

## CONSULTING AGREEMENT

**CONSULTING AGREEMENT** made effective January 1, 2020 – December 31, 2020 between **PREST & ASSOCIATES, LLC** (the “Consultant”) and **Salish Behavioral Health - Administrative Services Organization**, acting through its administrative entity, **Kitsap County, a political subdivision of the State of Washington**, (the “Company”) for the provision of certain consulting services.

### RECITALS:

WHEREAS, Consultant is accredited, without restriction, as an “Independent Review Organization/IRO” by the URAC and is in the business of providing advisory professional independent review organization consulting services to health plans, utilization review organizations, government agencies and others concerning medical necessity and/or medical appropriateness of treatment; and

WHEREAS, Company wishes to engage Consultant to provide such services.

In consideration of the mutual promises and obligations specified in this Agreement, the parties agree as follows:

1. Engagement. Consultant is hereby engaged to perform advisory professional external review organization consulting services, directly and through its qualified and experienced physicians licensed in particular specialties (the “Peer Reviewers”), and to render advisory consulting services on matters of medical necessity and/or medical appropriateness of treatment on cases requested by the Company from time to time. Unless otherwise agreed in writing, all services provided in response to a request shall be deemed completed upon delivery of Consultant’s final report responsive to such request. Any further or additional services shall be subject to Consultant and Company entering into a separate order or agreement specifying the applicable terms (including rate) for such services.

Consultant shall require that its Peer Reviewers use their appropriate medical and clinical judgment in performing consulting services hereunder and to render advisory opinions to Company in accordance with standard medical practice and Company’s applicable policies and procedures. Peer Reviewers shall not perform any type of professional diagnostic or treatment services, or any other direct medical care in the carrying out of any of the duties of this Agreement.

2. Consulting Services. During the consulting term, Consultant shall perform and discharge fully and faithfully the consulting services duties which may be assigned to Consultant from time to time by Company in connection with the conduct of its business. Consultant will make available Peer Reviewers to commence such consulting services within a reasonable period of time, after receiving a request for services from

Company. Consultant shall manage such consulting services so that the Independent Review Organization Standards provided by URAC are followed.

Consultant will provide consulting services to Company, including but not limited to, providing upon request from Company advisory consulting services on matters concerning medication management and medical necessity and/or medical appropriateness of mental health and substance abuse services as requested by Company. Such reviews shall be completed within timeframes mutually agreed upon by Consultant and Company. Upon completion of an advisory review or consultation, Consultant shall provide a report, including advisory opinions, to the Company.

Notwithstanding any advisory opinion which may be made by Consultant, it is expressly acknowledged by both parties that Company shall at all times remain responsible for making any determination concerning the medical necessity of a proposed or rendered service which impacts the provision of benefits to a Company member for such service. Consultant shall only be deemed to be providing advisory services with respect to such opinions; and shall not be construed to be making final determinations or to have the authority or responsibility for determining who is eligible to receive any type of benefit, the amount of any benefit to be paid under any insurance policy or plan, or for eligibility determinations, claims processing, or employee payment determinations or other similar determinations. All such authority and responsibility for such determinations remain with Company.

3. Qualifications of Peer Reviewers. For the performance of such consulting services, Consultant shall recruit and retain, qualify, insure, train and manage Peer Reviewers specializing in various aspects of mental health and substance abuse care; and shall ensure that such Peer Reviewers are re-credentialed every three years. Consultant shall ensure that all required professional licenses and credentials are maintained. Peer Reviewers will be required to follow all applicable Independent Review Organization Standards currently published by URAC and the Department of Labor.

4. Relationship of Parties. Consultant is hereby engaged as an independent contractor under this Agreement, and it shall direct and supervise the performance of the requested consulting services. This Agreement shall not be construed as a partnership. Nothing in this Agreement shall be construed in any way to create the relationship of employer and employee between Company and Consultant; and neither Consultant nor its Peer Reviewers shall be eligible to participate in any of Company's employment benefits, including but not limited to, any retirement plan provided by the Company. Consultant understands and agrees that Company will not pay or withhold from the compensation paid to Consultant pursuant to this Agreement any sums customarily paid or withheld on behalf of employees for income tax, unemployment insurance, social security, workers' compensation or any other withholding tax, insurance, or payment pursuant to any law or governmental requirement. All such

payments mentioned above and any similar payments as may be required by law are the sole responsibility of Consultant for Consultant's employees.

Consultant retains sole and absolute discretion, control, and judgment in the manner and means of carrying out the Consulting Services provided to Company.

5. Compensation. Rates are set forth in Exhibit A. Company also agrees to reimburse consultant for certain business and travel expenses incurred by Consultant in the performance of requested consulting services hereunder, including the cost of sending cases to Peer Reviewers via courier, or returning said cases to Company. Any travel expenses must be pre-approved in writing by the Company and may not exceed federal per diem reimbursement rates and must not exceed the limit set forth in Exhibit A.

Consultant shall submit to Company a biweekly invoice for services rendered. The bill shall include Company's client case number and patient's name, if provided by Company, and the total time spent on each case in units. Such invoices shall be payable within thirty (30) days of the Company's receipt; payment must be received by Consultant on or before the 30<sup>th</sup> day after the invoice is received by Company. If payment is not received by the designated due date, a late fee will be assessed along with interest at the highest applicable legal rate, but not exceeding 18% per annum and all actual costs of collection shall be added to the amount due.

6. Delegated Functions. Company delegates to Consultant the responsibilities of performing physician advisory services as outlined in this Agreement. Consultant agrees to perform services in accordance with Company's requirements and URAC standards.

In the event of any material change to the performance of any of the functions for which Consultant is delegated by Company, Consultant will provide advance written notification of not less than fifteen (15) days to Company.

Company may conduct surveys or audits of Consultant, as needed. Charges for such audits, if any, shall be negotiated by the parties.

Consultant will submit periodic reports to Company in such format as Company shall request from time to time. Charges for such reports, if any, shall be negotiated by the parties.

Deficiencies in service identified by Company, whether pursuant to audit or otherwise, shall be reported by Company to Consultant. Consultant shall respond within fifteen (15) days, or such longer period as Company may agree. The response shall either a) dispute the existence of a deficiency and provide supporting evidence, or b) present a corrective action plan, including procedures and timeframes. In the event that

the parties fail to reach agreement on the existence of a deficiency, or the appropriate corrective action and timeframe, Company or Consultant can terminate the contract as provided elsewhere in this Agreement.

Consultant shall not, without express written consent of Company, delegate any of its obligations hereunder. If such consent is granted by Company, the delegation by Consultant shall be on terms consistent with this agreement and in accordance with URAC standards, as applicable.

7. Authority. Nothing in this Agreement shall give Consultant or Company any right or authority, either express or implied, to assume or create on behalf of the other party any contract or commitment of any kind or nature without the written consent of the other party.

8. Term. The term of this Agreement (the "Consulting Term") shall be set forth on page one of this Agreement, January 1, 2020 – December 31, 2020.

9. Liability. CONSULTANT SHALL NOT BE LIABLE TO COMPANY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES SUCH AS, BY WAY OF EXAMPLE AND NOT LIMITATION, LOST REVENUES OR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER.

11. Insurance. Consultant shall maintain comprehensive general liability insurance and errors and omissions liability insurance policy(s), both in coverage amounts not less than \$5 million per occurrence, \$5 million in the aggregate. Evidence of such policies shall be furnished to Company upon reasonable request.

12. Confidentiality. Consultant agrees it will hold in strict confidence all information pertaining in any way to Company and clients of Company that is not generally available to the public and that was made available by Company or clients of Company or that becomes available to Consultant by virtue of this Agreement.

Consultant further agrees that it will not disclose patients' medical records to third parties without Company's consent, except in response to a subpoena or other court order and otherwise as required by or in accordance with applicable laws and regulations.

Company agrees that during the term of this Agreement and for at least two (2) years thereafter or such longer period as is permitted by applicable law, it shall hold in strict confidence all information pertaining in any way to Consultant, its Peer Reviewers and clients of Consultant, that is not generally available to the public and that was made available by Consultant, its Peer Reviewers or clients, or that becomes available to Company by virtue of this Agreement.

Such confidential disclosures that are made to Consultant or to Company, and such confidential information that is made or becomes available during the period that this Agreement is in effect, are made in reliance upon these promises.

Consultant and Company shall at all times comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, with regard to any medical records and individually identifiable health information subject to this Agreement, to the extent required by applicable laws. The parties agree to the terms of the Business Associate Agreement attached as Exhibit A, the terms of which are incorporated by reference herein. This provision shall survive termination of this Agreement.

13. Conflict of Interest. Consultant represents to the best of Consultant's knowledge, Consultant shall be able to perform advisory peer review and consultation services without any conflict of interest and shall promptly disclose to Company any potential or actual conflicts of interest with respect to any assignment given Consultant by Company. Any relationship or affiliation that could compromise the objectivity of the advisory peer review process, such as more than 5% ownership interest between any affected parties, any financial incentive for a particular opinion, performing utilization management or other services for the health benefits plan besides external advisory review, any known familial relationship, financial incentives or any incentive to promote a certain product or service with any of the following: the referring entity, the health benefits plan, the patient, the attending provider or any other health care provider previously involved in the case, the facility at which the recommended treatment would be provided, the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the patient, or have involvement with the case prior to its referral for advisory review are included but not limited to definitions of conflicts of interest. Consultant agrees that all peer advisory opinions coordinated by Consultant will be based on the appropriateness of care and service, to accept no rewards for issuing opinions and no incentives for encouraging underutilization of care. Consultant agrees to immediately report to Company any conflict or potential conflict of interest on each case received for advisory peer review.

Consultant and Company will determine and agree upon applicable state, federal or Company specific organizational conflicts of interest, if any, and attest to same when present. Consultant will not conduct a review in which it has an organizational conflict of interest unless, after full disclosure, Consultant obtains written consent to conduct the review from the covered person, insurance issuer or group health plan, and the Company.

Company represents to the best of Company's knowledge, Company shall be able to refer advisory peer review and consultation cases without any conflict of interest and shall promptly disclose to Consultant any potential or actual conflicts of interest with respect to any assignment given by Company to Consultant. Company represents

that no financial incentive for a particular opinion shall be offered. Company agrees that all advisory review outcomes are to be based on the appropriateness of care and service, to offer no rewards for issuing specific opinions and no incentives for encouraging underutilization of care. Company agrees to immediately report to Consultant any conflict or potential conflict of interest on each case received for advisory peer review.

14. Termination. This Agreement may be terminated by either party, with or without cause, at any time upon providing 90 days' written notice. Consultant shall be obligated to complete all open cases for Company unless otherwise directed by Company. Company shall be obligated to pay any and all outstanding fees and costs for advisory review services rendered prior to the termination of this Agreement.

This Agreement may be terminated for fault with fifteen (15) days written notice if the Consultant fails to resolve a deficiency after the Company follows the process as noted in Section 6 of this Agreement.

15. Miscellaneous.

(A) Notice. Any notice given pursuant to this Agreement shall be deemed effective if sent by registered or certified mail, express mail, postage prepaid, addressed as follows:

Consultant:

Prest & Associates, LLC  
401 Charmany Drive, Suite 305  
Madison, WI 53719

Attn.: Judith Shaffer, General Manager

Company:

Stephanie Lewis, SBH-ASO Regional Administrator  
Kitsap County  
614 Division St. MS-23  
Port Orchard, WA 98366-4676

or such other address as may be designated by a party by written notice to the other.

(B) Entire Agreement and Amendment. This Agreement constitutes the entire agreement of the parties replacing any prior agreement. It may be amended only by a written document signed by a duly authorized individual of each party.

(C) Non-Assignment and Benefit. This Agreement shall not be assignable by either party without the prior written consent of the other, which consent shall not be unreasonably withheld, and shall bind and inure to the benefit of the parties hereto and their respective legal successors and permitted assigns.

(D) Partial Invalidity. Should any provision of this Agreement be held unenforceable, the remainder of the Agreement shall continue in full force and effect notwithstanding the partial invalidity ruling, provided that the remaining provisions can be given effect without invalid provision and conform to applicable law and the fundamental purposes of this Agreement.

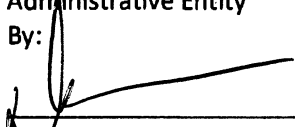
(E) Applicable Law. This Agreement has been made in and shall be governed by and construed by the laws of the State of Washington.

(F) Waiver. Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time.

(G) Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include, but are not necessarily limited to, the following: Sections 6 (Delegated Functions), 12 (Confidentiality), 15 (A) (Miscellaneous/Notice) and 15 (E) (Applicable Law); and Business Associate Agreement.

**IN WITNESS WHEREOF**, this Agreement has been executed by each party to be effective as of the date first above written.

SALISH BEHAVIORAL HEALTH:  
ADMINISTRATIVE SERVICES  
SERVICES ORGANIZATION By Kitsap  
Board of Commissioners, Its  
Administrative Entity

By:   
\_\_\_\_\_  
Doug Washburn, Director  
Department of Human Services

4-9-20

PREST & ASSOCIATES, LLC:  
By:

  
\_\_\_\_\_  
Judith Shaffer  
General Manager

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is made and entered into as of the date of the Agreement by and between Consultant (“Business Associate”) and Company (“Covered Entity”). This BAA is drafted in accordance with Covered Entity’s and Business Associate’s obligations under Title II of the Health Insurance Portability and Accountability Act of 1996, as amended (including by the Health Information Technology for Economic and Clinical Health, the “HITECH Act”), and the regulations issued and effective thereunder (collectively, “HIPAA”) to ensure the integrity and confidentiality of Protected Health Information (“PHI”) that the Business Associate may create for or receive from the Covered Entity.

### 1. DEFINITIONS

Capitalized terms used but not otherwise defined in this BAA or the Agreement shall have the same meaning as set forth in HIPAA.

### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1. Business Associate agrees not to use or further disclose PHI other than as permitted or required by the Agreement, this BAA or as Required by Law.
- 2.2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA.
- 2.3. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- 2.4. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- 2.5. To the extent that Business Associate maintains PHI in a Designated Record Set, as defined at 45 C.F.R. § 164.501, Business Associate agrees to provide Covered Entity, upon request, in a reasonable time and manner, PHI maintained or created by Business Associate, so Covered Entity can respond to a request by an Individual for access to inspect and obtain a copy of PHI in accordance with 45 C.F.R. 164.524.
- 2.6. To the extent that Business Associate maintains PHI in a Designated Record Set, as defined at 45 C.F.R. § 164.501, Business Associate agrees to provide Covered



Entity, upon request, in a reasonable time and manner, PHI maintained or created by Business Associate, so Covered Entity can respond to a request by an Individual for amendment to the PHI and if requested by Covered Entity to incorporate any amendments to the PHI maintained by the Business Associate in accordance with 45 C.F.R. 164.526.

- 2.7. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, related to the use and disclosure of PHI received from, or created or received by Business Associate available to HHS within a reasonable time or as designated by HHS, for purposes of the Secretary determining Covered Entity's and/or Business Associate's compliance with HIPAA.
- 2.8. 45 C.F.R. 164.308, 164.310, 164.312, and 164.316 shall apply to Business Associate in the same manner that such sections apply to Covered Entity.
- 2.9. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- 2.10. Business Associate agrees to provide to Covered Entity or an Individual within a reasonable time, information collected in accordance with Section 2.9 of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an Individual, in an electronic format, if a direct response is requested by the Individual.
- 2.11. Business Associate will comply with any restriction request under Section 4.3 below if: (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
- 2.12. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA or any Security Incident of which it becomes aware. In addition, Business Associate shall notify Covered Entity within a reasonable amount of time of the discovery of a Breach of Unsecured PHI, as defined by 45 C.F.R. § 164.402. Business Associate will treat the Breach as being discovered, and provide any required notification to Covered Entity in accordance with 45 C.F.R. § 164.410. If a delay is requested by a law enforcement official in accordance with 45 C.F.R. § 164.412, Business Associate may delay notifying Covered Entity for the applicable time period.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- 3.1. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that disclosures are either:
  - Required by Law; or
  - Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Covered Entity's PHI that the person or entity will: (1) hold Covered Entity's PHI in confidence and use or further disclose Covered Entity's PHI only for the purpose for which Business Associate disclosed Covered Entity's PHI to the person or entity or as Required by Law; and (2) promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Covered Entity's PHI was breached.
- 3.4. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- 3.5. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).
- 3.6. Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered Entity's PHI reasonably necessary to accomplish the intended purposes of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act, and government guidance on the definition.

- 3.7. Except as otherwise allowed under the HITECH Act, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless the Covered Entity or Business Associate obtained from the Individual, in accordance with 45 C.F.R. 164.508, a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual.

#### **4. OBLIGATIONS OF COVERED ENTITY**

- 4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity with the exception of any uses or disclosures as allowed by Section 3 above.

#### **5. TERM AND TERMINATION**

- 5.1. Term. The term of this BAA shall be effective as of the Effective Date of the Agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this BAA, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA and the Agreement. If Business Associate does not cure the breach or end the violation within a reasonable time period, or if Business Associate has breached a material term of this BAA and cure is not possible, then Covered Entity may immediately terminate this BAA and the Agreement. If termination is not feasible, Covered Entity shall report the problem to the Secretary.

## **6. EFFECT OF TERMINATION**

- 6.1. Except as provided in section 6.2, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate and its subcontractors or agents shall retain no copies of the PHI.
- 6.2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **7. MISCELLANEOUS**

- 7.1. **Regulatory References.** A reference in this BAA to a section in the Privacy or Security Rule means the section as in effect or as amended, and for which compliance is required.
- 7.2. **Amendment.** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including the HITECH Act, and any guidance and regulations promulgated thereunder.
- 7.3. **Survival.** The rights and obligations of Business Associate under section 6 of this BAA shall survive the termination of this BAA.
- 7.4. **Interpretation.** Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA.
- 7.5. **Authorizations.** To the extent any specific disclosure of PHI is made by Covered Entity to Business Associate pursuant to and in accordance with a valid authorization under 45 C.F.R. 164.508, the terms of such authorization will apply rather than the terms of this Business Associate Agreement.

**Exhibit A**

**Fees for Services**

**Compensation**

<b>Basic Reviews</b>	<b>Standard Reviews</b>	<b>On-Call Reviews</b>
\$110.00 per review	\$195 per hour (billed in 15-minute increments)	\$292.50 fixed rate up to the first hour.  For reviews requiring more than 60 minutes, \$195 per hour (billed in 15-minute increments).

COMPENSATION NOT TO EXCEED \$10,000.