

**NORTH SOUND
MENTAL HEALTH ADMINISTRATION**

**AGREEMENT
FOR THE
PROVISION OF
DD CRISIS PREVENTION AND
STABILIZATION SERVICES**

WITH

VOLUNTEERS OF AMERICA (VOA)

CONTRACT #NSMHA-VOA-DDD-09-10

JULY 1, 2009 TO JUNE 30, 2011

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Exhibit A – State of Washington mental health system mission statement, value statement, and the guiding principles for the system – links

Attachment I – Core Values and Principles

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Attachment III – Policy and Procedure Grid

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**AGREEMENT FOR THE PROVISION
OF
DD CRISIS PREVENTION AND
STABILIZATION SERVICES**

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THIS MENTAL HEALTH SERVICES AGREEMENT (the “Agreement”), pursuant to Chapter 71.24 RCW and all relevant and associated statutes, as amended, is made and entered into by and between the NORTH SOUND REGIONAL SUPPORT NETWORK, dba THE NORTH SOUND MENTAL HEALTH ADMINISTRATION (“NSMHA”), 117 North 1st Street, Suite 8, Mount Vernon, Washington 98273, and Volunteers of America (“CONTRACTOR”) 2801 Broadway, Everett, WA 98206.

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This Agreement incorporates the Agreement’s Exhibits and Attachments to the Agreement and other documents incorporated by reference.

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The effective date of this Agreement is July 1, 2009, through June 30, 2011.

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A. DEFINITIONS

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“Agreement” means this Interlocal Agreement, including all Exhibits and other documents attached or incorporated by reference

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“ARNP” means an Advanced Registered Nurse Practitioner as defined in RCW 18.88.

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“DMHP” means a Designated Mental Health Professional.

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“DCR” means Designated Crisis Responder; a DMHP with 40 hours of Chemical Dependency Training.

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“DDD” or “the division” or “the Division” means the Division of Developmental Disabilities.

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“In-home services” means face-to-face contact with an individual in service or travel time for each face-to-face contact or time used to make telephone calls regarding individuals being served or time spent in psychiatric consultation or attendance at meetings with or about the client.

“Medication Monitoring” means to monitor the client’s response to one or more prescribed medications. Monitoring may include observation of the client for side effects, correct dosage, intervals and other medically approved best practice monitoring techniques.

“NSMHA” means North Sounds Mental Health Administration.

“Psychiatric services” means services provided by a psychiatrist, who is a medical doctor (MD) and is board eligible or board certified in psychiatry, or an Advanced Registered Nurse Practitioner who holds a Master’s degree in nursing and is certified as an ARNP. Under the supervision of a psychiatrist certified or licensed physician assistants, registered nurses, and licensed practical nurses may provide services.

“RSN” means the Regional Support Network.

1 “CFR” means Code of Federal Regulations. All references in this Agreement to CFR chapters or sections
2 shall include any successor, amended, or replacement regulation. The CFR may be accessed at
3 <http://www.gpoaccess.gov/cfr/index.html>
4

5 “Debarment” means an action taken by a federal official to exclude a person or business entity from
6 participating in transactions involving certain federal funds.
7

8 “Personal Information” means information identifiable to any person, including, but not limited to,
9 information that relates to a person’s name, health, finances, education, business, use or receipt of
10 governmental services or other activities, addresses, telephone numbers, social security numbers, driver
11 license numbers, other identifying numbers, and any financial identifiers.
12

13 “RCW” means the Revised Code of Washington. All references in this Agreement to RCW chapters or
14 sections shall include any successor, amended, or replacement statute. The RCW can be accessed at
15 <http://slc.leg.wa.gov>
16

17 “Subcontract” means a separate contract between the CONTRACTOR and an individual or entity
18 (“Subcontractor”) to perform all or a portion of the duties and obligations that the CONTRACTOR shall
19 perform pursuant to this Agreement.
20

21 “USCA” means United States Code Annotated. All references to USCA chapters or sections in this
22 Agreement shall include any successor, amended, or replacement statute. The USCA may be accessed at
23 <http://www.gpoaccess.gov/uscode/>
24

25 “WAC” means the Washington Administrative Code. All references in this Agreement to WAC chapters
26 or sections shall include any successor, amended, or replacement regulation. The WAC can be accessed at
27 <http://slc.leg.wa.gov>
28
29

1 **B. SCOPE OF WORK AND PERFORMANCE STANDARDS**

2 The CONTRACTOR shall provide the services and staff, and otherwise do all things necessary for or
3 incidental to the performance of work, as set forth below.
4

5 **1. PURPOSE OF CONTRACT**

- 6 a. This contract is being entered into pursuant to the Department of Social and Health
7 Services (DSHS) Division of Developmental Disabilities (DDD) and Mental Health
8 Division (MHD) Collaborative Work Plan. In an effort to improve short-term, episodic
9 crisis prevention, interventions and stabilization mental health services for registered DDD
10 clients, DDD is contracting to provide enhanced services for DDD eligible clients.
11 b. This contract is not meant to duplicate services already provided to registered DDD clients
12 who have an Axis I or Axis II disorder and are already eligible to receive mental
13 health/behavioral services under the Prepaid Health Plan/RSN contract.
14 c. Enhanced services are those usual and customary behavioral health care services that would
15 not otherwise be provided by NSMHA.
16

17 **2. OBJECTIVES**

- 18 a. Provide an alternative, when appropriate, to voluntary and involuntary psychiatric
19 hospitalization in community hospitals, evaluation and treatment centers and state
20 hospitals.
21 b. Provide crisis stabilization and intervention services, regardless of mental health diagnosis
22 or RSN enrollment, to prevent the hospitalization of DDD eligible clients when they are
23 exhibiting behaviors that may cause harm to self or others, may result in property
24 destruction or may represent evidence of a serious deterioration in mental functioning
25 which could lead to hospitalization.
26 c. Support DDD enrolled clients to remain in their natural settings (i.e. residential, vocational,
27 etc.) when possible by coordinating an array of services intended to enable the clients to
28 become stable.
29 d. Reduce the number of hospitalizations and the average length of stay for DDD enrolled
30 clients who are detained and/or have a history of detentions.
31 e. Services shall be available along a continuum and shall be provided in the least restrictive,
32 clinically appropriate environment possible with available resources.
33

34 **3. TARGET POPULATION TO BE SERVED**

35 The following describes the groups of individuals who constitute the primary target population
36 for whom CONTRACTOR provides services under this agreement:
37

- 38 a. Individuals 18 years of age or older currently in DDD diversion or mental health respite
39 beds who are at risk of destabilizing;
40 b. Individuals who have a history of one or more detentions, voluntary or involuntary, at
41 either community or state psychiatric hospitals, within the past two (2) years;
42 c. Individuals who have repeatedly been seen in the crisis response system but have not been
43 detained;
44 d. Individuals who have a history of multiple contacts with the criminal justice system related
45 to their developmental disabilities;
46 e. Other Region 3 DDD enrolled clients referred by DDD, families, caregivers and/or other
47 responsible persons.
48

1 **4. SERVICES TO BE PROVIDED**

2 a. Immediate Acute Intervention Services

3
4 The CONTRACTOR shall provide enhanced 24-hour, seven-days a week, 365 days a year
5 Crisis Line and Crisis Triage Services and telephone consultation regarding utility and
6 availability of next-day response for in-home services. Services to be provided by
7 CONTRACTOR that are in addition to its regular services are:

- 8
9
- 10 1) Triage ensures that ICRS staff are aware of client’s DD status, specifics of DDD
11 Protocol, and coordinates services;
 - 12 2) Receives updated master list of DDD clients from NSMHA every month or when
13 it becomes available;
 - 14 3) Maintains notebook of approximately 50+ cross-systems crisis plans, periodically
15 receiving new or updated ones;
 - 16 4) CONTRACTOR staff enter DD alert in Raintree to let CONTRACTOR staff
17 know that client *has* a cross-systems crisis plan;
 - 18 5) Visible list of DDD clients with cross-systems plans is maintained by
19 CONTRACTOR staff on whiteboard in phone room;
 - 20 6) Views and utilizes DDD Cross-systems crisis plans when clients calls;
 - 21 7) Documents on DDD clipboard what services were provided for DD clients (this
22 information is utilized for monthly enhanced DDD report);
 - 23 8) Submits monthly DDD report to DDD;
 - 24 9) Checks master list for enhanced DDD services status when Triage dispatches ICRS
25 staff;
 - 26 10) Accesses DDD contact person/Anne Kinney when appropriate during office
27 hours regarding services for consumers on master list;
 - 28 11) Pages Sunrise DD crisis aides after hours in conjunction with emergency outreach
29 services;
 - 30 12) Periodically alerts Mary Norris/DDD contact person of inconsistencies or
31 concerns regarding DDD Protocol;
 - 32 13) Regularly helps ICRS emergency staff navigate accessing DDD crisis support
33 services.

34 b. Inter-agency and Intra-agency Collaboration

- 35
- 36 1) Collaborate with DDD staff and other mental health systems staff regarding
37 follow-up services for individuals who are at high risk or relapse once the acute
38 crisis is past and they are back in a community service residence, i.e. developing,
39 reviewing and/or revising crisis intervention plans.
 - 40 2) Network collaboratively with other service agencies.
 - 41 3) Meet as necessary, in collaboration with NSMHA and Region 3 DDD, to identify
42 and review systems issues related to the implementation of this agreement and the
43 effective delivery of crisis prevention, intervention, and response services.
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5. RECORDS:

The CONTRACTOR shall:

- a. Maintain an individual client record for each person who is provided services under this contract.
- b. Report monthly to DDD contact person the names of persons served, the type of service provided and the number of hours served.
- c. Consider all client information privileged and confidential. All client information shall be made available to the client, guardian, or legal representative as appropriate, and DSHS upon request. Pertinent client information shall be made available to employees of the CONTRACTOR.
- d. Require a “release of information” form, as necessary, signed by the client, guardian, or legal representative, prior to releasing any confidential information about an individual to outside parties if not for treatment, payment, or operation related.

1 **C. FINANCIAL TERMS AND CONDITIONS**

2
3 **1. GENERAL FISCAL ASSURANCES**

4 The CONTRACTOR shall comply with all applicable laws and standards, including Generally
5 Accepted Accounting Principles, and maintain, at a minimum, a financial management system that
6 is a viable, single, integrated system with sufficient sophistication and capability to effectively and
7 efficiently process, track, and manage all fiscal matters and transactions.
8

9 **2. FINANCIAL ACCOUNTING REQUIREMENTS**

10 The CONTRACTOR shall:

- 11
- 12 a. Ensure that all funds, including interest earned, provided pursuant to this Agreement are
 - 13 used to support the public mental health system within the Service Area.
 - 14 b. The CONTRACTOR shall produce annual audited financial statements within 180 days of
 - 15 fiscal year end and make such reports available to NSMHA upon request.
16

17 **3. FINANCIAL REPORTING**

- 18 a. NSMHA shall pay the CONTRACTOR an amount not to exceed the maximum
- 19 consideration specified in this Agreement for the satisfactory performance of all work set
- 20 forth in the Scope of Work.
- 21 b. NSMHA shall provide to the CONTRACTOR form A-19 State of Washington Invoice
- 22 voucher to be utilized as the billing document for this contract.
- 23 c. The CONTRACTOR shall submit a completed monthly invoice using the A-19 provided
- 24 by NSMHA.
- 25 d. The CONTRACTOR shall submit with the invoice a document that includes the following
- 26 information for each individual served during the billing month:
27
 - 28 1) Name of each person served.
 - 29 2) Type(s) of service provided.
 - 30 3) Date each services provided.
 - 31 4) Length of each service provided.
 - 32 5) Location of each service provided.
 - 33 6) Information regarding any specific training sessions held, including the type of
 - 34 training provided, dates of training, attendance information including place of work
 - 35 for attendees and location of training.
 - 36 7) The CONTRACTOR shall submit the invoice and documentation to the NSMHA
 - 37 Fiscal Services department.
- 38
- 39 e. The CONTRACTOR shall not be responsible for services beyond the total amount of this
- 40 contract. The CONTRACTOR may shift resources categories of this statement of work in
- 41 an effort to best meet the overall goals of the contract.
42

43 **4. RULES COMPLIANCE**

44 The CONTRACTOR shall:

- 45 a. Account for public mental health expenditures under this Agreement in accordance with
- 46 federal circular A-133 and A-87, and state requirements in accordance with the BARS
- 47 Manual and BARS Supplemental Instructions.
48

- b. NSMHA shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
- c. NSMHA shall pay the CONTRACTOR only for authorized services provided in accordance with this Contract. If this Contract is terminated for any reason, NSMHA shall pay only for services authorized and provided through the date of termination.
- d. Unless otherwise specified in this Contract, NSMHA shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- e. The CONTRACTOR shall not bill NSMHA for services performed under this contract, and NSMHA shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement for the same services.

5. FINANCIAL PROVISIONS - REIMBURSEMENT REQUIREMENTS

- a. NSMHA's obligations to reimburse the CONTRACTOR are limited to reimbursement obtained from DSHS for the performance of services under this Agreement.
- b. NSMHA shall reimburse the CONTRACTOR as follows for the period 7/1/09 – 6/30/11.
 - 1) Crisis stabilization services at \$835.00 per month.
- c. The consideration by NSMHA to the CONTRACTOR pursuant to this Agreement shall be paid in monthly installments within ten (10) working days of NSMHA's receipt of payment by DSHS/MHD. Total maximum consideration for this contract is \$20,040.

6. FRAUD AND ABUSE

The CONTRACTOR shall develop and implement administrative and management procedures that are designed to guard against fraud and abuse including:

- a. A mandatory compliance plan.
- b. Designation of a compliance officer or a compliance committee that is accountable to the CONTRACTOR.
- c. Effective ongoing training and education for the compliance officer and the CONTRACTOR.
- d. Effective lines of communication between the compliance officer and employees and other providers in the CONTRACTOR's network.
- e. Enforcement of standards through well-publicized disciplinary guidelines.
- f. Provision of internal monitoring and auditing.
- g. Provision for prompt response to detected offenses and for development of corrective action initiatives.
- h. Participation by the CONTRACTOR and any subcontractors in Medicaid fraud and abuse training conducted by the Washington State Attorney General's Medicaid Fraud Unit.
- i. Written policies, procedures, and standards of conduct that articulates the CONTRACTOR's commitment to comply with all applicable Federal and State standards.
- j. Report fraud and/or abuse information to NSMHA as soon as it is discovered including the source of the complaint, the party complained against, nature of fraud or abuse complaint, approximate dollars involved, and the legal and administrative disposition of the case.

1 **D. OVERSIGHT, REMEDIES AND TERMINATION**

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3 **1. OVERSIGHT AUTHORITY**

4 NSMHA, the Department of Social and Health Services (DSHS), Office of the State Auditor, the
5 Department of Health and Human Services, Centers for Medicare and Medicaid Services, the
6 Comptroller General, or any of their duly-authorized representatives (e.g. External Quality Review
7 Organizations), have the authority to conduct announced and unannounced: a) surveys; b) audits;
8 c) reviews of compliance with licensing and certification requirements and compliance with this
9 Agreement; d) audits regarding the quality, appropriateness, and timeliness of mental health
10 services of the CONTRACTOR and subcontractors; and e) audits and inspections of financial
11 records of the CONTRACTOR and subcontractors. The CONTRACTOR shall notify NSMHA
12 when an entity other than NSMHA performs any audit described above related to any activity
13 contained in this Agreement.
14

15 In addition, NSMHA will conduct reviews in accordance with its oversight of resource, utilization
16 and quality management, as well as to ensure that the CONTRACTOR has the clinical,
17 administrative and fiscal structures to enable them to perform in accordance with the terms of the
18 contract. Such reviews may include, but are not limited to encounter data validation, utilization
19 reviews, clinical record reviews, and reviews of administrative structures, fiscal management and
20 contract compliance. Reviews may include desk reviews, requiring CONTRACTOR to submit
21 requested information. NSMHA will also review activities delegated under this contract to the
22 CONTRACTOR.
23

24 The CONTRACTOR shall cooperate with and allow access to NSMHA Ombuds and Quality
25 Review Team (“QRT”) in order to conduct surveys and review activities in accordance with the
26 terms of this contract. The CONTRACTOR shall cooperate with NSMHA in resolving any
27 disputes that arise in the provision of Ombuds and QRT services.
28

29 Findings as a result of NSMHA conducted reviews may result in remedial action as outlined
30 below. Federal and State agencies may impose remedial action or financial penalties either directly
31 upon the CONTRACTOR or through NSMHA. The CONTRACTOR shall comply with the
32 terms of such remedial action and be responsible for the payment of financial penalties.
33

34 **2. REMEDIAL ACTION**

35 NSMHA may require the CONTRACTOR to plan and execute corrective action. Corrective
36 action plans developed by the CONTRACTOR must be submitted for approval to the NSMHA
37 within 30 calendar days of notification. Corrective action plans must be provided in a format
38 acceptable to NSMHA. The NSMHA may extend or reduce the time allowed for corrective action
39 depending upon the nature of the situation as determined by the NSMHA.
40

41 a. Corrective action plans must include:

- 42
43 1) A brief description of the finding;
44 2) Specific actions to be taken, a timetable, a description of the monitoring to be
45 performed, the steps taken and responsible individuals that will reflect the
46 resolution of the situation.
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- b. Corrective action plans may:
 - Require modification of any policies or procedures by the CONTRACTOR relating to the fulfillment of its obligations pursuant to this Agreement.
 - c. Corrective action plans are subject to approval by the NSMHA, which may:
 - 1) Accept the plan as submitted.
 - 2) Accept the plan with specified modifications.
 - 3) Request a modified plan.
 - 4) Reject the plan.
 - d. The CONTRACTOR agrees that NSMHA may initiate remedial action with or without a corrective action plan as outlined in subsection below if the NSMHA determines any of the following situations exist:
 - 1) A problem exists that negatively impacts consumers.
 - a) The CONTRACTOR has failed to perform any of the mental health services required in this Agreement, including delegated functions, which includes the failure to maintain the required capacity as specified by NSMHA to ensure that consumers receive medically necessary services.
 - 2) The CONTRACTOR has failed to develop, produce, and/or deliver to the NSMHA any of the statements, reports, data, data corrections, accountings, claims, and/or documentation described herein, in compliance with all the provisions of this Agreement.
 - 3) The CONTRACTOR has failed to perform any administrative function required under this Agreement, including delegated functions. For the purposes of this section, “administrative function” is defined as any obligation other than the actual provision of mental health services.
 - 4) The CONTRACTOR has failed to implement corrective action required by the state and within NSMHA prescribed time frames.
 - e. The NSMHA may impose any of the following remedial actions in response to findings of situations as outlined above:
 - 1) Withhold one percent of the next monthly payment and each monthly payment thereafter until the corrective action has achieved resolution. The NSMHA, at its sole discretion, may return a portion or all of any payments withheld once satisfactory resolution has been achieved.
 - 2) Compound withholdings identified above by an additional one-half of one percent for each successive month during which the remedial situation has not been resolved.
 - 3) Revoke delegation of any function delegated under this contract.

- 4) Deny any incentive payment to which the CONTRACTOR might otherwise have been entitled under this Agreement or any other arrangement by which the MHD provides incentives.
- 5) Termination for Default, as outlined in this Agreement.

3. ADDITIONAL FINANCIAL PENALTIES – MHD IMPOSED SANCTIONS

Financial penalties imposed by MHD or other regulatory agency due to the action or inaction of CONTRACTOR may be paid by NSMHA on behalf of the CONTRACTOR and the amount will be withheld from NSMHA’s payments to CONTRACTOR.

4. TERMINATION DUE TO CHANGE IN FUNDING

In the event funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to its normal completion, NSMHA may terminate this Agreement, subject to re-negotiations.

5. TERMINATION DUE TO CHANGE IN 1915(B) MENTAL HEALTH SERVICES WAIVER

In the event that changes to the terms of the 1915(b) (Medicaid) Mental Health Services Waiver render this Agreement invalid in any way after the effective date of this Agreement and prior to its normal completion, NSMHA may terminate this Agreement, subject to re-negotiation, if applicable, under those new special terms and conditions.

6. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, a party may terminate this Agreement upon 90 days written notification by certified mail to the other party. The effective date of termination shall be the ninetieth day after receipt of written notification to the other party or the last day of the calendar month in which the ninetieth day occurs, whichever is later.

7. TERMINATION FOR DEFAULT

NSMHA’s Program Manager may terminate this Agreement for default, in whole or in part, by written notice to the CONTRACTOR if NSMHA or DSHS has a reasonable basis to believe that the CONTRACTOR has or have:

- a. Failed to meet or maintain any requirement for contracting with DSHS.
- b. Failed to perform under any provision of this Agreement.
- c. Violated any law, regulation, rule, or ordinance applicable to the services provided under this Agreement.
- d. Otherwise breached any provision or condition of this Agreement.

Before NSMHA’s Program Manager may terminate this Agreement for default, in whole or in part, NSMHA shall provide the CONTRACTOR with written notice of the CONTRACTOR’s noncompliance with this Agreement which notice shall provide the CONTRACTOR a reasonable time period to correct its/their noncompliance. If the CONTRACTOR has or have not corrected its/their noncompliance within the period of time specified in the written notice of noncompliance, NSMHA Program Manager may then terminate this Agreement, provided, that the NSMHA Program Manager may terminate this Agreement in whole or in part for default without such written notice and without opportunity for correction if NSMHA and/or DSHS has a reasonable basis to believe that:

- 1 a. The CONTRACTOR has violated any law, regulation, rule or ordinance applicable to
- 2 services provided under this agreement.
- 3 b. Continuance of this Agreement with the CONTRACTOR poses a material risk of injury or
- 4 harm to any person.
- 5

6 The CONTRACTOR may terminate this Agreement in whole or in part, by written notice to
7 NSMHA, if the CONTRACTOR has a reasonable basis to believe that NSMHA has:

- 8
- 9 a. Failed to meet or maintain any requirement for contracting with the CONTRACTOR.
- 10 b. Failed to perform under any provision of this Agreement.
- 11 c. Violated any law, regulation, rule, or ordinance applicable to work performed under this
- 12 Agreement.
- 13 d. Otherwise breached any provision or condition of this Agreement.
- 14

15 **8. TERMINATION PROCEDURE**

16 The following provisions shall survive and be binding on the parties in the event this Agreement is
17 terminated:

- 18
- 19 a. The CONTRACTOR and any applicable subcontractors shall cease to perform any
- 20 services required by this Agreement as of the effective date of termination and shall
- 21 comply with all reasonable instructions contained in the notice of termination which are
- 22 related to the transfer of clients, distribution of property, and termination of services.
- 23 Each party shall be responsible only for its performance in accordance with the terms of
- 24 this Agreement rendered prior to the effective date of termination. The CONTRACTOR
- 25 and any applicable subcontractors shall assist in the orderly transfer/transition of the
- 26 consumers served under this Agreement. The CONTRACTOR and any applicable
- 27 subcontractors shall promptly supply all information necessary for the reimbursement of
- 28 any outstanding Medicaid claims.
- 29 b. The CONTRACTOR and any applicable subcontractors shall immediately deliver to
- 30 NSMHA Program Manager or to his/her successor, all DSHS and NSMHA assets
- 31 (property) in the CONTRACTOR and any applicable subcontractor's possession and any
- 32 property produced under this Agreement. The CONTRACTOR and any applicable
- 33 subcontractors grants NSMHA and DSHS the right to enter upon the CONTRACTOR
- 34 and any applicable subcontractors premises for the sole purpose of recovering any
- 35 NSMHA or DSHS property that the CONTRACTOR and any applicable subcontractors
- 36 fails to return within ten (10) working days of termination of this Agreement. Upon failure
- 37 to return NSMHA and/or DSHS property within ten (10) working days of the termination
- 38 of this Agreement, the CONTRACTOR and any applicable subcontractors shall be
- 39 charged with all reasonable costs of recovery, including transportation and attorney's fees.
- 40 The CONTRACTOR and any applicable subcontractors shall protect and preserve any
- 41 property of NSMHA and/or DSHS that is in the possession of the CONTRACTOR and
- 42 any applicable subcontractors pending return to NSMHA and/or DSHS.
- 43 c. NSMHA shall be liable for and shall pay for only those services authorized and provided
- 44 through the date of termination. NSMHA may pay an amount agreed to by the parties for
- 45 partially completed work and services, if work products are useful to or usable by NSMHA.
- 46 d. If the CONTRACTOR terminates this Agreement, the NSMHA will require the spend-
- 47 down of all remaining State fund reserves and fund balance within the termination period.

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State funds shall be deducted from the final months' payments until reserves and fund balances are spent.

1 **E. GENERAL TERMS AND CONDITIONS FOR CONTRACTOR**

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3 **1. BACKGROUND**

4 NSMHA is an entity formed by inter-local agreement between Island, San Juan, Skagit, Snohomish
5 and Whatcom Counties, each a county authority recognized by the Secretary of Department of
6 Social and Health Services (“Secretary”). These counties entered into an inter-local agreement to
7 allow NSMHA to contract with the Secretary pursuant to RCW 71.24.025(13), to operate a single
8 managed system of services for persons with mental illness living in the service area covered by
9 Island, San Juan, Skagit, Snohomish and Whatcom Counties (“Service Area”). NSMHA is party to
10 an interagency agreement with the Secretary, pursuant to which NSMHA has agreed to provide
11 integrated community support, crisis response, and inpatient management services to people
12 needing such services in its Service Area. NSMHA, through this Agreement, is subcontracting
13 with CONTRACTOR for the provision of specific mental health services as required by the
14 agreement with the Secretary. CONTRACTOR, by signing this Agreement, attests that it is willing
15 and able to provide such services in the Service Area.

16
17 **2. MUTUAL COMMITMENTS**

18 The parties to this Agreement are mutually committed to the development of an efficient, cost
19 effective, integrated, consumer-driven, age specific recovery and resilience model approach to the
20 delivery of quality community mental health services. To that end, the parties are mutually
21 committed to maximizing the availability of resources to provide needed mental health services in
22 the Service Area, maximizing the portion of those resources used for the provision of direct
23 services and minimizing duplication of effort.

24
25 **3. ASSIGNMENT**

26 Except as otherwise provided within this Agreement, this Agreement may not be assigned,
27 delegated, or transferred by CONTRACTOR without the express written consent of NSMHA,
28 and any attempt to transfer or assign this Agreement without such consent shall be void. The
29 terms “assigned”, “delegated”, or “transferred” shall include change of business structure to a
30 limited liability company, of any CONTRACTOR Member or Affiliate Agency.

31
32 **4. AUTHORITY**

33 Concurrent with the execution of this Agreement, CONTRACTOR shall furnish NSMHA with a
34 copy of the explicit written authorization of its governing body to enter into this Agreement and
35 accept the financial risk and responsibility to carry out all terms of this Agreement including the
36 ability to pay for all expenses incurred during the contract period. Likewise, concurrent with the
37 execution of this Agreement, NSMHA shall furnish CONTRACTOR with a written copy of the
38 motion, resolution, or ordinance passed by NSMHA Board of Directors (NSMHA Board)
39 authorizing NSMHA to execute this Agreement.

40
41 **5. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND OPERATIONAL**
42 **POLICIES**

43 The CONTRACTOR and its subcontractors shall comply with all applicable federal and state
44 statutes, regulations, and operational policies whether or not a specific citation is identified in
45 various sections of this Agreement, and all amendments thereto that are in effect when the
46 Agreement is signed, or that come into effect during the term of the Agreement, which may
47 include but are not limited to, the following (“Federal and/or State Law”):

- a. Title XIX and Title XXI of the Social Security Act and Title 42 of the Code of Federal Regulations.
- b. All applicable Office of the Insurance Commissioner (OIC) statutes and regulations.
- c. All local, State, and Federal professional and facility licensing and certification requirements/standards that apply to services performed under the terms of this Agreement.
- d. All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 US 1857(h)), Section 508 of the Clean Water Act (33 US 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Any violations shall be reported to Department of Social and Health Services (DSHS), Department of Health and Human Service (DHHS), and the EPA.
- e. Any applicable mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan, issued in compliance with the federal Energy Policy and Conservation Act.
- f. Those specified for laboratory services in the Clinical Laboratory Improvement Amendments (CLIA).
- g. Those specified in Title 18 RCW for professional licensing.
- h. Reporting of abuse as required by RCW 26.44.030.
- i. Industrial insurance coverage as required by Title 51 RCW.
- j. RCW 38.52, 70.02, 71.05, 71.24, and 71.34.
- k. WAC 388-865.
- l. 42 CFR 438, including 42 CFR 438.58 (conflict of interest) and 42 CFR 438.106 (physician incentive plans).
- m. The State of Washington Medicaid State Plan and the 1915(b) Medicaid Mental Health Waiver or their successors, which documents are incorporated by reference.
- n. MHD Quality Strategy.
- o. The State of Washington mental health system mission statement, value statement, and the guiding principles for the system, attached hereto as Exhibit A.
- p. The State Medicaid Manual (SMM), Office of Management and Budget (OMB) Circulars, the Budgeting, Accounting, and Reporting System (BARS) Manual, and BARS Supplemental Mental Health Instructions.
- q. Any applicable federal and state laws that pertain to Medicaid enrollee or consumer rights. CONTRACTOR shall ensure that its staff takes those rights into account when furnishing services to consumers.
- r. DSHS Administrative policies, to the extent that they are applicable to this contract.
- s. 42 U.S.C. 1320a-7 and 1320a-7b (Section 1128 and 1128 (b) of the Social Security Act), which prohibits making payments directly or indirectly to physicians or other providers as an inducement to reduce or limit mental health services provided to consumers.
- t. Any policies and procedures developed by Medical Assistance Administration for compliance with WAC 388-519-0110, which governs the spend-down of client assets.
- u. The CONTRACTOR and any subcontractors must comply with 42-USC 1396u-2 and must not knowingly have a director, officer, partner, or person with a beneficial ownership of more than 5% of the CONTRACTOR, CMHA or subcontractor's equity, or an employee, contractor, or consultant who is significant or material to the provision of services under this Agreement, who has been, or is affiliated with someone who has been, debarred, suspended, or otherwise excluded by any federal agency.
- v. Federal and State non-discrimination laws and regulations.

- w. The Health Insurance Portability and Accountability Act (HIPAA), 45 CFR parts 160-164.
- x. MHD-CIS Data Dictionary and its successors.
- y. Federal funds must not be used for any lobbying activities.

If the CONTRACTOR is in violation of a federal law or regulation, and Federal Financial Participation is recouped from NSMHA, the CONTRACTOR shall reimburse the federal amount to the NSMHA within 20 days of such recoupment.

Upon notification from DSHS, NSMHA shall notify CONTRACTOR in writing of changes/modifications in Center for Medicare and Medicaid Services (CMS) policies and DSHS/MHD contract requirement changes.

6. COMPLIANCE WITH NSMHA OPERATIONAL POLICIES

CONTRACTOR shall comply with all NSMHA operational policies that pertain to the delivery of services under this Agreement that are in effect when the Agreement is signed or that come into effect during the term of the Agreement. NSMHA policies shall not exceed that required to implement Federal and state requirements or to implement continuous quality improvement efforts determined by the Integrated Quality Management Process as approved by the NSMHA Board. All proposed new policies shall specifically reference the Federal or state requirements they implement and shall be limited to such requirements. NSMHA shall notify CONTRACTOR of any proposed change in Federal or state requirements affecting this agreement immediately upon NSMHA receiving knowledge of such change. Such policies shall include, but not limited to:

- a. NSMHA Core Values and Principles, attached hereto as Attachment I provide a framework of principles for the regional system and CONTRACTOR shall take these principles into account when providing services under this Agreement.
- b. The CONTRACTOR and its subcontractors must recognize the unique social/legal status of Indian nations as required by both the Supremacy and the Indian Commerce Clauses of the United States Constitution; federal treaties; executive orders; Indian Citizens Act of 1924 statutes; and state and federal court decisions; or any Memorandum of Agreement or Understanding signed by the State of Washington and a federally recognized tribe or recognized organization; shall maintain compliance DSHS Admin. Policy No. 7.01 American Indian Policy, or any successor, pursuant to the Centennial Accord between the Washington State government and the Washington Tribes; and maintain compliance with NSHMA 7.01 Plan, or any successor (Attachment II).
- c. NSMHA's Strategic Plan.
- d. NSMHA clinical policies and procedures, including crisis services policies.
- e. NSMHA medical records documentation and data reporting policies and procedures.
- f. NSMHA quality management policies and procedures.
- g. NSMHA consumer rights policies and procedures, including complaint, grievance, fair hearing and appeal policies.
- h. Any other policies designated by NSMHA as applicable to the Agreement.

Along with all NSMHA stakeholders, CONTRACTOR will be included in the process for developing relevant operational policies and procedures. NSMHA's Provider Policy & Procedure Grid and successors contain a list of NSMHA's policies and their applicability to CONTRACTOR in accordance with Attachment IV. The Grid and NSMHA's policies and procedures are posted on NSMHA's website. NSMHA shall notify CONTRACTOR of new and revised policies through

1 its NSMHA Policy Numbered Memoranda. Training will be provided on policies that impact
2 providers.
3

4 In the event there is disagreement between NSMHA and CONTRACTOR in an operational
5 committee regarding a proposed new policy or modification to a current policy, the following
6 process will apply. NSMHA will provide a summary of the regulatory requirement or other
7 rationale for the proposed policy or policy modification. CONTRACTOR will provide an analysis
8 of its objection to the proposed policy or policy modification within 30 days from the receipt of
9 the NSMHA summary. If the objection is primarily due to increased cost, CONTRACTOR will
10 provide substantiation of the additional costs and, if possible, an alternative to achieving the policy
11 goal in a less costly manner. The proposed policy or policy modification will be discussed at the
12 next Regional Management Council. If resolution is not obtained, the proposed policy or policy
13 modification will be discussed at the next Quality Management Oversight Committee meeting. If
14 resolution is not obtained, the proposed policy or policy modification will be discussed at the next
15 NSMHA Board meeting. On a quarterly basis CONTRACTOR will calculate the cumulative fiscal
16 impact of resource reallocation due to new policies or policy modifications since the inception of
17 the contract, and present that information for review and discussion at the next Regional
18 Management Council.
19

20 NSMHA will make best efforts to maintain currency of policies with applicable Federal or State
21 Law, regulation or policy. In the event of a conflict, Federal or State Laws or policies supersede
22 NSMHA policies and procedures and requirements of this contract.
23

24 **7. CONFIDENTIALITY OF CLIENT INFORMATION**

25 Pursuant to 42 CFR 431.301 and 431.302, information concerning applicants and recipients may
26 be disclosed for purposes directly concerning the administration of this Agreement. Purposes
27 include, but are not limited to:
28

- 29 a. Establishing eligibility.
- 30 b. Determining the amount of medical assistance.
- 31 c. Providing services for recipients.
- 32 d. Conducting or assisting in investigation, prosecution, or civil or criminal proceeding related
33 to the administration of the plan.
- 34 e. Assuring compliance with Federal and State laws, regulations, with terms and requirements
35 of this Agreement.
- 36 f. Improving quality.
37

38 CONTRACTOR shall protect all information, records and data collected from unauthorized
39 disclosure in accordance with 42 CFR 431.300 through 431.307, RCW's 70.02, 71.05, and 71.34,
40 HIPAA, and for service recipients receiving alcohol and drug abuse services, in accordance with 42
41 CFR Part 2. CONTRACTOR shall have a process in place to ensure that all components of its
42 Community Mental Health Agency (CMHA) and system understand and comply with
43 confidentiality requirements for publicly funded mental health services.
44

45 CONTRACTOR shall ensure that access to the information is restricted to persons or agency
46 representatives who are subject to standards of confidentiality that are comparable to those of
47 NSMHA and DSHS.

1 The parties acknowledge that coordination, planning, screening, and referral require the sharing of
2 information among the various treatment providers. Disclosure of information to verify eligibility,
3 determine the amount of assistance, and to provide medically necessary mental health services are
4 all “purposes directly connected with the administration of the Agreement”, and are all
5 appropriate justifications for sharing information.
6

7 CONTRACTOR shall assure that all staff and subcontractors providing services under this
8 Agreement receive annual training on confidentiality policies and procedures. In addition,
9 CONTRACTOR shall assure that all staff and subcontractors providing services under this
10 Agreement sign an annual Oath of Confidentiality statement. Signed copies of the Oath of
11 Confidentiality shall be kept in CONTRACTOR’s personnel files.
12

13 **8. CONTRACT PERFORMANCE/ENFORCEMENT**

14 NSMHA shall be vested with the rights of a third party beneficiary, including the "cut through"
15 right to enforce performance should CONTRACTOR be unwilling or unable to enforce action on
16 the part of its subcontractor(s). In the event that CONTRACTOR dissolves or otherwise
17 discontinues operations, NSMHA may, at its sole option, assume the right to enforce the terms
18 and conditions of this Agreement directly with CONTRACTOR’s subcontractors; provided, that
19 NSMHA shall keep CONTRACTOR reasonably informed concerning such enforcement.
20 CONTRACTOR shall include this clause in its contracts with its subcontractors. In the event of
21 the dissolution of CONTRACTOR, NSMHA’s rights in indemnification shall survive.
22

23 **9. COOPERATION**

24 The parties to this Agreement shall cooperate in good faith to effectuate the terms and conditions
25 of this Agreement.
26

27 **10. DEBARMENT CERTIFICATION**

28 The CONTRACTOR certifies that it is not presently debarred, suspended, proposed for
29 debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any
30 federal or state department or agency. If requested by DSHS or NSMHA, the CONTRACTOR
31 shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary
32 Exclusion. Any Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary
33 Exclusion pertaining to this Agreement shall be incorporated into this Agreement by reference.
34

35 **11. DECLARATION THAT CLIENTS UNDER THE MEDICAID AND OTHER**
36 **MENTAL HEALTH PROGRAMS ARE NOT THIRD-PARTY BENEFICIARIES**
37 **UNDER THIS CONTRACT**

38 Although NSMHA, CONTRACTOR, and subcontractors mutually recognize that services under
39 this Agreement may be provided by the CONTRACTOR and subcontractors to clients under the
40 Medicaid program, RCW 71.05 and 71.34, and the Community Mental Health Services Act, RCW
41 71.24, it is not the intention of either NSMHA, the CONTRACTOR, that such individuals, or any
42 other persons, occupy the position of intended third-party beneficiaries of the obligations assumed
43 by either party to this Agreement. Such third parties shall have no right to enforce this agreement.
44

45 **12. EXECUTION, AMENDMENT, AND WAIVER**

46 This Agreement shall be binding on all parties only upon signature by authorized representatives
47 of each party. This Agreement, or any provision, may be amended during the contract period, if
48 circumstances warrant, by a written amendment executed by all parties. Only the NSMHA

1 Program Manager or the NSMHA Program Manager's designee has authority to waive any
2 provision of this Agreement on behalf of NSMHA.
3

4 **13. HEADINGS AND CAPTIONS**

5 The headings and captions used in this Agreement are for reference and convenience only, and in
6 no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.
7

8 **14. INDEMNIFICATION**

9 CONTRACTOR shall be responsible for and shall indemnify and hold NSMHA harmless
10 (including all costs and attorney fees) from all claims for personal injury, property damage and/or
11 disclosure of confidential information and/or from the imposition of governmental fines or
12 penalties resulting from the acts or omissions of CONTRACTOR and its subcontractors related to
13 the performance of this contract. NSMHA shall be responsible and shall indemnify and hold
14 CONTRACTOR harmless (including all costs and attorney fees) from all claims for personal
15 injury, property damage and disclosure of confidential information and from the imposition of
16 governmental fines or penalties resulting from the acts or omissions of NSMHA. For the
17 purposes of these indemnifications, the Parties specifically and expressly waive any immunity
18 granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been
19 mutually negotiated and agreed to by the Parties. The provision of this section shall survive the
20 expiration or termination of the Agreement.
21

22 **15. INDEPENDENT CONTRACTOR FOR NSMHA**

23 The parties intend that an independent contractor relationship be created by this contract. The
24 CONTRACTOR acknowledges that neither the CONTRACTOR nor its employees or
25 subcontractors are not officers, employees, or agents of NSMHA. The CONTRACTOR shall not
26 hold the CONTRACTOR or any of the CONTRACTOR's employees and subcontractors out as,
27 nor claim status as, officers, employees, or agents of NSMHA. The CONTRACTOR shall not
28 claim for the CONTRACTOR or the CONTRACTOR's employees or subcontractors any rights,
29 privileges, or benefits which would accrue to an employee of NSMHA. The CONTRACTOR
30 shall indemnify and hold NSMHA harmless from all obligations to pay or withhold Federal or
31 State taxes or contributions on behalf of the CONTRACTOR or the CONTRACTOR's
32 employees and subcontractors unless specified in this Agreement.
33

34 **16. INSURANCE**

35 NSMHA certifies it is a member of Washington Governmental Entity Pool for all exposure to tort
36 liability, general liability, property damage liability, and vehicle liability, if applicable, as provided by
37 RCW 43.19.
38

39 CONTRACTOR shall maintain a Commercial General Liability Insurance (CGL). If the
40 Contractor is not a member of a risk pool, the Contractor shall carry CGL to include coverage for
41 bodily injury, property damage, and contractual liability, with the following minimum limits: Each
42 Occurrence - \$1,000,000; General Aggregate - \$2,000,000; shall include liability arising out of
43 premises, operations, independent contractors, personal injury, advertising injury, and liability
44 assumed under an insured contract. Contractor shall provide evidence of such insurance to
45 NSMHA within 15 days of execution of this Agreement and 15 days post renewal date thereafter.
46 All non-risk pool policies shall name NSMHA as a covered entity under said policy(s).
47
48

1 **17. INTEGRATION**

2 This Agreement, including Exhibits and Attachments contains all the terms and conditions agreed
3 upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of
4 this Agreement shall be deemed to exist or to bind any of the parties hereto.
5

6 **18. MAINTENANCE OF RECORDS**

7 During the term of this Agreement and for six (6) years following termination or expiration of this
8 Agreement, or if any audit, claim, litigation, or other legal action involving the records set forth
9 below is started before expiration of the six year period, the records shall be maintained until
10 completion and resolution of all issues arising there from or until the end of the six year period,
11 whichever is later. The CONTRACTOR shall maintain records sufficient to:

- 12 a. Maintain the content of all Medical Records in a manner consistent with utilization control
13 requirements of 42 CFR 456, 42 CFR 434.34 (a), 42 CFR 456.111, and 42 CFR 456.211.
- 14 b. Document performance of all acts required by law, regulation, or this Agreement.
- 15 c. Substantiate the CONTRACTOR statement of its organizations' structures, tax status,
16 capabilities, and performance.
- 17 d. Demonstrate accounting procedures, practices, and records, which sufficiently and
18 properly document the CONTRACTOR invoices to NSMHA and all expenditures made
19 by the CONTRACTOR to perform as required by this Agreement.
- 20 e. The CONTRACTOR and its subcontractors shall cooperate in all reviews, including but
21 not limited to, surveys, and research conducted by NSMHA, DSHS or other Washington
22 State Departments.
- 23 f. Evaluations shall be done by inspection or other means to measure quality,
24 appropriateness, and timeliness of services performed under this Agreement, and to
25 determine whether the CONTRACTOR and its subcontractors are providing service to
26 individuals in accordance with the requirements set forth in this Agreement and applicable
27 state and federal regulations as existing or hereafter amended.

28 **19. NO WAIVER OF RIGHTS**

29 A failure by either party to exercise its rights under this Agreement shall not preclude that party
30 from subsequent exercise of such rights and shall not constitute a waiver of any other rights under
31 this Agreement unless stated to be such in a writing signed by an authorized representative of the
32 party and attached to the original Agreement.
33

34 Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of
35 any subsequent breach and shall not be construed to be a modification of the terms and conditions
36 of this Agreement.
37

38 **20. ONGOING SERVICES**

39 CONTRACTOR and its subcontractors shall ensure that in the event of labor disputes or job
40 actions, including work slowdowns, so called "sick outs", or other activities, within its service
41 CMHA network, uninterrupted services shall be available as required by the terms of this
42 Agreement
43
44
45
46

1 **21. ORDER OF PRECEDENCE**

2 In the event of an inconsistency in the terms of this Agreement, or any inconsistency between the
3 terms of this Agreement and any applicable statute, rule or contract, unless otherwise provided
4 herein, the conflict shall be resolved by giving precedence in the following order, to:
5

- 6 a. The applicable Medicaid 1915(b) Waiver, Provisions of Title XIX of the Social Security Act
7 and Federal regulations concerning the operations of Prepaid Inpatient Health Plans.
- 8 b. State statutes and regulations concerning the operation of the community mental health
9 programs.
- 10 c. Federal and State Law.
- 11 d. The NSMHA-DSHS agreement, or its successors, that covers the provision of the mental
12 health services covered under this Agreement, which shall include any exhibit, document,
13 or material incorporated by reference. NSMHA shall promptly notify CONTRACTOR of
14 any amendment to the NSMHA-DSHS agreement which affects any term or condition
15 herein.
- 16 e. This Agreement.

17
18 **22. OVERPAYMENTS**

19 In the event CONTRACTOR fails to comply with any of the terms and conditions of this
20 Agreement and that failure results in an overpayment, NSMHA may recover the amount due
21 DSHS, CMS or other federal or state agency, subject to dispute resolution as set forth in the
22 contract. In the case of overpayment, CONTRACTOR shall cooperate in the recoupment process
23 and return to NSMHA the amount due upon demand.
24

25 **23. OWNERSHIP OF MATERIALS**

26 Materials created by the CONTRACTOR and its subcontractors and paid for by NSMHA as a
27 part of this Agreement shall be owned by NSMHA and shall be, "works for hire" as defined by the
28 U.S. Copyright Act of 1976. This material includes but is not limited to: books, computer
29 programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes,
30 and/or training materials. Material which the CONTRACTOR and its subcontractors use to
31 perform this Agreement, but which is not created for or paid for by NSMHA, is owned by the
32 CONTRACTOR or relevant subcontractors; however, NSMHA and DSHS shall have a perpetual
33 license to use this material for DSHS internal purposes at no charge to DSHS.
34

35 **24. PERFORMANCE**

36 CONTRACTOR shall furnish the necessary personnel, materials, and/or mental health services
37 and otherwise do all things for, or incidental to, the performance of the work set forth here and as
38 attached. Unless specifically stated, the CONTRACTOR is responsible for performing or ensuring
39 all fiscal and program responsibilities required in this contract. No subcontract will terminate the
40 legal responsibility of the CONTRACTOR to perform the terms of this Agreement.
41

42 **25. RESOLUTION OF DISPUTES**

43 The parties wish to provide for prompt, efficient, final, and binding resolution of disputes and
44 controversies that may arise under this Agreement and therefore establish this dispute resolution
45 procedure. All claims, disputes, and other matters in question between the parties arising out of,
46 or relating to, this Agreement shall be resolved exclusively by the following dispute resolution
47 procedure unless the parties mutually agree in writing otherwise:
48

- a. The parties shall use their best efforts to resolve issues prior to giving written Notice of Dispute.
- b. Within ten (10) working days of receipt of the written Notice of Dispute, the parties (or a designated representative) shall together or, if both parties agree, with a mediator meet, confer, and attempt to resolve the claim.
- c. The terms of the resolution of all claims concluded in meetings shall be memorialized in writing and signed by each party.

Arbitration: If the claim is not resolved within thirty (30) days, the parties shall proceed to arbitration as follows:

- a. Demand for arbitration shall be made in writing to the other party. The parties shall select one person as arbitrator.
- b. If there is a delay of more than ten (10) days in the naming of the arbitrator, either party can ask the presiding judge of Skagit County to name the arbitrator.
- c. The prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorney fees. The arbitrators shall determine which party, if any, is the prevailing party.
- d. The parties agree that the arbitrators' decision shall be binding, final and appealable to Skagit County Superior Court only as provided in Chapter 7.04A RCW.
- e. Unless the parties agree in writing otherwise, the unresolved claims in each notice of dispute shall be considered at an arbitration session which shall occur in Skagit County no later than 30 days after the close of the meeting described in paragraph (b) above.
- f. The Provisions of this section shall, with respect to any controversy or claim, survive the termination or expiration of this Agreement.
- g. Nothing contained in this Agreement shall be deemed to give the arbitrator the power to change any of the terms and conditions of this Agreement in any way.
- h. The prevailing party in any action to compel arbitration or to enforce an arbitration award shall be awarded its costs, including attorney fees. Venue for any such action is exclusively Skagit County Superior Court.
- i. This Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

26. SEVERABILITY AND CONFORMITY

The provisions of this Agreement are severable. If any provision of this Agreement, including any provision of any document incorporated by reference, is held invalid by any court, that invalidity shall not affect the other provisions of this Agreement and the invalid provision shall be considered modified to conform to existing law.

27. SINGLE AUDIT ACT

If the CONTRACTOR or its subcontractor is a sub recipient of Federal awards as defined by OMB Circular A-133, the CONTRACTOR and its subcontractors shall maintain records that identify all Federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance titles and numbers, award names and numbers, award years, if awards are for research and development, as well as names of the Federal agencies. The CONTRACTOR and its subcontractors shall make the CONTRACTOR and its subcontractors records available for review or audit by officials of the Federal awarding agency, the General Accounting Office, and DSHS. The CONTRACTOR and its subcontractors shall

1 incorporate OMB Circular A-133 audit requirements into all contracts between the
2 CONTRACTOR and its subcontractors who are sub recipients. The CONTRACTOR and its
3 subcontractors shall comply with any future amendments to OMB Circular A-133 and any
4 successor or replacement Circular or regulation.
5

6 If the CONTRACTOR and/or its subcontractors are a sub recipient and expends \$500,000 or
7 more in Federal awards from any and/or all sources in any fiscal year, the CONTRACTOR and
8 applicable subcontractors shall procure and pay for a single or program-specific audit for that fiscal
9 year. Upon completion of each audit, the CONTRACTOR and applicable subcontractors shall
10 submit to NSMHA Program Manager the data collection form and reporting package specified in
11 OMB Circular A-133, reports required by the program-specific audit guide, if applicable, and a
12 copy of any management letters issued by the auditor.
13

14 For purposes of “sub recipient” status under the rules of OMB Circular A-133 205(i) Medicaid
15 payments to a sub recipient for providing patient care services to Medicaid eligible individuals are
16 not considered Federal awards expended under this part of the rule unless a State requires the fund
17 to be treated as Federal awards expended because reimbursement is on a cost-reimbursement
18 basis.
19

20 **28. SUBCONTRACTS**

21 The CONTRACTOR may subcontract services to be provided under this Agreement subject to
22 the following requirements.
23

- 24 a. The CONTRACTOR shall be responsible for the acts and omissions of any subcontractor.
- 25 b. The CONTRACTOR must ensure that the subcontractor neither employs any person nor
26 contracts with any person or Community Mental Health Agency (CMHA) excluded from
27 participation in federal health care programs under either 42 U.S.C. 1320a-7 (§§1128 or
28 1128A Social Security Act) or debarred or suspended per this Agreement’s General Terms
29 and Conditions.
- 30 c. The CONTRACTOR shall require subcontractors to comply with all applicable federal and
31 state laws, regulations, and operational policies as specified in this Agreement.
- 32 d. The CONTRACTOR shall require subcontractors to comply with all applicable NSMHA
33 operational policies as specified in this Agreement, including Access to Care, standards,
34 travel standards, and access standards.
- 35 e. The CONTRACTOR shall ensure a process is in place to demonstrate that all third-party
36 resources are identified and pursued.
- 37 f. The CONTRACTOR shall oversee, be accountable for, and monitor all functions and
38 responsibilities delegated to a subcontractor for conformance with any applicable statement
39 of work in this agreement on an ongoing basis including written reviews.
- 40 g. CONTRACTOR will monitor performance of the subcontractors on an annual basis and
41 notify NSMHA of any identified deficiencies or areas for improvement requiring corrective
42 action by CONTRACTOR.
- 43 h. The CONTRACTOR shall ensure that all subcontracts are in writing and that subcontracts
44 specify all duties, reports, and responsibilities delegated under this Agreement. Those
45 written subcontracts shall:
46

- 1) Require subcontractors to hold all necessary licenses, certifications, and/or permits as required by law for the performance of the services to be performed under this Agreement.
- 2) Include clear means to revoke delegation, impose corrective action, or take other remedial actions if the subcontractor fails to comply with the terms of the subcontract.
- 3) Require that the subcontractor correct any areas of deficiencies in the subcontractor's performance that are identified by the CONTRACTOR, NSMHA, and/or MHD.
- 4) Require best efforts to provide written or oral notification within 15 working days of termination of a Mental Health Care Provider (MHCP) to consumers currently open for services who had received a service from the affected MHCP in the previous 60 days. Notification must be verifiable in the client medical record at the subcontractor.

29. SURVIVABILITY

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration of this Agreement shall so survive. Surviving terms include, but are not limited to: Order of Precedence, Contract Performance and Enforcement, Confidentiality of Client Information, Resolution of Disputes, Indemnification, Oversight Authority, Maintenance of Records and Ownership of Materials.

30. TREATMENT OF CLIENT PROPERTY

Unless otherwise provided in this Agreement, CONTRACTOR shall ensure that any adult individual receiving services from the CONTRACTOR under this Agreement has unrestricted access to the individual's personal property. The CONTRACTOR shall not interfere with any adult individual's ownership, possession, or use of the individual's property unless clinically indicated. The CONTRACTOR shall provide individuals under age eighteen (18) with reasonable access to their personal property that is appropriate to the individual's age, development, and needs. Upon termination of this Agreement, the CONTRACTOR shall immediately release to the individual and/or the individual's guardian or custodian all of the individual's personal property.

31. WARRANTIES

The parties' obligations are warranted and represented by each to be individually binding, for the benefit of the other party. CONTRACTOR warrants and represents that it is able to perform its obligations set forth in this Agreement and that such obligations are binding upon CONTRACTOR and other subcontractors for the benefit of NSMHA.

32. CONTRACT ADMINISTRATION

The Program Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Manager for NSMHA is:

Charles R. Benjamin, Executive Director
North Sound Regional Support Network
117 North First Street, Suite 8
Mount Vernon, WA 98273

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3
4
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9

The Program Manager for CONTRACTOR is:
Phil Smith, President/CEO
Volunteers of America
2801 Broadway
Everett, WA 98206

Changes shall be provided to the other party in writing within ten (10) working days.

