

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is entered into between Snohomish Health District (the “Covered Entity”) and Ideal Option PLLC (the “Business Associate”), collectively (the “Parties”) and individually (a “Party”). This Agreement is effective as of _____.

RECITALS

WHEREAS, Business Associate provides certain services to Covered Entity (the “Services”) related to activities performed as part of sexually transmitted disease (STD) infection screening and services. The performance of these Services may include but not be limited to (i) the creation, receipt, maintenance, transmission, access to or use of Protected Health Information and Electronic Protected Health Information by Business Associate, or (ii) the disclosure of Protected Health Information and Electronic Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate. Accordingly, the creation, receipt, transmission, access to or maintenance of Protected Health Information and Electronic Protected Health Information by Business Associate is subject to the Privacy, Security, Breach Notification, and Enforcement rules promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) at 45 C.F.R. Parts 160 and 164. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations at 45 C.F.R. § 164.504(e), the HIPAA Security Regulations at 45 C.F.R. § 164.314(a) and the obligations of the Parties under the State Health Care Information Act pursuant to Chapter 70.02 RCW.

WHEREAS, this Agreement will govern the terms and conditions under which Covered Entity may disclose or have disclosed Protected Health Information and Electronic Protected Health Information to Business Associate, and under which Business Associate may create, receive, maintain, transmit, access or use Protected Health Information and Electronic Protected Health Information on behalf of Covered Entity.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, Covered Entity and Business Associate agree as follows:

AGREEMENT

1. Definitions. Capitalized terms used in this Agreement, but not otherwise defined in this Agreement shall have the same meanings as those terms in the HIPAA Privacy and Security Regulations at 45 C.F.R. Parts 160 and 164. Unless otherwise stated, a reference to a “Section” is to a Section in this Agreement. For Purposes of this Agreement, the following terms shall have the following meanings.
 - 1.1. Breach. “Breach” shall have the same meaning as the term “breach” in 45 C.F.R § 164.402
 - 1.2. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
 - 1.3. Electronic Protected Health Information or EPHI. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- 1.4. Individual. “Individual” shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
 - 1.5. Individually Identifiable Health Information. “Individually Identifiable Health Information” shall have the same meaning as the term “individually identifiable health information in 45 C.F.R. § 160.103.
 - 1.6. Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.7. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
 - 1.8. Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services or that person’s designee.
 - 1.9. Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
 - 1.10. Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
2. Permitted Uses and Disclosures by Business Associate.
 - 2.1. General. Except as otherwise specified in this Agreement, Business Associate may access, use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity provided that Business Associate uses and discloses PHI in the following manner:
 - 2.1.1 Consistent with the minimum necessary policies and procedures of Covered Entity; and
 - 2.1.2 Would not violate 45 C.F.R. Subpart E if done by Covered Entity, except as specified in paragraphs 2.2 and 2.2 of this section
 - 2.1.3 Consistent with the provisions of Chapter 70.02 RCW.
 - 2.2. Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:
 - 2.2.1. For the proper management and administration of Business Associate;
 - 2.2.2. To carry out the legal responsibilities of Business Associate; or
 - 2.2.3. To provide Data Aggregation services to Covered Entity that relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

- 2.3. Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:
 - 2.3.1. The disclosure is Required By Law; or
 - 2.3.2. Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 2.4. De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.
3. Obligations and Activities of Business Associate Regarding PHI.
 - 3.1. Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.
 - 3.2. Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
 - 3.3. Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or subcontractor or agent of Business Associate in violation of the requirements of this Agreement.
 - 3.4. Reporting. Business Associate will immediately report to Covered Entity in writing, any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
 - 3.5. Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor to whom Business Associate provides PHI that was created for or received from or on behalf of Covered Entity, has executed an agreement containing the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate will ensure only those who reasonably need to know such information in order to perform Services receive such information and, in such case, only the minimum amount of such PHI is disclosed as is necessary for such performance.
 - 3.6. Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity, to an Individual, that is necessary for Covered Entity to respond to Individuals’ requests for access to PHI in

- accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a readable electronic format as agreed to by Covered entity and Individual.
- 3.7. Compliance with Requirements. To the extent Business Associate is to carry out Covered Entity's obligation under HIPAA, Business Associate will comply with the requirement applicable to such obligation.
 - 3.8. Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.
 - 3.9. Disclosure Documentation. Business Associate will document its disclosure 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 C.F.R. § 164.528.
 - 3.10. Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.
 - 3.11. Access to Business Associate's Internal Practices. Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI, including EPHI, created, used, disclosed, received, maintained, accessed, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Business Associate or Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.
 - 3.12. Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such Breach. Except as otherwise required by law, Business Associate shall provide such notice in writing without unreasonable delay, and in no case later than ten (10) calendar days after discovery of the Breach.
 - 3.12.1. Notice to Covered Entity required by this Section 3.12 shall include (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach to mitigate harm to the individual(s) and to protect against further Breaches; and (v) any other information that Covered

Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. §164.404(c).

- 3.12.2. After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, accessed or otherwise possessed by Business Associate, or of a Breach involving Unsecured Protected Health Information for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.
 - 3.13. Remuneration in Exchange for PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.
 - 3.14. Marketing. Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, as defined in 45 C.F.R. § 164.501.
 - 3.15. Exporting Information. Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America.
4. Obligations of Covered Entity.
 - 4.1. Limited Disclosure Obligations. Covered Entity will limit the PHI provided to Business Associate to only that necessary to the business needs of Covered Entity. Prior to the transmission of PHI to Business Associate, Covered Entity will notify Business Associate of the need to transmit PHI and will arrange with Business Associate for the proper and secure transmission of such PHI.
 - 4.2. Requested Restrictions. Covered Entity shall notify Business Associate, in writing, 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, which permits an Individual to request certain restrictions or uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
 - 4.3. Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
 - 4.4. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and the HIPAA Security Regulations if done by Covered Entity, except to the

extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities and legal responsibilities of Business Associate.

5. Security Restrictions on Business Associate.

- 5.1. General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.
- 5.2. Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such EPHI.
- 5.3. Reporting of Security Incidents. Business Associate shall report to Covered Entity in writing without unreasonable delay, but not later than five (5) business days, any Security Incident affecting EPHI created, received, maintained, accessed or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware.
- 5.4. HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations with respect to all EPHI.

6. Term and Termination.

- 6.1. Term. This Agreement shall take effect on Effective Date, and shall terminate when all of the PHI disclosed to Business Associate by Covered Entity or created or received by Business Associate on behalf of Covered Entity, is destroyed according to applicable records retention guidelines or returned to Covered Entity, or, if it is infeasible to return or destroy PHI in accordance with applicable records retention guidelines, protections are extended to such information, in accordance with the termination provisions in this Section 6.
- 6.2. Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate that sets forth Covered Entity's determination that Business Associate breached a material terms of this Agreement, and Covered Entity may:
 - 6.2.1. Provide written notice to Business Associate that provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or
 - 6.2.2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible
 - 6.2.3. If neither termination nor cure is feasible as provided in Section 6.2.1 and 6.2.2 of this Agreement, Covered Entity will report the violation to the Secretary.

6.3. Effect of Termination.

- 6.3.1. Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy in accordance with records retention guidelines all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision also applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.
- 6.3.2. In the event that Business Associate determines that returning or destroying the PHI in accordance with records retention guidelines is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction in accordance with records retention guidelines infeasible. Upon reasonable determination that return or destruction of PHI in accordance with records retention guidelines is infeasible, Business Associate will extend the protections of this Agreement 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 the PHI.

7. Miscellaneous.

- 7.1. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.
- 7.2. Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for the Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days prior written notice to the party.
- 7.3. Survival. The respective rights and obligations of Business Associate and Covered Entity under Sections 3, 5, 6.3, 8 and 9 of this Agreement shall survive the termination of this Agreement.
- 7.4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations and the HIPAA Security Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only and are not intended to act as a limitation on the scope or meaning of the sections and paragraphs themselves.
- 7.5. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- 7.6. Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of all the parties hereto and their permitted successors and assigns.
- 7.7. Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.
- 7.8. Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.
- 7.9. Notices. Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either Party may provide to the other.

If to Covered Entity:

Shawn Frederick
 Snohomish Health District
 3020 Rucker Ave.
 Everett, WA 98201

If to Business Associate:

Ideal Option PLLC
 5615 Dunbarton Avenue
 Pasco, WA 99301

- 7.10. Counterparts. This Agreement may be executed in multiple counterparts all of which together will constitute one agreement, even though all Parties do not sign the same counterpart. Electronic or facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, shall be the same as delivery of an original.
- 7.11. Effective Date. This Agreement is effect on execution or on the date first referenced in this Agreement.
- 7.12. Venue and Choice of Law.
- 7.12.1. This Agreement shall be governed by the laws of the State of Washington, without giving effect to any conflict-of-law provision that would result in the laws of any other jurisdiction governing this Agreement.
- 7.12.2. Each Party submits to the jurisdiction of any state of federal court sitting in the State of Washington, in any action or proceeding arising out of or relating to this Agreement. Each Party agrees that all claims in respect of the action or proceeding may be heard and determined in any such court.

8. Indemnification.

- 8.1. In the event that entry into or performance of this Agreement results in claims, losses, liabilities, costs, lawsuits (including an award of attorney’s fees) or other expenses, against Covered Entity, Business Associate will indemnify, hold harmless and defend Covered Entity from and against such claims, including but not limited to the assessment by a governmental agency of civil or criminal penalties, losses, liabilities, costs, lawsuits (including attorney’s fees) or other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Business Associate under this Agreement; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Business Associate obligations under this Agreement.
- 8.2. In the event that entry into or performance of this Agreement results in claims, losses, liabilities, costs, lawsuits (including an award or attorney’s fees) or other expenses, against Business Associate, Covered Entity will indemnify, hold harmless and defend Business Associate from and against such claims, losses, liabilities, costs, lawsuits (including attorney’s fees) or other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, breach or non-fulfillment of any undertaking on the part of Covered Entity under this Agreement; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with Covered Entity obligations under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this BUSINESS ASSOCIATE AGREEMENT to be duly executed as of the Effective Date.

COVERED ENTITY:

BUSINESS ASSOCIATE:

 For Snohomish Health District Date

 For Ideal Option PLLC Date