

School/Unit: Rowan University School of Osteopathic Medicine

Vendor: \_\_\_\_\_

**Business Associate Agreement**  
Involving the Access to Protected Health Information

This Business Associate Agreement (“BAA”) is entered into between **Rowan School of Osteopathic Medicine (RowanSOM), a unit of Rowan University**, a body corporate and politic of the State of New Jersey having its principal administrative offices at 40 East Laurel Road, Academic Center, Third Floor, Stratford New Jersey 08084 (hereinafter referred to as “**Covered Entity**”) and **INSERT.**, having its principal place of business at **INSERT** (hereinafter referred to as “**Business Associate**”) (the “**Covered Entity**” and “**Business Associate**” hereinafter collectively referred to as the “**Parties**”). Any conflict between the terms of this BAA and the Underlying Agreement between the Parties shall be governed by the terms of this BAA.

WHEREAS, in connection with the Underlying Agreement the Business Associate provides services to Covered Entity and Covered Entity discloses to Business Associate certain Protected Health Information that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) (the “**HITECH Act**”), and regulations promulgated by the U.S. Department of Health and Human Services (the “**HHS**”) (hereinafter the “**HIPAA Regulations**” and the “**HITECH Regulations**,” respectively) and/or applicable State and/or local laws and regulations; and

WHEREAS, for good and lawful consideration and with acknowledgment of the mutual promises, set forth in the Underlying Agreement and herein, the Parties, intending to be legally bound, hereby agree as follows:

**I. Definitions**

- A. **Breach** means the unauthorized acquisition, access, use, or disclosure of protected health information (“PHI”) which compromises the security or privacy of such information in violation of HIPAA, the HITECH Act, the HIPAA Regulations, and/or the HITECH Regulations, except where a good faith belief exists that unauthorized persons to whom such information is disclosed would not reasonably have been able to retain such information. Impermissible use or disclosure of protected health information is presumed to be a breach unless the Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised. The term “**Breach**” does not include:
1. Any unintentional acquisition, access, or use of PHI by an employee or person acting under the authority of a Covered Entity or Business Associate if:
    - a. Such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or person, respectively, with the Covered Entity or Business Associate; and
    - b. Does not result in further unauthorized use or disclosure; or
  2. Any inadvertent disclosure by a person who is otherwise authorized to access PHI at a Covered Entity or Business Associate to another, similarly authorized person at the same Covered Entity, Business Associate or organized health care arrangement in which the Covered Entity participate and such information received as a result of such disclosure is not further used or disclosed in an impermissible manner.

An expanded definition of the following terms as well as the definition of other relevant terms are available on **RowanSOM**’s website at [http://www.rowan.edu/compliance/hipaa/hipaa\\_breach.php](http://www.rowan.edu/compliance/hipaa/hipaa_breach.php) Terms used in this Business Associate Agreement but not otherwise defined shall have the meaning ascribed to those terms in HIPAA, the HITECH Act, and any current and future regulations promulgated under HIPAA and/or the HITECH Act. *See* 45 C.F.R. 160.103, 164.402 and 164.501.

- B. **Business Associate** means a service provider that receives PHI from, or creates or maintains PHI on behalf of, a Covered Entity including, but not limited to, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefits management, practice management, re-pricing, transcription, legal, actuarial, accounting, consulting, data aggregation, administrative, accreditation or financial services, and vendors that offer personal health records to patients as part of a Covered Entity's electronic health record, where the service or function involves the use or disclosure of individually identifiable health information from the Covered Entity or from another Business Associate of the Covered Entity. A Business Associate excludes, among others, employees of Covered Entities.
- C. **Covered Entities** include (i) health care providers that transmit patient health information electronically in connection with a covered transaction, (ii) health plans (including employer-sponsored employee welfare benefit plans and self-insured employer-offered health plans), and (iii) health care clearinghouses.
- D. **Data Aggregation** means, with respect to PHI created or received by a Business Associate, the combining of PHI received by a Business Associate in its capacity as a Business Associate for more than one Covered Entity to permit data analyses that relate to the health care operations of the respective Covered Entities.
- E. **Designated Record Set** means any grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a Covered Entity that is (i) medical records and billing records about individuals, and/or (ii) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, used, in whole or in part, by or for the Covered Entity, to make decisions about individuals.
- F. **Electronic Protected Health Information ("Electronic PHI")** means PHI that is transmitted by or maintained in electronic media.
- G. **Individual** means the person who is the subject of PHI and includes a person who qualifies as a personal representative (45 C.F.R. 164.502(g)).
- H. **Protected Health Information ("PHI")** means physical and/or mental health and demographic information collected from an individual and created or received by a Covered Entity and/or Business Associate that identifies or could reasonably identify an individual (*i.e.*, is "individually identifiable") and is held or transmitted in any form including electronic media. PHI excludes educational records and employment records held by a Covered Entity as an employer (45 C.F.R. 164.501).
- I. **Required By Law** means that Covered Entities may use and disclose PHI without individual authorization as required by law (including by statute, regulation, or court orders) in accordance with the requirements in 45 C.F.R. 164.512(c), (e) or (f).
- J. **Unsecured PHI** means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary of HHS.

## **II. Permitted Uses and Disclosures of PHI by Business Associate**

- A. 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 Underlying Agreement, provided that such uses and/or further disclosures (i) do not violate the requirements of HIPAA's Business Associate contract standard at 45 C.F.R. 164.504(e)(1) and/or the HITECH Act, if done by the Covered Entity, (ii) are the minimum necessary PHI to accomplish the intended purpose, or (iii) are Required By Law.
- B. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate, provided, however, that any such uses or disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person 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 person, and (ii) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- C. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity (42 C.F.R. 164.504(e)(2)(i)(B)).

- D. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities as permitted under HIPAA and/or other Federal and State laws. (45 C.F.R. 164.502(j)(1)).

### **III. Duties and Obligations of Business Associate Related to PHI**

- A. Business Associate shall not use or disclose PHI other than as permitted or required by the Underlying Agreement, this BAA, and/or as Required By Law. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this BAA.
- B. Business Associate shall use and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and/or Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall notify, in writing, the Covered Entity when the Business Associate discovers a Breach of Unsecured PHI. A Breach is deemed to have been discovered by a Business Associate as of the first day on which Business Associate (by its employee, officer, or other agent) knows or would have known of such Breach by exercising reasonable diligence. Business Associate's notification to Covered Entity (i.e., **RowanSOM**) shall:

1). Be made to the Covered Entity without unreasonable delay and in no event later than ten (10) days following the discovery of a Breach, except in the case of a Business Associate that is an agent of the Covered Entity, in which case the Business Associate must provide the Covered Entity with immediate notification of the Breach, except where law enforcement officials determine that a notification would impede a criminal investigation or cause damage to national security. Unless the language in the Underlying Agreement between the parties indicates that a Business Associate is an independent contractor, then the Business Associate shall be considered an agent of **RowanSOM** for purposes of Breach notification.

To the extent possible, provide the identity of each Individual whose Unsecured PHI was, or is reasonably believed to have been, Breached, and any other information that the Covered Entity is required to include in the notice to affected Individuals under 45 C.F.R. 164.404(c), either at the time of notice of Breach to the Covered Entity or as promptly thereafter as information becomes available. Include information in substantially the same form as the "Notification To the Covered Entity About A Breach of Unsecured Protected Health Information" available to Business Associates at RowanSOM's website at <http://www.rowan.edu/compliance/hipaa/RowanUniversityOfficeofComplianceandCorporateIntegrity030.htm>

- D. Business Associate is subject to the same legal requirements to cure, terminate or report violations to the Secretary of HHS under the same duty and in the same manner as Covered Entity.
- E. Business Associate shall mitigate, to the extent practicable, any harmful effect known to it resulting from an unauthorized use or disclosure of PHI or Breach of Unsecured PHI.
- F. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI (i) received from, or (ii) created or received by Business Associate on behalf of, a Covered Entity agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such PHI.
- G. Business Associate (i) shall provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI and, (ii) to the extent applicable, shall provide access for inspection and copying of PHI in a Designated Record Set at reasonable times at the request of Covered Entity or, as directed by Covered Entity, to an Individual (45 C.F.R. 164.524). If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act. (42 U.S.C. §17935(e)).
- H. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- I. Business Associate agrees to use, disclose and request (i) only the minimum necessary PHI, as defined by law, and (ii) to the extent practicable, only the limited data set of PHI excluding direct identifiers, as defined in 45 C.F.R. 164.514(e)(2).
- J. Business Associate shall document such disclosures of PHI and information related to such disclosures as

would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI (45 C.F.R. 164.528). Should a Covered Entity or an Individual request an accounting of disclosures of PHI pursuant to 45 C.F.R. 164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond no later than sixty (60) days after receipt of such request, subject to specific statutory exceptions.

- K. Business Associate shall make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to Covered Entity at the request of Covered Entity, or the Secretary of HHS, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and/or the HITECH Act in the time, manner and place designated by the Covered Entity and/or the Secretary.
- L. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, no later than sixty (60) days after receipt of such request from a Covered Entity or Individual.
- M. Business Associate agrees to abide by the limitations on marketing communications to Individuals regarding the purchase and use of products or services set forth in the HITECH Act and the HITECH Regulations.
- N. Business Associate agrees and acknowledges that the administrative rules governing, and the civil and criminal penalties for violating, HIPAA, the HITECH Act, the HIPAA Regulations and the HITECH Regulations, apply to it in the same manner as they apply to Covered Entity, as more fully set forth at **RowanSOM's** website at <http://www.rowan.edu/compliance/hipaa/RowanUniversityOfficeofComplianceandCorporateIntegrity030.htm>

#### **IV. Term and Termination**

- A. **Term**. The term of this BAA shall be effective as of the last date of signature below 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 of this Section IV.
- B. **Termination for Cause**. Upon Covered Entity's knowledge of a material Breach by Business Associate, Covered Entity shall either:
  1. Provide an opportunity for Business Associate to cure the Breach or end the violation, and terminate this BAA and the Underlying Agreement if Business Associate does not cure the Breach or end the violation within the time specified by Covered Entity;
  2. Immediately terminate this BAA and/or the Underlying Agreement if Business Associate has Breached a material term of this BAA and cure is not possible; or
  3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of HHS.
- C. **Effect of Termination**.
  1. (a) Except as provided in paragraph C.2. of this Section, 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 shall retain no copies of PHI.
  1. (b) Except as provided in paragraph C.2. of this Section, if Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, either due to the termination of this BAA or otherwise, Business Associate shall certify, in writing, to Covered Entity that the PHI has been destroyed and rendered indecipherable, pursuant to HIPAA and the HITECH Act. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
  2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible within thirty (30) calendar days of such request. In such case, 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. This provision also shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

3. Should the Business Associate make a disclosure of PHI in violation of this BAA, Covered Entity shall have the right to immediately terminate any contract, other than this BAA, then in force between the Parties, including the Underlying Agreement.
4. The provisions of this Section IV.C. shall survive the termination of this BAA and the Underlying Agreement for any reason.

#### **V. Remedies In Event of Breach**

- A. Business Associate agrees and acknowledges that irreparable harm will result to Covered Entity, and to its business, in the event of Breach by Business Associate of any covenants, duties, obligations and assurances in this BAA and further agrees that remedy at law for any such Breach shall be inadequate and that damages resulting there from are not susceptible to being measured in monetary terms. In the event of any such Breach or threatened Breach by Business Associate, Covered Entity shall be entitled to (i) immediately enjoin and restrain Business Associate from any continuing violations and (ii) reimbursement for reasonable attorneys' fees, costs and expenses incurred as a proximate result of the Breach. The remedies in this Section V shall be in addition to any action for damages and/or other remedy available to Covered Entity for such Breach.
- B. Business Associate shall indemnify and hold Covered Entity, its directors, officers, employees and agents harmless from any and all liabilities, damages, reasonable attorneys' fees, costs and expenses incurred by Covered Entity as a result of a Breach of this BAA caused by Business Associate's actions or inactions and/or those of its employees and agents.
- C. Business Associate agrees and acknowledges that the provisions of this BAA shall be strictly construed.

#### **VI. Miscellaneous**

- A. Independent Contractor. None of the provisions of this BAA and/or the Underlying Agreement are intended to create nor shall be deemed or construed to have created any relationship between the Parties other than that of independent entities contracting with each other unless otherwise explicitly stated in this BAA or the Underlying Agreement.
- B. Detrimental Reliance By Covered Entity. Business Associate agrees and acknowledges that its covenants, duties, obligations and assurances herein shall be detrimentally relied upon by Covered Entity in choosing to commence or continue a business relationship with Business Associate. Covered Entity shall not be liable to Business Associate for any claim, loss, or damage relating to Business Associate's use or disclosure of any information received from Covered Entity or from any other source.
- C. Regulatory References. Any reference herein to law means the law as in effect or as amended.
- D. Construction. The BAA shall be construed broadly and any ambiguity shall be resolved in favor of a meaning that complies and is consistent with applicable law.
- E. Severability. In the event that any provision of this BAA violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this BAA, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this BAA.
- F. Authority. The signatories below have the right and authority to execute this BAA for their respective entities and no further approvals are necessary to create a binding agreement.
- G. Covered Entity's Notices To Business Associate. Covered Entity's Notices to Business Associate are available on ROWAN UNIVERSITY's website at <http://www.rowan.edu/compliance/hipaa/RowanUniversityOfficeofComplianceandCorporateIntegrity030.htm> Such Notices include, but are not limited to, (i) any limitations in the Covered Entity's Notices of Privacy Practices that may affect the Business Associate, (ii) any changes in, or revocation of, permission by an Individual to use or disclose PHI, or (iii) any restriction in the use or disclosure of PHI that Covered Entity has agreed to.

- H. Compliance With State Law. Business Associate agrees and acknowledges that as the holder of individually identifiable health information it is subject to New Jersey law. In the event of any conflict between Federal health care laws and New Jersey law, the Business Associate shall comply with the more restrictive provision.
- I. Conflict Among Contracts. Should there be conflict between the terms of this BAA and any other contract between the Parties (either previous or subsequent to the date of this BAA), the terms of this BAA shall control unless the Parties, in a subsequent writing, specifically otherwise provide.
- J. Modification. This BAA may only be modified by a writing signed by the Parties. The Parties agree to take such action subsequent to this BAA as necessary to amend the BAA from time to time as necessary for the Parties to comply with the requirements of any applicable law.
- K. Notices to Parties. Any notice required under this BAA to be given shall be made in writing to:

**To The Covered Entity:**

RowanSOM Chief Financial Officer

**To The Business Associate:**

Name/Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Business Associate Agreement the day and year first written below.

**By: RowanSOM [COVERED ENTITY]**

**By:**

Approved: \_\_\_\_\_

Approved: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_