

**This Business Associate Agreement  
Is Related To and a Part of the Following  
Underlying Agreement:**

**Effective Date of Underlying Agreement:**

**Business Associate Agreement**  
Involving the Access to Customer Information

This Business Associate Agreement (“BAA”) is entered into between **Rowan University (“Rowan”)**, a public institution of higher education of the State of New Jersey, having its principal administrative offices located at 201 Mullica Hill Road, Glassboro, New Jersey 08028 (hereinafter referred to as “**Customer**”) and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, (hereinafter referred to as “**Business Associate**”) (the “**Customer**” 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 Customer and Customer discloses to Business Associate certain Information that is subject to protection under 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.** An expanded definition of the following terms as well as the definition of other relevant terms, are available on the [Rowan Compliance and Corporate Integrity website](#).
- A. Breach** means the unauthorized acquisition, access, use, or disclosure of Information which compromises the security or privacy of such information in violation of Privacy 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. The term “**Breach**” does not include:
1. Any unintentional acquisition, access, or use of information by an employee or person acting under the authority of a Customer 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 Customer 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 information at a Customer or Business Associate to another, similarly authorized person at the same Customer, Business Associate or organization which the Customer participates and such information received as a result of such disclosure is not further used or disclosed in an impermissible manner.

- B. **Business Associate** means a service provider that receives information from, or creates or maintains Information on behalf of, a Customer 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 Customer's service, where the service or function involves the use or disclosure of individually identifiable information from the Customer or from another Business Associate of the Customer. A Business Associate excludes, among others, employees of customer.
- C. **Customer** includes (i) providers that transmit 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) other clearinghouses.
- D. **Data Aggregation** means, with respect to Information created or received by a Business Associate, the combining of Information received by a Business Associate in its capacity as a Business Associate for more than one Customer to permit data analyses that relate to the operations of the respective Customer.
- E. **Designated Record Set** means any grouping of information that includes Information and is maintained, collected, used, or disseminated by or for a Customer 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 Customer, to make decisions about individuals.
- F. **Electronic Information ("Electronic INFORMATION")** means Information that is transmitted by or maintained in electronic media.
- G. **Individual** means the person who is the subject of Information and includes a person who qualifies as a personal representative
- H. **Required By Law** means that Customer may use and disclose Information without individual authorization as required by law (including by statute, regulation, or court orders) in accordance with the requirements
- I. **Unsecured Information** means Information 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 INFORMATION by Business Associate**

- A. Except as otherwise limited in this BAA, Business Associate may Use or Disclose Information to perform functions, activities, or services for, or on behalf of, Customer as specified in the Underlying Agreement, provided that such Uses and/or further Disclosures (i) do not violate the requirements of Business Associate contract standard at 45 C.F.R. 164.504(e)(1) and/or the HITECH Act, if done by the Customer, (ii) are the minimum necessary Information 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 Information 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 Information 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 Information to provide Data Aggregation services to Customer (45 C.F.R. 164.504(e)(2)(i)(B)).
- D. Business Associate may Use Information to report violations of law to appropriate Federal and State authorities as permitted under Federal and State laws

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

- A. Business Associate shall not Use or Disclose Information other than as permitted or required by the Underlying Agreement, this BAA, and/or as Required By Law. Business Associate shall immediately notify Customer of any Use or Disclosure of Information 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 Information and/or Electronic Information that it creates, receives, maintains, or transmits on behalf of Customer.
- C. Business Associate shall notify, in writing, the Customer when the Business Associate discovers a Breach of Unsecured Information. 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 Customer (i.e., **Rowan**) shall:
  1. Be made to the Customer 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 Customer, in which case the Business Associate must provide the Customer 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.
  2. To the extent possible, provide the identity of each Individual whose Unsecured Information was, or is reasonably believed to have been, Breached, and any other information that the Customer 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 Customer or as promptly thereafter as information becomes available. Include information in substantially the same form as the "Notification To the Customer About A Breach of Unsecured Information" available to Business Associates at [Rowan Compliance and Corporate Integrity website](#).
- 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 Customer.
- E. Business Associate shall mitigate, to the extent practicable, any harmful effect known to it resulting from an unauthorized use or disclosure of Information or Breach of Unsecured Information.
- F. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Information (i) received from, or (ii) created or received by Business Associate on behalf of, a Customer agrees, in writing, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such Information.
- G. Business Associate (i) shall provide Customer access to its premises for a review and demonstration of its internal practices and procedures for safeguarding Information and (ii) to the extent applicable, shall provide access for inspection and copying of Information in a Designated Record Set at reasonable times at the written request of Customer or, as directed by Customer, to an Individual . If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Customer to fulfill its obligations.
- H. Business Associate shall, upon written request with reasonable notice, provide Customer with an accounting of Uses and Disclosures of Information provided to it by Customer.

- I. Business Associate agrees to Use, Disclose and request (i) only the minimum necessary Information, as defined by law, and (ii) to the extent practicable, only the limited data set of Information excluding direct identifiers.
- J. Business Associate shall document such disclosures of Information and information related to such disclosures as would be required for a Customer to respond to a request by an Individual for an accounting of Disclosures of Information. Should a Customer request an accounting of Disclosures of Information, Business Associate agrees to promptly provide Customer with information in a format and manner sufficient to respond no later than sixty (60) days after of receipt of such written 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 Information received from, or created or received by Business Associate on behalf of, Customer, available to Customer at the request of Customer, or the Secretary of HHS, for purposes of the Secretary determining Customer's compliance with the time, manner and place designated by the Customer and/or the Secretary.
- L. To the extent applicable, Business Associate shall make any amendment(s) to Information maintained in a Designated Record Set that Customer directs or agrees to, no later than sixty (60) days after receipt of such written request from a Customer.
- M. Business Associate agrees to abide by the limitations on marketing communications to Individuals regarding the purchase and use of products or services.
- N. Business Associate agrees and acknowledges that the administrative rules governing, and the civil and criminal penalties for violating, Privacy & Security Rules, apply to it in the same manner as they apply to Customer.
- O. Business Associate shall report to the Customer any Security Incident of which it becomes aware, orally or in writing, without unreasonable delay.
- P. To the extent Business Associate is engaged by the Customer to carry out one or more of Customer's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Customer in the performance of such obligation(s).

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

- A. Term. The term of this BAA shall be effective as of the effective date of the Underlying Agreement and shall terminate when all of the Information provided by Customer to Business Associate, or created or received by Business Associate on behalf of Customer, is destroyed or returned to Customer, or, if it is infeasible to return or destroy Information, protections are extended to such information, in accordance with the termination provisions of this Section IV.
- B. Termination for Cause. Upon Customer's knowledge of a material breach by Business Associate, Customer 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 Customer;
  - 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, Customer 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 Information received from Customer, or created or received by Business Associate on behalf of Customer. This provision shall apply to Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of Information.
 

(b) Except as provided in paragraph C.2. of this Section, if Customer, in its sole discretion, requires that Business Associate destroy any or all Information received from Customer, or created or received by Business Associate on behalf of Customer, either due to the termination of this BAA or otherwise, Business Associate shall certify, in writing, to Customer that the Information has been destroyed and rendered indecipherable. This provision also shall apply to Information 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 Information is infeasible, Business Associate shall provide to Customer 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 Information and limit further Uses and Disclosures of such Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Information. This provision also shall apply to Information that is in the possession of subcontractors or agents of Business Associate.
3. Should the Business Associate make a disclosure of Information in violation of this BAA, Customer shall have the right to 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 Customer, 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, Customer 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 Customer for such Breach.
- B. Business Associate shall indemnify and hold Customer, its directors, officers, employees and agents harmless from any and all liabilities, damages, reasonable attorneys' fees, costs and expenses incurred by Customer 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.



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

\_\_\_\_\_  
**ROWAN UNIVERSITY (CUSTOMER)**

\_\_\_\_\_  
**BUSINESS ASSOCIATE**

By: \_\_\_\_\_  
Joseph F. Scully, Jr.  
Senior Vice President for Finance &  
Chief Financial Officer

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

By: \_\_\_\_\_

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