**Business Associate Agreement**

 **This Business Associate Agreement** (“BAA”) is entered into between:

[Insert Name and Address of Covered Entity Here] (hereinafter referred to as “Covered Entity”),

and

Rutgers, The State University of New Jersey (“Rutgers”), an instrumentality of the State of New Jersey, a public entity, with offices at Winants Hall, 7 College Avenue, New Brunswick, NJ 08901, on its own behalf, on behalf of its organizational unit, Rutgers Biomedical and Health Sciences (“RBHS”), and the unincorporated constituent units therein, and Rutgers Health Group, Inc. (“RHG”), a New Jersey nonprofit corporation with offices located at 89 French Street, Suite 4100, New Brunswick, NJ 08901, on its own behalf. Individually and together, Rutgers, RBHS and RHG, and all of their other present and future Affiliates, are collectively, “Business Associate”,

(The Covered Entity and Business Associate hereinafter each a “Party” and collectively the “Parties”).

1. **WHEREAS,** RHG is the clinical practice of the health professionals employed by, contracted to, or affiliated with the schools, institutes and units of RBHS;
2. **WHEREAS,** Covered Entity and Business Associate have entered into the Services Agreement (as defined below) under which Business Associate has been engaged to perform a function or service for or on behalf of Covered Entity;
3. **WHEREAS**, in connection with the Services Agreement, the Covered Entity discloses to Business Associate certain Protected Health Information (“PHI”) 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;
4. **WHEREAS**, Rutgers and RHG are closely integrated entities that operate as a single affiliated entity for purposes of HIPAA and together may from time to time be involved in providing services to Covered Entity as a business associate;
5. **WHEREAS**, in connection with the Services Agreement, Business Associate may have access to and may receive and maintain PHI from Covered Entity;
6. **WHEREAS**, HIPAA requires that Covered Entity receive adequate assurances that Business Associate will appropriately safeguard PHI that has been or will be used or disclosed in the course of providing services to or on behalf of Covered Entity; and
7. **WHEREAS**, the purpose of this BAA is to comply with the requirements of HIPAA, the HITECH Act, the HIPAA regulations and/or the HITECH regulations;

 **NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms used in this BAA but not otherwise defined herein shall have the meaning ascribed to those terms in HIPAA, the HITECH Act, and any current or future regulations promulgated under HIPAA and/or the HITECH Act. *See* 45 C.F.R. §§ 160.103, 164.402 and 164.501.
	1. “Affiliate” means (a) an entity owned or controlled by, or under common ownership or control with, either of Rutgers or RHG, directly or indirectly, now or in the future; and, (b) such entity is providing services to Covered Entity under the Services Agreement; and, (c) such entity has access to, receives or maintains PHI.
	2. “Services Agreement”means any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which may involve the use or disclosure of PHI, and all such agreements shall be collectively referred to as the “Services Agreement.” Each Services Agreement is amended by and incorporates the terms of this BAA.
2. Permitted Uses and Disclosures of PHI by Business Associate.
	1. Except as expressly limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity and Business Associate, provided that such use or disclosure would not violate HIPAA if done by Covered Entity.
	2. Except as expressly limited in this BAA, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. Except as otherwise expressly limited in the BAA, Business Associate may disclose PHI when Required By Law or if the disclosure is for the proper management and administration of the Business Associate then Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been the subject of a Breach.
	3. Business Associate may use PHI to provide Data Aggregation services to Covered Entity, consistent with 45 C.F.R. $§$ 164.504(e)(2)(i)(B).
	4. Business Associate may use and disclose personal information received from Covered Entity that has been de-identified by Business Associate in accordance with 45 C.F.R. § 164.514(a) and (b). Business Associate’s use and disclosure of such de-identified personal information will not be subject to the requirements set forth in this BAA.
	5. Business Associate may use PHI to report violations of law to appropriate federal and state authorities as required under HIPAA and/or other federal and state laws, consistent with 45 C.F.R. § 164.502(j)(1).
3. Duties and Obligations of Business Associate Related to PHI.

	1. Business Associate shall not use or disclose PHI other than as permitted or required by the Services Agreement, this BAA, and/or as Required By Law.
	2. 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.
	3. Business Associate agrees to report promptly to Covered Entity any Security Incident or other use or disclosure of PHI not permitted by this BAA of which it becomes aware. If Business Associate discovers that a Breach of Unsecured PHI has occurred, Business Associate shall notify promptly (but in no event later than thirty (30) days after it has knowledge that a Breach has occurred, unless sooner required under state law) Covered Entity in accordance with the requirements of 45 C.F.R. § 164.410.
		1. Such notification shall include, to the extent possible, the identity of each Individual whose Unsecured PHI was, or is reasonably believed to have been, the subject of a Breach, 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).
	4. Notwithstanding the foregoing, the Parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents (“Unsuccessful Security Incidents”) for which no additional notice to Covered Entity shall be required. Unsuccessful Security Incidents shall include pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and similar events that do not result in unauthorized access, use or disclosure of Electronic PHI.
	5. Business Associate is subject to the same legal requirements to cure, terminate or report violations to the Secretary of HHS, and in the same manner, as Covered Entity.
	6. Business Associate agrees to mitigate, to the extent commercially reasonably, any harmful effect known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA.
	7. Business Associate shall ensure that any Subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same or similar restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
	8. Business Associate agrees to make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. § 164.524.
	9. Business Associate agrees to make reasonable efforts to limit the use and/or disclosure of PHI to the minimum amount of information necessary to accomplish the intended purpose of the use or disclosure.
	10. Business Associate shall document and provide to Covered Entity, in the time and manner reasonably required by Covered Entity, disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
	11. 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 the Covered Entity or to the Secretary, in a time and manner reasonably designated, for purposes of the Secretary determining Covered Entity’s compliance with HIPAA.
	12. To the extent applicable, Business Associate shall make any amendment(s) to a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. § 164.526.
	13. Nothing in this BAA shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
4. Duties and Obligations of Covered Entity.
	1. Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.
	2. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
	3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction affects Business Associate’s use or disclosure of PHI.
	4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
5. Term and Termination.
	1. Term. The term of this BAA shall be effective as of the effective date of the Services Agreement and shall remain in effect until terminated in accordance with Section 5.2 hereof, or until the Services Agreement is terminated.
	2. Termination. Upon either Party’s (the “Non-Breaching Party”) knowledge of a material breach by the other Party (the “Breaching Party”), the Non-Breaching Party may provide a reasonable opportunity for the Breaching Party to cure the material breach within a reasonable time, and if the Breaching Party does not cure the material breach within such time, the Non-Breaching Party may terminate this BAA. If the Breaching Party has breached a material term of this BAA and cure is not possible, the Non-Breaching Party may immediately terminate this BAA.
	3. Effect of Termination. 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 also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible and 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 not feasible, for so long as Business Associate maintains such PHI.
6. Miscellaneous.

	1. Independent Contractor. None of the provisions of this BAA and/or the Services 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 Services Agreement.
	2. Regulatory References. Any reference herein to law means the law as in effect or as amended.
	3. 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.
	4. 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.
	5. 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.
	6. Choice of Law and Venue. This BAA, and all claims or causes of action that may be based upon, arise out of or relate to this BAA, shall be governed by and enforced in accordance with the internal laws of the State of New Jersey, including its statutes of limitations and without reference to its conflicts of laws principles. The Parties further agree that any and all claims arising under this BAA, or related thereto, shall be heard and determined either in the courts of the State of New Jersey with venue in the Middlesex County vicinage or in the federal courts located in New Jersey.
	7. Conflict Among Contracts. Should there be conflict between the terms of this BAA and any other agreement between the Parties (either previous or subsequent to the date of this BAA), the terms of this BAA shall control.
	8. 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.
	9. Assignment. Neither Party shall directly or indirectly assign or otherwise transfer this Agreement, or any interest herein or obligation hereunder, without the prior written consent of the other party. Notwithstanding the foregoing, a corporate reorganization of the clinical operations of Rutgers and/or RHG, which results in the clinical operations of Rutgers and/or RHG being transferred to an Affiliate, shall not require approval of Covered Entity.
	10. No Third Party Beneficiaries. This BAA is made solely for the benefit of the Parties and their Affiliates, successors and assigns and no other person or entity shall have any right, benefit or interest under or because of this BAA.
	11. Notices to Parties. All notices, requests, approvals, demands, and other communications required or permitted to be given under this BAA will be in writing and will be deemed to have been duly given when (a) delivered personally or (b) if sent via USPS/FedEx/UPS (or similar courier service) then as evidenced by a delivery receipt or tracking report, addressed as follows or to such other address as either Party may designate by notice to the other Party:

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| --- | --- |
| To the Covered Entity:[Insert name/address here] | To the Business Associate:[Insert name/address here] |
| With a copy to: | With a copy to:Rutgers University Ethics and ComplianceDirector of Privacy65 Bergen Street, Suite 1346Newark, NJ 07107 |

*Remainder of page intentionally left blank.*

*Signature page follows.*

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

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| **[INSERT NAME HERE]****[COVERED ENTITY]** | **RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY** **[BUSINESS ASSOCIATE]** |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title:Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | **RUTGERS HEALTH GROUP** **[BUSINESS ASSOCIATE]**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Title:Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

*Signature Page for Business Associate Agreement*