

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is by and between _____ (“Covered Entity”) and CONEX Med Pro Systems (“Business Associate”). This Agreement has been attached to, and is hereby fully incorporated into, the underlying service agreement between the parties.

RECITALS

WHEREAS, Covered Entity has contractually engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA (as hereinafter defined), the HIPAA Privacy Regulations (as hereinafter defined), the HIPAA Security Regulations (as hereinafter defined), and the HITECH Standards (as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

a. “*Breach*” shall mean the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “HIPAA Privacy Rule”) which compromises the security or privacy of the Protected Health Information. “Breach” shall not include:

(1) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Rule; or

(2) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, or Organized Health Care Arrangement in which Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule; or

(3) A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. “*Business Associate*” means, with respect to a Covered Entity, a person who:

(1) on behalf of such Covered Entity or of an organized health care arrangement in which Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, performs, or assists in the performance of:

a) a function or activity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

b) any other function or activity regulated by the HIPAA Privacy Regulations or HIPAA Security Regulations; or

(2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administrative, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

c. “*Covered Entity*” means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Regulations and HIPAA Security Regulations.

d. “*Data Aggregation*” means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

e. “*Electronic Protected Health Information*” or “*Electronic PHI*” means Protected Health Information that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.

f. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

g. “*HIPAA Privacy Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.

h. “*HIPAA Security Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C.

i. “*HITECH Standards*” means the privacy, security and security Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

j. “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual, and;

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

k. “*Protected Health Information*” or “*PHI*” means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate

received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

1. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

2. **Status of Parties.** Business Associate hereby acknowledges and agrees that Covered Entity is a Covered Entity and that Business Associate is a Business Associate of Covered Entity.

3. **Permitted Uses and Disclosures.**

a. *Performance of Services.* Business Associate may use and disclose PHI in connection with the performance of the services if such use or disclosure of PHI would not violate HIPAA, the HIPAA Privacy Regulations, or the HITECH Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b. or 3.c. of this Agreement.

b. *Proper Management and Administration.* Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or 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 purpose 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 breached.

c. *Other Permitted Uses.* Unless otherwise limited herein, the Business Associate may also: (1) perform Data Aggregation for the Health Care Operations of Covered Entity; (ii) may use, analyze, and disclose the PHI in its possession for the public health activities and purposes set forth at C.F.R. § 164.512(b); and (iii) de-identify any and all PHI provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. §164.514(b).

4. **Nondisclosure.**

a. *As Provided In Agreement.* Business Associate shall not use or further disclose PHI except as permitted or required by this Agreement.

b. *Disclosures Required By Law.* Business Associate shall not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

c. *Additional Restrictions.* If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA, the HIPAA Privacy Regulations or the HITECH Standards, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

5. **Safeguards, Reporting, Mitigation and Enforcement.**

a. *Safeguards.* Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided by this Agreement. Business Associate further agrees to use appropriate administrative,

physical and technical safeguards to protect the confidentiality, integrity and availability of any Electronic PHI in accordance with the HIPAA Security Regulations and the HITECH Standards.

b. *Business Associate's Agents.* Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity.

c. *Reporting.* Business Associate shall report immediately to Covered Entity any use or disclosure of PHI in violation of this Agreement or applicable law of which it becomes aware. Business Associate further agrees to report immediately to Covered Entity any security incident (as defined by the HIPAA Security Regulations, as amended) on or after the compliance date of the HIPAA Security Regulations of which it becomes aware. In addition, Business Associate shall immediately report to Covered Entity any Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services at 45 C.F.R. Part 164, Subpart D.

d. *Mitigation.* Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Agreement or applicable law.

e. *Sanctions.* Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law.

f. *Covered Entity's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 5.f. shall survive termination of the Agreement.

g. *United States Department of Health and Human Services.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of Electronic PHI, available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining Covered Entity's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards after the compliance dates, respectively, of these regulations and standards; provided, however, that Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of HHS, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under this Section 5.g. shall survive termination of the Agreement.

6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

a. *Access to PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA, the HIPAA Privacy Regulations, and the HITECH Standards.

b. *Amendment of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA, the HIPAA Privacy Regulations and the HITECH Standards. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate.

c. *Accounting of Disclosures of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA, the HIPAA Privacy Regulations, and the HITECH Standards. Business Associate shall make this information available to Covered Entity upon Covered Entity's request.

d. *Forwarding Requests From Individuals.* In the event that any individual requests access to, amendment of, or accounting of PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA, the HIPAA Privacy Regulations, or the HITECH Standards, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

7. **Compliance with HITECH Standards.** Notwithstanding any other provision in this Agreement, no later than February 17, 2010, unless a separate effective date is specified by law or this Agreement for a particular requirement (in which case the separate effective date shall be the effective date for that particular requirement), Business Associate shall comply with the HITECH Standards, including, but not limited to:

- (i) compliance with the requirements regarding minimum necessary under HITECH §13405(b);
- (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a);
- (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies;
- (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by this Agreement and Section 13406 of HITECH;
- (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e);
- (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and
- (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c).

8. **Material Breach, Enforcement and Termination.**

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date, and shall continue until the Agreement is terminated in accordance with the provisions of Section 8.b., or the service agreement between the parties terminates.

b. *Termination.* Covered Entity may terminate this Agreement:

- (1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HITECH Standards;
- (2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or
- (3) pursuant to Sections 8.c. or 9.b. of this Agreement.

c. *Remedies.* If Covered Entity determines that Business Associate has breached or violated a material term of this Agreement, Covered Entities may, at its option, pursue any and all of the following remedies:

- (1) exercise any of its rights of access and inspection under Section 5.f. of this Agreement;
- (2) take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- (3) terminate this Agreement immediately.

If Business Associate determines that Covered Entity has breached or violated a material term of this Agreement, Business Associate may, at its option, pursue any and all of the following remedies:

- (1) take any reasonable steps that Business Associate, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
- (2) terminate this Agreement immediately.

d. *Knowledge of Non-Compliance.* Any non-compliance by Business Associate with this Agreement or with the requirements of HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, or the HITECH Standards automatically will be considered a breach or violation of a material term of this Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. *Reporting to United States Department of Health and Human Services.* As required by law, Covered Entity shall report Business Associate's breach or violation to the Secretary of HHS, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s). As required by law, Business Associate shall report Covered Entity's breach or violation to the Secretary of HHS, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).

f. *Return or Destruction of Records.* Upon termination of this Agreement for any reason, Business Associate shall return or destroy, as specified by Covered Entity, all PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI. If Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI, Business Associate shall certify to Covered Entity that the PHI has been destroyed. If return or destruction is not feasible, Business Associate shall inform Covered Entity of the reason it is not feasible and shall continue to extend the protections of this Agreement to such information.

g. *Injunctions.* Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 8.g. shall survive termination of the Agreement.

9. **Miscellaneous Terms.**

a. *State Law.* Nothing in this Agreement 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 by law for such use or disclosure.

b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards. Covered Entity may terminate this Agreement upon 30 days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between both parties.

c. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. *Ambiguities.* The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

e. *Primacy.* This Agreement supersedes and replaces any pre-existing business associate agreement between the parties. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.

f. *Ownership of PHI.* As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity, any right, title or interest in or to such PHI or any portion thereof. Except as specified in Section 3.c. above or as otherwise agreed to in writing by both parties, Business Associate shall have no right to compile and/or distribute any statistical analysis or report utilizing such PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Covered Entity.

Covered Entity

CONEX Med Pro Systems/Business

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____