

Business Associate Agreement

This Business Associate Agreement (“Agreement”) by and between _____ (“Business Associate”) and HEALTHPLEX, INC. (“Covered Entity”) (“collectively, “the Parties”) effective as of _____ (“Effective Date”), is entered into pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH”) and the regulations promulgated hereunder including all pertinent regulation issued by the Department of Health and Humans Services (“HHS”)(collectively, HIPAA, HITECH and any other state or federal law relating to the protection of health information is referred to herein as “Applicable Privacy Law”) and Personal Identifiable Information as hereinafter defined.

Applicable Privacy Law requires that the Parties enter into this Agreement in order to protect the privacy of Protected Health Information (“PHI”) and Personal Identifiable Information (“PII”) which either party and its employees, affiliates, agents, or representatives may access in carrying out its obligations to each respective party, pursuant to an Agreement between the parties dated _____ (the “Contract”).

The Parties desire to enter into this Agreement to protect PHI, PII and Confidential Information (“CI”) and to amend any agreement between them, whether oral or written, by executing this Agreement.

In consideration of the mutual covenants contained in this Agreement and intending to be legally bound, the parties agree as follows:

Section 1. Definitions.

Terms used, but not otherwise defined in this Agreement shall have the same meaning as those in 45 C.F.R. § 160.103, 164.501, and 164.402.

Specific definitions are as follows:

- A. “Individual” shall have the same meaning as the term “individual” 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).
- B. “Protected Health Information (“PHI”)” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103 (broadly defined as information, including demographic information, related to the past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for such health care, that is created or received by both parties and that either identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual).
- C. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- D. “Personal Identifiable Information (“PII”)” is any information that by itself or as part of a combination of information specifically distinguishes an individual by unique descriptors or identifiers. Examples of PII may include:

- Name (in combination with any of the following items)
- Credit Card Number
- Social Security Number
- Income Tax or Wage Records or Other Financial Information
- Postal Address
- Birth Date or Age
- Driver's License Number
- Personal Phone Number
- Mother's Maiden Name
- Passport Number
- Fax Number
- Online Identifiers
- Personal Email Address
- Bank Account Numbers
- Birth Certificate Number
- Marital or Family Status
- Racial, National, or Ethnic Origin
- Medical & Health Records
- Immigration Status, Green Card or Documentation Number

E. "Confidential Information ("CI")"

Confidential information is Healthplex information, records, systems and property of prospective and covered members, employees, providers, business associates and other affiliates. It includes, but is not limited to, the following:

- Any information about Healthplex's method, tactics, or strategies of conducting business
- Financial information and records
- Client or prospective or current covered member lists, names or information
- Pricing methods
- New product ideas and prototypes
- Current and projected marketing and sales statistics and studies
- Technology, programs, developments and proposals
- Processing methods and plans
- Computer programs, designs, passwords, hardware and software
- Group, covered member and/or provider contracts and agreements

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, PII or CI and Use.

Section 2. Obligations and Activities of the Parties.

- A. The Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.
- B. The Business Associate agrees not to use or disclose PHI, PII or CI other than as permitted or required by this Agreement or Applicable Privacy Law, as amended from time to time.
- C. The Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI, PII or CI other than as permitted by this Agreement.
- D. The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI, PII or CI by the Business Associate in violation of the requirements of this Agreement.
- E. The Parties agree to report to each other any use or disclosure of PHI, PII or CI not permitted by this Agreement of which they become aware.
- F. The Business Associate agrees to require that any agent, including subcontractors, to whom it provides PHI, PII or CI received from, or created or received by either party, agree to the same

restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.

- G. If requested, in a time and manner reasonably designated by the Covered Entity, the Business Associate agrees to provide access to the Covered Entity PHI, PII or CI, or as directed by the Covered Entity, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.
- H. If requested, in a time and manner reasonably designated by the Covered Entity, the Business Associate agrees to make amendments to PHI, PII or CI or a record about an Individual as the Business Associate directs or agrees to pursuant to 45 C.F.R. § 164.526.
- I. The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI , PII or CI received from, or created or received by the Business Associate available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining the Business Associate’s compliance with Applicable Privacy Law.
- J. The Business Associate agrees to document such disclosures of PHI, PII or CI and information related to such disclosures as would be required for the Business Associate to respond to a request by an Individual for an accounting of disclosures of PHI, PII or CI in accordance with 45 C.F.R. § 164.528.
- K. The Business Associate agrees to provide to the Covered Entity or an Individual, in a time and manner reasonably designated by the Covered Entity, information collected in accordance with this Agreement to allow the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, PII or CI in accordance with 45 C.F.R. § 164.528.
- L. The Business Associate agrees to implement administrative, physical and technical safeguards (“Safeguards”) that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI, PI or CI as required by 45 CFR Part 164, Subpart C (“Security Rule”).
- M. The Business Associate agrees to ensure that any agent and subcontractor to whom it provides electronic PHI, PII or CI agree to implement reasonable and appropriate Safeguards to protect electronic PHI, PII or CI.
- N. The Business Associate agrees to report promptly to the Covered Entity any “Security Incident” of which the Business Associate becomes aware; as such term is defined in the Security Rule. At the request of the Covered Entity, the Business Associate shall identify the following: the date of the Security Incident, the scope of the Security Incident, the response to the Security Incident, and the identification of the party responsible for causing the Security Incident, if known. Thereafter, upon the Covered Entity’s request, shall provide periodic updates regarding the Security Incident.
- O. The Business Associate agrees to make its policies, procedures and documents required by the Security Rule related to Safeguards available to the Secretary for purposes of determining both parties compliance with the Security Rule.
- P. The Business Associate shall, upon request with reasonable notice from the Covered Entity, provide the Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI, PII or CI.
- Q. To the extent that the Business Associate is to carry out one or more of the Covered Entity’s obligation(s) under Subpart E of 45 CFR Part 164, it shall comply with the requirements of Subpart E that apply to the performance of the Business Associate’s obligation(s).

Section 3. Breach Notification Requirement.

- A. In compliance with section 13402 of the HITECH Act, and 45 CFR § 164.410, as they may be amended from time to time, the Business Associate agrees to notify the Covered Entity of any breach of unsecured PHI, PII or CI without unreasonable delay and in no case later than sixty (60) calendar days after discovery of breach. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI, PII or CI has been or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach. The Business Associate shall provide to the Covered Entity any other available information that is required to include in notification to the individual under 45 CFR § 164.404(c) at the time of the notification or as promptly thereafter as information becomes available.
- B. The Business Associate agrees to indemnify and hold the Covered Entity harmless and pay for any and all costs associated with any breach of unsecured PHI, PII or CI including, but not limited to: the costs of notifying Members, the Department of Health and Human Services, and any media; providing credit monitoring; investigating the breach; taking measures to prevent such breaches in the future; and defending against any subsequent lawsuits.

Section 4. Permitted Uses by the Business Associate.

Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI, PII or CI to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in any other Agreement entered into between the Parties.

Section 5. Obligations of the Parties.

- A. The Covered Entity shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR § 164.520, to the extent such limitation may impact the Business Associate's use or disclosure of PHI, PII or CI.
- B. The Covered Entity shall immediately notify the Business Associate of any changes in, or revocation of, permission by any Individual to use or disclose PHI, PII or CI to the extent that such changes may affect the Business Associate's use or disclosure of PHI, PII or CI.
- C. The Covered Entity shall immediately notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI, PII or CI.

Section 6. Permissible Requests by the Parties.

The Parties shall not request each other to use or disclose PHI, PII or CI in any manner that would not be permissible under Applicable Privacy Law if done by the other party.

Section 7. Term and Termination.

- A. Term. The term of this Agreement shall commence as of the Effective Date of this Agreement, and shall terminate when all of the PHI, PII or CI provided by the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to each other except for any and all information that must be maintained pursuant to any federal, state and/or local regulatory authority. If it is not feasible to return or destroy the PHI, PII or CI, protections are extended to such information, in accordance with the termination provisions of this Section.

- B. Termination for Cause. Upon Covered Entity's knowledge that the Business Associate has breached a material term of this Agreement, the Covered Entity shall:
- (1) Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate this Agreement. If Business Associate does not cure the material breach or end the violation within a reasonable period of time, the Covered Entity may terminate this Agreement;
 - (2) Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violations to the Secretary.
- C. Effect of Termination.
- (1) Except as provided in subparagraph (2) of this paragraph, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all PHI, PII or CI received from the Covered Entity or created or received by Business Associate on behalf of the Covered Entity. This provision shall apply to PHI, PII or CI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI, PII or CI, unless return or destruction is not reasonably feasible.
 - (2) In the event that the Business Associate determines that returning or destroying the PHI, PII or CI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI, PII or CI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI, PII or CI and limit further uses and disclosures of such PHI, PII or CI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI, PII or CI.
- D. State Law. If state law applicable to the relationship between the Parties contain additional or more stringent requirements than federal law for the Parties regarding any aspect of PHI, PII or CI privacy, then the Parties agree to comply with the higher standard contained in applicable state law.
- E. Consideration. The Parties recognize that the promises they have made in this Agreement shall, henceforth, be detrimentally relied upon by the Parties in choosing to continue or commence a business relationship with each other.
- F. Indemnification. The Business Associate shall indemnify and hold harmless the Covered Entity and its officers, employees, agents, and instrumentalities (the indemnified parties) from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Covered Party or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Business Associate or its employees, agents, servants, partners, principals, or subcontractors.
- G. Modification. This Agreement may only be modified through writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including all pertinent regulations issued by the Department of Health and Human Services ("HHS");

Section 8. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section then in effect or as amended.
- B. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either parties to comply with the requirements of Applicable Privacy Law.
- C. Survival. The respective rights and obligations of either parties under Section 6C of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved to permit either party to comply with Privacy Regulations.

The parties have caused this Agreement to be executed on the date first written above.

NAME OF GROUP

BY: _____

TITLE: _____

DATE: _____

HEALTHPLEX, INC.

BY: _____

TITLE: _____

DATE: _____