

## ATTACHMENT 2

### TERMS AND CONDITIONS

"VIP" and Subscriber shall be the parties identified in that certain Letter of Agreement between VIP and Subscriber and shall be referred to hereafter as the "parties". The terms and conditions set forth below shall be referred to as the "Agreement".

1. Recitals. This Agreement is made with reference to and in consideration of the following recitals: The parties agree that Subscriber desires to participate in an electronic connectivity program. Company has entered into a license agreement with certain vendors, which has resulted in Company offering to Subscriber access to a technology platform designed to assist healthcare providers improve their workflow, enhance patient care, and transfer secure information among healthcare related administrative and clinical databases ("VIP Health Connect").

2. Compliance with HIPAA Requirements. Subscriber agrees to comply with all of the provisions of the Health Insurance Portability and Accountability Act's ("HIPAA's") privacy standards to protect Subscriber's patient's health information. Further, Subscriber agrees to comply with all of the provisions of HIPAA's security standards, which includes the assessment of the security of e-patient information and the implementation of the necessary steps to protect such information. Company acknowledges that it is a "Business Associate" of Subscriber under HIPAA and agrees to be bound by the privacy and security regulations of HIPAA as they pertain to Business Associates. Both parties agree to abide with the terms of the Business Associate Agreement regarding privacy and security as set forth in Attachment 2B attached hereto. Notwithstanding the foregoing, Company may use or disclose Protected Health Information for the following purposes: (a) to train Subscriber and its employees and agents in the use of the VIP Health Connect; (b) to provide support services to Subscriber and its employees and agents relating to the VIP Health Connect; (c) to provide helpdesk support services to Subscriber and its employees and agents relating to the VIP Health Connect; (e) to repair the VIP Health Connect; (f) to upgrade the VIP Health Connect; or (g) to update information relating to or on the VIP Health Connect.

### 3. Indemnity.

3.1 Indemnity by Subscriber. Subscriber, for itself and its successors, assigns, heirs, executors, administrators, and legal representatives, agrees to indemnify, defend, and hold harmless Company, and its officers, directors, employees, control persons, and attorneys from and against any and all complaints, grievances, demands, obligations, promises, agreements, claims, actions, and causes of action, whether civil or criminal, and any and all loss, liability, damage, cost and expense (including interest, penalties, and settlements), fines, costs and expenses (to include reasonable attorney's fees) incurred in connection with or related to the investigation or defense of any and all claims or causes of action, arising out of or relating to any act or omission by Subscriber. In all events, Company shall have the right to participate in the defense of any suit or proceeding in which Company is named as a party through legal counsel of Company's own choosing.

3.2 Indemnity by Company. Company, for itself and its successors, assigns, heirs, executors, administrators, and legal representatives, agrees to indemnify, defend, and hold harmless Subscriber, and its officers, directors, employees, control persons, and attorneys from and against any and all complaints, grievances, demands, obligations, promises, agreements, claims, actions, and causes of action, whether civil or criminal, and any and all loss, liability, damage, cost and expense (including interest, penalties, and settlements), fines, costs and expenses (to include reasonable attorney's fees) incurred in connection with or related to the investigation or defense of any and all claims or causes of action, arising out of or relating to any act or omission by Company. In all events, Subscriber shall have the right to participate in the defense of any suit or proceeding in which Subscriber is named as a party through legal counsel of Subscriber's own choosing.

### 4. Disclaimer of Warranty and Limitation of Liability.

4.1 Disclaimer of Warranty. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, AND COMPANY EXPRESSLY DENIES, REJECTS AND DISCLAIMS ANY WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF THE CORRECTNESS, ACCURACY, TIMELINESS, OR COMPLETENESS OF ANY INFORMATION OR SERVICES PROVIDED BY COMPANY FROM ITS VENDORS RELATING TO THE VIP HEALTH CONNECT.

4.2 Limitation of Liability. COMPANY, ITS AFFILIATES, EMPLOYEES, OFFICERS AND AGENTS SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, WHETHER DIRECT OR INDIRECT, RESULTING FROM DELAYS OR INTERRUPTIONS OF THE VIP HEALTH CONNECT

BECAUSE OF MECHANICAL OR ELECTRICAL PROBLEMS STORMS, STRIKES, WALK-OUTS, EQUIPMENT OR SYSTEM FAILURE, OR ANY OTHER CAUSE OVER WHICH COMPANY, ITS AFFILIATES, EMPLOYEES, OFFICERS OR AGENTS, HAS NO REASONABLE CONTROL. COMPANY, ITS AFFILIATES, EMPLOYEES, OFFICERS AND AGENTS SHALL NOT BE LIABLE TO SUBSCRIBER OR TO ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, RESULTING FROM INACCURACIES, ERRONEOUS STATEMENTS, ERRORS OF FACT, OMISSIONS, OR ERRORS IN THE TRANSMISSION OR DELIVERY OF INFORMATION BY THE VIP HEALTH CONNECT. IN ALL OTHER CASES THE AGGREGATE LIABILITY OF COMPANY TO SUBSCRIBER FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO AND SUBSCRIBER AGREES NOT TO MAKE ANY CLAIM EXCEEDING, OR THAT WOULD CAUSE COMPANY'S AGGREGATE LIABILITY TO EXCEED, AN AMOUNT EQUAL TO THE HEREINABOVE SUBSCRIPTION FEE FOR ONE CALENDAR YEAR. IN NO EVENT SHALL COMPANY BE LIABLE TO SUBSCRIBER OR TO ANY THIRD PARTY, FOR SPECIAL INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES WHICH SUBSCRIBER, OR SUCH THIRD PARTY, MAY INCUR OR EXPERIENCE ON ACCOUNT OF ENTERING INTO THIS AGREEMENT OR RELYING UPON THIS AGREEMENT.

4.3 Period to Make Claims. Any action by Subscriber against Company, its affiliates, officers, directors, agents, employees, successors or assigns, based upon any act or omission arising out of or relating to this Agreement, or for any alleged breach thereof, shall be commenced within one (1) year of the first occurrence giving rise to such claim or be forever barred. This section 8.3 does not modify or otherwise affect the limitation of Company's liability as set forth above.

5. Company Vendor Compliance with HIPAA. Subscriber understands and agrees that Company holds a license from its vendor(s) that allows Company to offer to Subscriber the VIP Health Connect. In connection with such license, Company vendor has agreed to comply with all of the provisions of HIPAA applicable to a Business Associate in connection with the vendor's use and disclosure of "Protected Health Information" as those terms are defined in HIPAA. Notwithstanding the foregoing, Company's vendor may use or disclose Protected Health Information for any of the following purposes: (a) to load the VIP Health Connect at Subscriber's site(s); (b) to interface the VIP Health Connect with other software used by Subscriber; (c) to train Subscriber and its employees and agents in the use of the VIP Health Connect (d) to provide on-site Support Services to Subscriber; (e) to provide help desk support services to Subscriber and its users; (f) to repair the VIP Health Connect; (g) to upgrade the VIP Health Connect; (h) to update information relating to or on the VIP Health Connect; (i) to transmit prescriptions, dictations, claims, orders, results or other records as requested by Subscriber, its users and/or the patient; (j) to provide information to another Covered Entity, either directly or through a vendor's business associate, in connection with a use for which the HIPAA privacy rule allows such disclosure (provided that the receiving Covered Entity, either directly or through its business associate, represents to the Company's vendor that (i) it has or had a relationship with the Individual who is the subject of the Protected Health Information being requested, (ii) the Protected Health Information pertains to such relationship and (iii) the Protected Health Information will be used only for the treatment activities of the receiving Covered Entity, a purpose listed in the definition of "health care operations" under the HIPAA privacy rule, or for health care fraud and abuse detection or compliance, or for receiving Covered Entity's payment activities); (k) for any other purpose which supports the intended use of the VIP Health Connect by Subscriber or its users; (l) for any other purpose which requires consent or authorization of the patient, if such consent or authorization is obtained; or (m) for Company's vendor's or Subscriber's proper management and administration or to carry out its legal responsibilities. Company's vendor may also de-identify and aggregate Protected Health Information, which it may then use or disclose to others for purposes of VIP Health Connect development, preparing commercially available normative and benchmark data and databases, screening eligibility for clinical trial opportunities, internal and external research and analysis purposes, and for any other lawful purpose; provided, however, any such de-identified and aggregated Protected Health Information shall be aggregated with all other similar data available to Company's vendor and provided further that such data shall not be attributed, either directly or indirectly, to Subscriber. Subscriber shall notify Company of the following: (a) any limitation(s) in its notice of privacy practices of Subscriber in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Company's vendor's use or disclosure of Protected Health Information; (b) any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Company's vendor's use or disclosure of Protected Health Information; and/or (c) any restriction to the use or disclosure of Protected Health Information that Subscriber has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Company's vendor's use or disclosure of Protected Health Information. Subscriber, its employees and agents will obtain from their patients all requisite written consents in order to utilize the capabilities of the VIP Health Connect in compliance with applicable laws and regulations, as amended from time to time, including, but not limited to HIPAA, and to carry out the purposes of this Agreement.

6. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given if personally delivered or mailed by certified or registered mail, return receipt requested to the address of the party.

7. Governing Law and Jurisdiction. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California and jurisdiction and venue shall be the Superior Court for the County of San Diego, California, Central Division. agreed upon location.

8. Subscriber Responsibility.

8.1 Accuracy of Data. Subscriber acknowledges that it is solely responsible for the inputting and retrieving of data regarding Subscriber's patients, and Subscriber shall be solely responsible

8.2 Passwords and Security. Subscriber shall be responsible for all use of its account and maintaining the confidentiality of all passwords and information. Subscriber shall not permit the sharing of passwords and account numbers. Company shall not be responsible for any violation of this section, and any use of the VIP Health Connect will be at Subscriber's own risk.

8.3 Operating Environment. Subscriber agrees the successful implementation and use of the VIP Health Connect depends upon Subscriber's utilization of appropriate hardware and software. Company reserves the right to request that Subscriber upgrade or change its hardware or software to successfully implement or use the VIP Health Connect. Subscriber shall be responsible for providing all hardware and software at its own expense.

8.4 Record Retention. Although the VIP Health Connect includes an amount of digital storage capability for Subscriber's patient information and data, Subscriber acknowledges that the VIP Health Connect is not intended to and does not replace Subscriber's practice management or record retention system. Subscriber's obligation to retain and maintain appropriate patient medical records will not be satisfied by use or storage of patient information or data on the VIP Health Connect.

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## ATTACHMENT 2

### BUSINESS ASSOCIATE AGREEMENT

#### TERMS AND CONDITIONS

VIP Health Initiative, LLC shall be referred to hereafter as "Business Associate". Subscriber shall be referred to hereafter as "Healthcare Provider". This Attachment 2B sets forth the terms and conditions under which Protected Health Information, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Regulations enacted thereunder, created or received by ("Business Associate") on behalf of Health Care Provider may be used or disclosed.

#### Definitions

- a. Business Associate. "Business Associate" shall mean that certain person or entity that performs certain functions or activities that involve the use or disclosure of Protected Health Information on behalf of, or provides services to, a Covered Entity to include Health Care Provider. The identity of the Business Associate, which is a party to this Agreement, is set forth below.
- b. Covered Entity. "Covered Entity" shall have the same meaning as the term "Covered Entity" in 45 CFR § 160.103.
- c. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- d. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of a Covered Entity.
- f. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- g. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- h. Health Care Provider. "Health Care Provider" shall mean that certain person or entity that is a Covered Entity. The identity of Health Care Provider, which is a party to this Addendum, is set forth below. Throughout this Agreement, Covered Entity may refer to Health Care Provider.

#### Operative Provisions

1. Term. This Agreement shall commence on the last date set forth below and the obligations herein shall continue in effect so long as Business Associate uses, discloses, creates or otherwise possesses any Protected Health Information created or received on behalf of Health Care Provider and until all Protected Health Information created or received by Business Associate on behalf of Health Care Provider is destroyed or returned to Health Care Provider as set forth hereinbelow.

2. Use of PHI by Business Associate. Health Care Provider and Business Associate hereby agree that, except as otherwise specified herein, Business Associate may make any and all uses of PHI necessary to perform its obligations as set forth in the Subscription Agreement between the Parties, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. 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 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. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B). It is to be understood by all parties that the permitted uses and disclosures must be within the scope of and necessary to achieve, the obligations and responsibilities of Business Associate in performing on behalf of, or providing services to, the Health Care Provider. Business Associate further agrees not to use or disclose Protected Health Information except as expressly permitted by this Agreement, applicable law, or for the purpose of managing Business Associate's own internal business processes.

3. Security of PHI. Business Associate hereby agrees to maintain the security and privacy of all Protected Health Information in a manner consistent with California State and Federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations hereunder, and all other applicable law.

4. Safeguards Against Disclosure. Business Associate shall not disclose Protected Health Information to any member of its workforce unless Business Associate has advised such person (employee) of Business Associate privacy and security obligations and policies under this Agreement, including the consequences for violation of such obligations. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses Protected Health Information in violation of this Agreement and applicable law. Business Associate shall not disclose Protected Health Information created or received by Business Associate on behalf of Health Care Provider to any person, including any agent or subcontractor of Business Associate until such person agrees in writing to be bound by the provisions of this Agreement and applicable California state or federal law. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information not permitted by this Agreement or applicable law.

5. Record of Disclosures. Business Associate agrees to maintain a record of all disclosures of Protected Health Information, including disclosures not made for the purposes of this Agreement. Such record shall include the date of the disclosure, the name and, if known, the address of the recipient of the Protected Health Information, the name of the Individual who is the subject of the Protected Health Information, a brief description of the Protected Health Information disclosed, and the purpose of the disclosure. Business Associate shall make such record available to any Individual who is the subject of such information or Health Care Provider within five (5) working days of a written request.

6. Reporting Obligation Regarding Disclosure. Business Associate agrees to report to Health Care Provider any unauthorized use or disclosure of Protected Health Information by Business Associate or its workforce or subcontractors and the remedial action taken or proposed to be taken with respect to such use or disclosure.

7. Inspection Rights and Access. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Health Care Provider or created or received by Business Associate on behalf of Health Care Provider, available to the Secretary for purposes of determining the Covered Entity's compliance with HIPAA. Within thirty (30) days of a written request by Health Care Provider, Business Associate shall allow a person who is the subject of Protected Health Information, such person's legal representative, or Health Care Provider to have access to and to copy such person's Protected Health Information in the format requested by such person, legal representative, or practitioner unless it is not readily producible in such format, in which case it shall be produced in standard hard copy format.

8. Amending PHI. Business Associate agrees to amend, pursuant to a request by Health Care Provider, Protected Health Information maintained and created or received by Business Associate, on behalf of the Practitioner. Business Associate further agrees to complete such amendment within thirty (30) days of a written request by Health Care Provider, and to make such amendment as directed by Health Care Provider.

9. Healthcare Provider's Right to Protect PHI. In the event Business Associate fails to perform the obligations under this Agreement, Health Care Provider may, at its option require Business Associate to submit to a plan of compliance, including monitoring by Health Care Provider and reporting by Business Associate, as Health Care Provider, in its sole discretion, determines necessary to maintain compliance with this Agreement and applicable law. Such plan shall be incorporated into this Agreement by amendment hereto, and require Business Associate to mitigate any loss occasioned by the unauthorized disclosure or use of Protected Health Information. Health Care Provider may immediately discontinue providing Protected Health Information to Business Associate with or without written notice to Business Associate. Health Care Provider may amend this Agreement by providing ten (10) days prior written notice to Business Associate in order to maintain compliance with California state or federal law. Such amendment shall be binding upon Business Associate at the end of the ten (10) day period and shall not require the consent of Business Associate. Business Associate may elect to

discontinue this Agreement within the ten (10) day period, but the duty of Business Associate to maintain the security and privacy of Protected Health Information shall survive such discontinuance. Health Care Provider and Business Associate may otherwise amend this Agreement by mutual written agreement.

10. Termination by Healthcare Provider for Breach. Health Care Provider may immediately terminate this Agreement and related agreements if Health Care Provider determines that Business Associate has breached a material term of this Agreement. Alternatively, Health Care Provider may choose to (i) provide Business Associate with ten (10) days written notice of the existence of an alleged material breach, and (ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Health Care Provider within ten (10) days. Business Associate's failure to cure shall be grounds for immediate termination of this Agreement. Health Care Provider's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

11. Indemnification by Business Associate. Business Associate shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless Health Care Provider and his/her respective employees, directors, and agents ("Indemnities") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of every kind (including reasonable attorneys fees, including at trial and on appeal) asserted or imposed against any Indemnities arising out of the acts or omissions of Business Associate or any of Business Associate's employees, directors, or agents related to the performance or nonperformance of this Agreement.

12. Automatic Termination. This Agreement will automatically terminate without any action by the parties hereto upon the termination or expiration of the Subscription Agreement.

13. Effect of Termination. Upon an event of termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from or on behalf of, or created for, Health Care Provider if it is feasible to do so, pursuant to 45 C.F.R 164.504(e)(2)(ii)(1). Prior to doing so, Business Associate further agrees to recover any such PHI in the possession of its licensors, subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify Health Care Provider in writing of said fact, including the specific reasons for such determination. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to the PHI that it so retains after termination of this Agreement, and shall limit any further use or disclosure to the purpose that makes the return or destruction of the PHI infeasible, for as long as Business Associate maintains such PHI.

14. Change of Law. The parties acknowledge that further regulations under HIPAA are expected, particularly in the area of security of PHI, that the Department of Health and Human Services may further modify the Privacy Regulations from time to time. Therefore, it may be necessary to add, delete, or change requirements under this Agreement to meet such new or changed regulations. Further, the parties acknowledge that pricing under the Subscription Agreement may be based on legal requirements in effect and as to which compliance is required as of the date of the Subscription Agreement only, and that compliance with additional or different legal requirements may result in changes of scope and pricing under the Subscription Agreement. Health Care Provider retains primary responsibility for its own compliance with HIPAA and other new or changed laws or regulations and for identifying to Business Associate those changes in the manner in which services are provided under the Subscription Agreement that are required for Health Care Provider's compliance with HIPAA or other new or changed laws or regulations. However, Business Associate shall not be obligated to make a change in the manner in which services are delivered under the Subscription Agreement until and unless an amendment to this Agreement and/or the Subscription Agreement covering such changes is mutually agreed upon and executed by Business Associate and the Health Care Provider. In the event of new or changed requirements, Health Care Provider shall specify in writing to Business Associate the particular functional requirements needed for its compliance with HIPAA, or other new or changed law or regulation, which it desires the Business Associate to address. Business Associate shall use all commercially reasonable efforts to propose a solution that achieves the functional requirements defined in Health Care Provider's notice and shall provide such proposal, including the additional costs, if any, to the Health Care Provider within a reasonable time. The parties shall then negotiate in good faith any necessary amendment to this Agreement and/or the Subscription Agreement to effect a solution. Should the parties fail to reach agreement on such an amendment within ninety days after commencement of negotiations, either party may terminate this Agreement and the Subscription Agreement by written notice to the other, effective sixty (60) days after such notice is given.

#### Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as 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 Health Care Provider to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate and Health Care Provider under this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit any Covered Entity to comply with the Privacy Rule.

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