

ATTACHMENT 2A

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 2A 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.

Unless prohibited by this Agreement, Business Associate may use and disclose Protected Health Information as follows: (a) to enable "data sharing" functionality between physicians or physician organizations and any subsequent healthcare providers in the physician community that may be requested. Data sharing using the VIP Health Portal is enabled at the request of the Covered Entity for the purpose of creating a community patient medical record, for continuity of care, and to enable interoperability of the HITECH act for improved quality of patient care.

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.

All PHI shall comply with any and all HIPAA rules and restrictions as to how a Covered Entity may use, share or disclose PHI to include the following: (a) no disclosure of PHI if an individual who pays out of pocket requests the Covered Entity not to disclose such information, and (b) the accounting of all disclosures of an individual's PHI if such individual requests an accounting.

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.
