

**LETTER OF AGREEMENT**  
**BETWEEN VIP HEALTH INITIATIVE, LLC AND SUBSCRIBER**  
**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. Agreement to Subscribe. Subscriber hereby subscribes to the VIP Health Connect to become a sub-licensee pursuant to the terms and conditions set forth in this Agreement. The herein sub-license is limited, non-exclusive and non-transferable. Subscriber agrees that upon execution this subscription is and shall be irrevocable except as provided by the terms of this Agreement. Company shall provide Subscriber with services related to the VIP Health Connect. Company reserves the right to limit or curtail services when necessary for system upgrades, adjustments, maintenance, or other operational considerations. Subscriber understands that services provided by the VIP Health Connect are available only when Company’s vendors provide such services, and that such services may be interrupted or curtailed as the result of upgrades, maintenance or repairs by Company’s vendors.

2.1 Subscriber Participants. Subscriber may employ or contract with licensed healthcare providers who may be provided access to the VIP Health Connect by Subscriber (“Subscriber Participants”). Those participants will be listed on a Data Collection Form provided by VIP Health Connect.

3. Subscription Fee.

3.1 Annual Subscription Fee. Subscriber understands and agrees to the following: The annual subscription fee shall be determined by the level of service, and membership in certain medical groups, as described in the Letter of Agreement.

3.2 Payment of Annual Subscription Fee. Subscriber agrees to pay in advance the annual subscription fee by check, money order, or by credit card, or by installment account set up at time of installation, and that Company reserves the right not to connect Subscriber to the VIP Health Connect until Company has received full payment. Subscriber shall pay the annual subscription fee within thirty (30) days from the date that Company sends its invoice (“30-Day Period”). If full payment is not received by Company within the 30-Day Period, Subscriber agrees to pay interest on the unpaid balance at the rate of ten percent (10%) per annum commencing from the expiration of the 30-Day Period until the invoice is paid in full. If payment in full is not received by Company within sixty (60) days from the date of the invoice, Company may, at its option, terminate this Agreement upon ten (10) days written notice. The charges for any partial month of service shall be prorated on the basis of a 30-day month. Should Subscriber provide its credit card or bankcard number, Subscriber authorizes Company to charge Subscriber’s account for all fees and other amounts due under this Agreement. This authorization will remain in effect until Subscriber notifies Company in writing of withdrawal of Subscriber’s authorization. Subscriber authorizes Company to use third-party subcontractors to verify Subscriber’s credit card information and to receive updated account information from the financial institution issuing Subscriber’s credit card. If the credit card or bankcard number that Subscriber provides to Company belongs to someone other than Subscriber, then Subscriber represents and warrants that it has such person’s permission to use that number. Subscriber agrees to provide an alternate credit card or bankcard number

to Company within three (3) business days in the event such third person revokes its permission.

4. Term and Termination. The initial term of this Agreement is twelve (12) months. Either party may terminate this Agreement upon giving at least 60-days prior written notice ("60-Day Notice"). This Agreement shall renew automatically for successive 12-month renewal terms unless Subscriber or Company provides a 60-Day Notice. Subscriber shall have the right to terminate this Agreement immediately if Subscriber, in good faith, determines that Company has violated a material term of the Business Associate Agreement, which is Attachment 2A (and is attached hereto and incorporated in its entirety herein by this reference), and Subscriber determines that such violation has not been cured within ten (10) days from the date that Company has received written notice from Subscriber regarding such violation. If Subscriber breaches any other term of this Agreement, Company may terminate this Agreement upon thirty (30) days written notice to Subscriber. These rights are in addition to any other rights held by Company under this Agreement.

5. Representations by Subscriber. Subscriber represents to Company the following: Subscriber is authorized to enter into this Agreement. Subscriber (or Subscriber Participants) holds a practice certificate issued by the California Board of Medical Quality Assurance, Division of Licensing, and is engaged in the professional practice as authorized by such certificate. Subscriber is not subject to any current, ongoing or pending investigation or disciplinary action by the MBC, or the equivalent medical licensing authority of any other state in the United States ("OMBC") and is not on the Exclusion List of the Office of Inspector General ("OIG"). Neither Subscriber nor any of its employees or agents have been sanctioned, excluded or debarred as a provider under Medicare, Medicaid, or any other state or federal program, or by any state or federal agency. Subscriber shall maintain a current DEA License without restrictions. If, for any reason, the authority of Subscriber (or any user of the VIP Health Connect who is an employee or agent of Subscriber) to issue prescriptions is restricted or prohibited or Subscriber (or any user of the VIP Health Connect who is an employee or agent of Subscriber) has been sanctioned, excluded, or debarred, then Subscriber shall promptly provide Company with written notice of such action, and Company reserves the right to terminate this Agreement.

6. 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 2A 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.

#### 7. Indemnity.

7.1 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.

7.2 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.

8. Disclaimer of Warranty and Limitation of Liability.

8.1 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.

8.2 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.

8.3 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.

9. 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.

10. Surveys and Advertisements. Company reserves the right to display online advertisements on its website. Company may periodically conduct user surveys to improve the types of services offered by Company. Personal information provided by Subscriber shall remain confidential. Company shares aggregated and non-identifying information about its users and visitors collected through the subscription application process as well as through online surveys and promotions with advertisers. Company may use aggregated and non-identifying information to deliver tailored advertisements. Company warrants that it shall not share non-aggregated and identifying information about its users or visitors with advertisers.

11. Revisions to this Agreement. Company reserves the right to revise, amend, or modify the terms of this Agreement relating to services to be provided by Company including the VIP Health Connect ("Amendment"). Upon the receipt of any Amendment, Subscriber shall have thirty (30) days to terminate this Agreement and will receive a refund of the subscription fee for the remaining prorated balance of the term. If Subscriber does not terminate this Agreement within said 30-day period, Subscriber will be deemed to have accepted the Amendment.

12. 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.

13. Miscellaneous.

13.1 Waiver. Waiver by any party of the default or breach of any provision of this Agreement by the others shall not operate or be construed as a waiver of any subsequent default or breach.

13.2 Assignability. This Agreement may be assigned by Company, but shall not be assignable by Subscriber without the prior written consent of Company.

13.3 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of final jurisdiction, it is the parties' intent that all other provisions of their Agreement shall remain fully valid, enforceable, and binding on the parties.

13.4 Further Assurances. The parties agree to take such further actions, including the execution and delivery of any documents, as may be required, necessary, or desirable for the performance of this Agreement;

13.5 Entire Agreement; Headings; Incorporation by Reference. This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof, and supersedes all previous agreements, written or oral. Headings are for convenience or reference only and shall not affect the interpretation or construction of this Agreement; and

13.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute an original and all of which shall constitute one document.

13.7 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.

13.8 Attachments. All attachments identified in this Agreement are attached to and incorporated into this Agreement as though fully set forth within this Agreement.

14. Mandatory Mediation; Binding Arbitration; Governing Law; and Venue.

14.1 Except for any dispute that arises out of the interpretation of Section 7 above, the parties agree that any dispute between them relating to this Agreement, or the breach hereof, shall, if negotiations and other discussions fail, be first submitted to mediation in accordance with the provisions of the commercial mediation rules of the American Arbitration Association before resorting to arbitration. The parties agree to conduct the mediation in good faith and make reasonable efforts to resolve their dispute by mediation. The commercial mediation rules of the American Arbitration Association are incorporated by reference. The parties agree to conduct the mediation in San Diego, California, or another mutually agreed upon location.

14.2 The parties agree that any dispute between them relating to this Agreement, or the breach hereof, shall be subject to binding arbitration, if the dispute is not resolved by the mediation required under this Section 14, in accordance with the provisions of the Commercial Arbitration rules of the American Arbitration Association, and that judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The Commercial Arbitration Rules are incorporated by reference. The parties agree to conduct the arbitration in San Diego, California, or another mutually agreed upon location.

14.3 Any dispute between the parties relating to this Agreement shall be construed under and in accordance with the laws of the State of California and is fully performable in San Diego County, California.

14.4 If either party appeals the decision of the arbitrator(s), the Parties agree that the Superior Court in and for the County of San Diego, California, San Diego Central Division shall be exclusive venue and jurisdiction of same.

15. Force Majeure. Company shall not be responsible for the failure to provide the VIP Health Connect if caused by any of the following: (a) any act or omission by any Company vendor (to include any VIP Health Connect vendor); (b) equipment failures or shortages; (c) acts of nature, labor strikes, or war; or (d) any other act or event that is outside of the reasonable control of Company. Under any of above-mentioned circumstances, Company, at its option, may suspend or terminate this Agreement without prior notice to Subscriber and without any liability. Should such suspension or termination occur, Subscriber shall not be entitled to a refund or credit.

16. No Third Party Beneficiary. Subscriber agrees that it is not a third party beneficiary of any agreement between Company and any vendor to Company to include any VIP Health Connect vendor. Further, Subscriber expressly agrees that any Company vendor has no legal, equitable, or other liability of any kind to Subscriber regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise.

17. Subscriber Responsibility.

17.1 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 for the accuracy and adequacy of the information and data furnished for processing by the VIP Health Connect. Subscriber agrees that it shall have full and sole responsibility for the care and well-being of its patients, and any reliance by Subscriber upon the VIP Health Connect shall not diminish or alter Subscriber's responsibility.

17.2 Obligations of Subscriber. Subscriber shall ensure that all authorized persons accessing VIP Health Connect, to include but not limited to Subscriber Participants, through any account provided to Subscriber shall comply with all of the terms and conditions of this Agreement as well as all terms and conditions that may be required by Company vendors. All Subscriber Participants automatically shall become a party to this Agreement in regards to Sections 5 and 6 of this Agreement as if that person had signed this Agreement and was bound under its terms as of the date this Agreement is deemed effective, and Subscriber shall require that each Subscriber Participant comply with Sections 5 and 6. Subscriber shall take reasonable steps to protect against unauthorized usage of the VIP Health Connect through Subscriber's account. Subscriber shall not rent, lease, sublicense, distribute, transfer, copy or modify the VIP Health Connect or any component thereof without the prior written consent of Company. Subscriber shall use the VIP Health Connect for its internal operations and not for the benefit of any third party or entity. Subscriber shall not translate, decompile, or create or attempt to create by reverse engineering, or otherwise, the object code or source code relating to VIP Health Connect. Subscriber shall not adapt the VIP Health Connect in any way or use it to create a derivative work. Subscriber shall not remove or obscure or alter any Company, or Company vendor, proprietary notices, service marks, trademarks, copyright notices, or other proprietary rights notices affixed to or contained in the VIP Health Connect. Subscriber shall not use the VIP Health Connect in any manner, or in connection with any content, data, hardware, software or other materials provided to Subscriber that infringes upon or violates any patent, copyright, trade secret, trademark, or other intellectual property right of any third party. Subscriber shall not use the VIP Health Connect to defame, libel, invade the privacy or violate any right of any third party. Subscriber shall not use the VIP Health Connect for any illegal, obscene, offensive or immoral purpose. Subscriber shall not inject into the VIP Health Connect any viruses, worms, Trojan horses, or other such malicious codes.

17.3 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.

17.4 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.

17.5 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.

18. Survival. The following sections of this Agreement shall survive the termination of this Agreement: Sections 5 (Representations by Subscriber), 6 (Compliance with HIPAA Requirements), 7 (Indemnity), 8 (Disclaimer of Warranty and Limitation of Liability), 9 (Company Vendor Compliance with HIPAA), 14 (Mandatory Mediation; Binding Arbitration; Governing Law, and Venue), and 16 (No Third Party Beneficiary).

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