

## RCM STANDARD TERMS AND CONDITIONS (PLASTIC SURGERY)

The RCM Standard Terms and Conditions (Plastic Surgery) hereinafter set forth, as amended from time to time (these “**Terms and Conditions**”), form a part of the Revenue Cycle Management Agreement (Plastic Surgery) between Medical Practice and MMBS (the “**RCM Agreement**” and together with these Terms and Conditions, this “**Agreement**”) and are hereby incorporated by reference into the RCM Agreement, without the need for further action. All capitalized terms set forth herein shall have the meaning set forth in the RCM Agreement unless expressly provided to the contrary herein. These Terms and Conditions were last updated on January 20, 2015.

**1. Definitions.** As used in this Agreement:

**1.1 “Additional Services”** has the meaning set forth in Section 2.1.

**1.2 “Appointment Reminder Services”** means using commercially reasonable efforts to attempt to contact patients of Medical Practice to remind such patients of pending service appointments with Medical Practice.

**1.3 “Billing Implementation Fee”** means the Billing Implementation Fee listed, on the Effective Date, on Schedule “B” to the RCM Agreement.

**1.4 “Billing Information”** means all billing and encounter information and documentation for all patients of Medical Practice, including, but not limited to the name of the patient, patient demographics, patient contact information, insurance information (including a copy or scanned copy of insurance cards along with any required referral or authorization information), the date of service, the nature and extent of services provided, the applicable CPT Codes (as defined in Section 3.2.2 or other procedure codes, ICD-9 Codes (as defined in Section 3.2.2), ICD-10 Codes as defined in Section 3.2.2) or other diagnosis codes, and any supporting medical information that is necessary to obtain payment or reimbursement for services.

**1.5 “Delinquent Account”** means a payment that MMBS determines, in its sole discretion, is not reasonably collectible by MMBS.

**1.6 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations, as each may be amended from time to time.

**1.7 “Insurance Eligibility Verification Services”** means using commercially reasonable efforts to attempt to ascertain from information provided to MMBS by Medical Practice, insurance providers or other sources deemed appropriate by MMBS whether patients of Medical Practice are eligible for medical insurance coverage for contemplated treatment by Medical Practice.

**1.8 “Medical Practice Data”** means any electronic data, information or material that MMBS receives from or on behalf of Medical Practice, Medical Practice’s Patients and/or Medical Practice’s Users (or at any of their direction) through the Software or otherwise in connection with this Agreement, including, without limitation, (i) any electronic data, information or material entered into the Software by Medical Practice and its Users (or at any of their direction), (ii) any electronic data, information or material imported into the Software relating to Medical Practice or any of its Patients, (iii) Patient Data and (iv) any electronic data, information or material provided or submitted by a third party through the Software relating to the Medical Practice or any of its Patients.

**1.9 “MMBS”** means Modernizing Medicine Billing Services, LLC, a California limited liability company.

- 1.10 “Modernizing Medicine”** means Modernizing Medicine, Inc., a Delaware corporation, and its subsidiaries.
- 1.11 “ModMed Site”** means www.modmed.com and any related sites operated by MMBS.
- 1.12 “Patient(s)”** means any person who was a previous or is a prospective or current patient of Medical Practice.
- 1.13 “Patient Data”** means any electronic data, information or material about a Patient entered into the Software.
- 1.14 “Physician”** means an individual duly licensed by the appropriate state authorities to practice medicine or surgery.
- 1.15 “Physician Extender”** means any medically trained and appropriately licensed professional, other than a Physician, who may enter patient information into the Software under the supervision of a Physician including, without limitation, nurse practitioners and physician assistants.
- 1.16 “Provider”** means a Physician User and/or a Physician Extender User.
- 1.17 “RCM Services”** has the meaning set forth in Schedule “A” to the RCM Agreement.
- 1.18 “RCM Services Commencement Date”** shall be the date specified in Schedule “A” to the RCM Agreement as the RCM Services Commencement Date; provided that MMBS may change such date to a later date in its discretion.
- 1.19 “Representative”** means, as to MMBS, each of MMBS’ employees, directors, officers, affiliates, advisors, agents, vendors, any person or entity that provides any products or services that relate to the Software, the RCM Services or the Additional Services (including, without limitation, laboratories and other diagnostic, clinical and pathology testing providers), service providers, consultants and contractors and Modernizing Medicine and each of Modernizing Medicine’s employees, directors, officers, affiliates, advisors, agents, vendors, any person or entity that provides any products or services that relate to EMA Plastic Surgery or any other Modernizing Medicine product or service (including, without limitation, laboratories and other diagnostic, clinical and pathology testing providers), service providers, consultants and contractors.
- 1.20 “Software”** means (i) MMBS’ proprietary web-based commercially available inventory management software (including any applications or other software that is designated by MMBS to be downloaded and locally installed (“**Device Software**”)), including its screen displays and documentation, printed or otherwise, made available through the ModMed Sites and marketed under the name Modernizing Medicine Inventory Management and (ii) any other software licensed to MMBS and provided to Medical Practice by MMBS in conjunction with the RCM Services..
- 1.21 “Territory”** means the United States of America.
- 1.22 “Transaction Documents”** means this Agreement (including the Business Associate Addendum (as defined below)), the exhibits hereto, any addendums to this Agreement entered into in accordance with these Terms and Conditions, the TOS (as defined below), any Statement of Work (as defined below) and the Electronic Payment Authorization Form (as defined below).
- 1.25 “User”** means Medical Practice’s employees, representatives, consultants, contractors or agents, including Physicians and Physician Extenders, who are authorized to use the Software and have been supplied user logins and passwords by MMBS. For the avoidance of doubt, a User is a specifically identified individual with a corresponding user login and password.

## **2. Software License; User Logins & Contact Information.**

**2.1 Software License.** Commencing on the Effective Date, MMBS hereby grants to Medical Practice a non-exclusive, nontransferable and limited (as provided in this Agreement) license, without the right to sublicense, to access and use the Software through the ModMed Sites, in the Territory, for Medical Practice's internal business purposes only (the "**License**"). With respect to Device Software only, the foregoing license grant includes the right to download, install and use the Device Software on Users' mobile devices. MMBS may require Medical Practice to agree to modified or additional terms in order to access certain additional services, software or technology, including, without limitation, through a "click-to-agree" addendum or other means acceptable to MMBS ("**Additional Services**"). ***Medical Practice acknowledges and agrees that (i) MMBS is not a health care provider, (ii) the Software provides only sample forms and templates, (iii) any treatments, procedures, information, medications, products or other matters referenced by the Software are not intended as a recommendation or endorsement of any course of treatment, procedure, information, product or medication and (iv) the ultimate responsibility for diagnosing and treating any Patient, as well as drafting or completing all written materials related to such Patient, rests exclusively with the Physicians and the Physician Extenders treating such Patient.***

**2.2 User Logins.** Medical Practice's employees, representatives, consultants, contractors or agents, including Physicians and Physician Extenders, will become Users of the Software by logging into the ModMed Site or other website indicated by MMBS and using the login information provided by MMBS or, with the consent of MMBS, by the practice's administrator. Without limiting any terms of this Agreement, after the issuance of logins to the number of Users specified as being authorized to use the Software on Schedule "B" to the RCM Agreement, MMBS may make the issuance of any additional logins to Users (e.g., upon the substitution of one User for another User) subject to such conditions as MMBS may determine, including, without limitation, the payment of activation and other fees by Medical Practice with respect to such new Users.

**2.3 Medical Practice Contact Information.** On or prior to the Effective Date, Medical Practice shall provide to MMBS Medical Practice's contact information and designate a contact person. If Medical Practice's contact person or contact information changes at any time during the Term, Medical Practice shall, no later than five (5) business days prior to such change, provide notice of Medical Practice's new contact person or contact information to MMBS in writing.

## **3. RCM Services.**

**3.1 Exclusivity.** Medical Practice shall take such actions as may be necessary to designate MMBS as the sole billing and collection agent for Medical Practice. Medical Practice agrees that Medical Practice shall not carry on any billing or collection activities either on its own or through a third party during the term of this Agreement other than as specified on Schedule "A" to the RCM Agreement (the "**RCM Exclusivity**").

### **3.2 Medical Practice Responsibilities.**

**3.2.1 Billing Information and Supporting Documentation.** When requested by MMBS, Medical Practice shall submit to MMBS in a prompt and timely manner (but no longer than three (3) business days following such request) all Billing Information and other documentation necessary to support Medical Practice's claims for medical and other items and services including, to support the use of any ICD-9 Code, ICD-10 Code, CPT Code or other code used to bill for such items or services provided by Medical Practice and identify any patient, government program, health insurer or other entity or individual responsible for payment for such items or services (each, a "**Payer**"). Such documentation shall include, at a minimum, the following: (a) dated and authenticated medical records, including, without limitation, Providers' progress notes, documentation of all services rendered and/or products supplied, appropriate patient histories and evaluations, treatment plans and the documentation of the medical necessity and reasons for the patient encounter, services and/or products; (b) patient consents, releases, assignments of benefits and other patient approvals; (c) physician orders and prescriptions; (d) patient insurance

information necessary for MMBS to submit accurate and complete billing claims to the appropriate Payer; and (e) any other documentation that is necessary to obtain payment. Medical Practice shall also submit any further documentation as requested from time to time by MMBS; including, without limitation, documentation that is necessary, in MMBS's sole discretion, to: (x) clarify or correct any documentation that MMBS (or any Payer to whom a claim is submitted) deems confusing, unclear, or ambiguous; or (y) resubmit a claim that a Payer has disputed or denied. Without limiting the foregoing, Medical Practice hereby authorizes MMBS to obtain any information from the Software, Modernizing Medicine's EMA products or services or from MMBS' Representatives that MMBS deems appropriate to provide the RCM Services. Medical Practice shall comply with all MMBS practices and procedures with respect to the submission of Billing Information and other information and documentation to MMBS as MMBS may inform Medical Practice of from time to time.

**3.2.2 Coding Activities.** Medical Practice agrees and acknowledges that Medical Practice is solely and completely responsible in all respects for: (a) the coding of medical diagnoses and utilization of the International Classification of Diseases, Ninth Revision, Clinical Modification codes ("**ICD-9 Codes**"), the International Classification of Diseases, Tenth Revision, Clinical Modification codes ("**ICD-10 Codes**") and other diagnosis codes; (b) assignment of place of service codes for items dispensed and services rendered; (c) the coding of medical procedures or utilization of Current Procedural Terminology codes ("**CPT Codes**") or other procedure codes, including, without limitation, modifiers of CPT Codes; (d) activity linking ICD-9, ICD-10 and CPT Codes in any claim for an item or service to any Payer; (e) the determination of the number of units of any procedures codes; (f) the preparation of any clinical documentation forming the basis for the utilization of any ICD-9 Code, ICD-10 Code, CPT Code, or other code; and (g) otherwise properly and correctly identifying and describing services and products rendered or supplied by Medical Practice or Medical Practice's Providers (collectively, "**Coding Activities**"). Medical Practice acknowledges and agrees that Medical Practice is solely and completely responsible for ensuring that all medical services forming the basis for Coding Activities were: medically necessary and appropriate; actually rendered; appropriately, accurately, and completely documented; and appropriately communicated to MMBS. Medical Practice is responsible for identifying the rendering Provider and, as applicable, the supervising, ordering and referring Provider for any services.

**3.2.3 Form Execution.** Medical Practice shall execute such forms (and/or shall cause any of Medical Practice's Providers or other personnel, as necessary, to execute such forms), including, without limitation, assignments and re-assignments, as may be required to permit MMBS to provide the RCM Services on behalf of Medical Practice. Without limiting the foregoing, Medical Practice shall accurately complete all clinical and charge source data and insurance forms and provide such forms to MMBS in a timely manner (but no later than three (3) business days after the applicable patient encounter). Any charge submitted to MMBS by Medical Practice that is missing any of the billing information required by MMBS may be returned by MMBS to Medical Practice.

**3.2.4 Compliance.** Medical Practice shall comply, and shall cause each of Medical Practice's Providers and other personnel to comply, with all applicable federal, state and local laws and regulations and the applicable Payer's provider manuals, procedures and other rules relating to the provision of items and services and the billing and collection of fees for such services (collectively, "**Payer Rules**"). Without limiting the foregoing, Medical Practice shall comply with applicable Payer Rules governing the assignment and reassignment of benefits, including, but not limited to (a) obtaining the signature of each patient (or the appropriate responsible party) authorizing the submission of claims for reimbursement for items and services provided to such patient; (b) maintaining such information or copies thereof in Medical Practice's records; and (c) providing such patient authorization to MMBS upon MMBS' request. Medical Practice shall, within three (3) business days upon Medical Practice's receipt thereof, provide MMBS with copies of any communications from patients or Payers with respect to the claims submitted pursuant to this Agreement, including, without limitation, explanations of benefits or other information showing payments, partial payments, deductible and coinsurance information or amounts, and all denied or rejected billing claims.

**3.2.5 Notification.** Medical Practice shall notify MMBS within seven (7) business days of receiving notice or advice that such party or any of its Providers or other personnel is, or has become, the subject

of, or to, any order, agreement, settlement or memorandum of understanding directed or issued by any federal or state agency charged with the supervision or regulation of medical practices, physicians or other healthcare providers or any other governmental agency having supervisory or regulatory authority with respect to Medical Practice's business. Medical Practice represents and warrants that: (i) it is not under a corporate integrity agreement or any other restriction or investigation by any payer; (ii) neither it nor any of its Providers or other employees or contractors are listed on the General Services Administration's Excluded Parties List System ("**GSA List**"), (iii) neither it nor any of its Providers or other employees or contractors are suspended or excluded from participation in Medicare, Medicaid or any other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7b(f)) or any other government program (collectively, "**Government Payer Programs**"); and (iv) to its knowledge, there are no pending or threatened governmental investigations against it or any of its Providers or other employees or contractors that may lead to suspension or exclusion from Government Payer Programs or may be cause for listing on the GSA List (collectively, and "**Investigation**"). Medical Practice shall notify MMBS of the commencement of any Investigation within two (2) business days of first learning of such and MMBS shall have the right to terminate this Agreement: (a) upon ninety (90) days' advance written notice upon learning of any such action, or (b) within seven (7) business days of notice that the other party will be excluded from participation in any Government Payer Programs.

**3.2.6 Billing Claims.** If Medical Practice submits a request for the preparation of a claim for reimbursement to MMBS, Medical Practice hereby warrants and represents that no bill for such services or products has been previously submitted to the patient or any Payer except as may be related to any portion of such payment (e.g., co-payment) owed individually by such patient. Medical Practice agrees that MMBS may prepare and submit all claims for reimbursement in Medical Practice's name and under its provider number, and Medical Practice shall indicate that MMBS is acting as a billing agent for MMBS.

**3.2.7 Lockbox.** Medical Practice shall open and maintain a bank account in Medical Practice's name with a bank of Medical Practice's choosing ("**Bank**") that shall be maintained in lockbox form into which payments from Payers and patients shall be deposited ("**Lock Box Account**"). Medical Practice shall request the Bank to forward digital copies of all checks, payments and Explanations of Benefits to MMBS, so that MMBS can complete proper payment posting. Without limiting the foregoing, Medical Practice will make all Explanations of Benefits and payments received by Medical Practice, as it relates to MMBS billing services attributable to Medical Practice's patients available to MMBS within seventy-two (72) hours of receipt through such methods as MMBS may request. Medical Practice shall be the only signatory on the Lock Box Account; *provided, however*, that MMBS shall have the authority to deposit to, but not withdraw from, the Lock Box Account and shall have "read only" access to the account. Medical Practice shall arrange for the Bank to provide monthly bank statements describing deposits to and withdrawals from the Lock Box Account to both MMBS and Medical Practice. To facilitate MMBS's access to such lockbox and to carry-out the provisions of this Section, Medical Practice shall, within five (5) days of the Effective Date of this Agreement, complete the bank request form set forth on Schedule "C" to the RCM Agreement ("**Bank Request**"), and submit such Bank Request, or such other form as the Bank or MMBS may request to the Bank.

**3.2.8 Provider Numbers.** Medical Practice shall procure and maintain current National Provider Identifiers and other necessary provider numbers for all Medical Practice's Providers, as necessary or appropriate to allow MMBS to obtain payment or reimbursement from Payers, and Medical Practice will provide MMBS with all such information, and any updates or modifications to such information, within the timeframe reasonably requested by MMBS.

**3.2.9 Appointment Reminders.** If Schedule "A" to the RCM Agreement indicates that MMBS is to provide Appointment Reminder Services to Medical Practice then Medical Practice shall provide each Patient's name, phone number and any other appointment related information reasonably requested by MMBS to MMBS at least one (1) business day following the making of each Patient appointment with Medical Practice. If Schedule "A" to the RCM Agreement indicates that MMBS is to provide Appointment Reminder Services to Medical Practice then Medical Practice hereby authorizes MMBS to contact Medical Practice's patients to provide the Appointment Reminder Services. Medical Practice acknowledges and agrees that MMBS makes no warranties of any kind regarding the provision of



Appointment Reminder Services and that MMBS has no liability of any kind relating to the Appointment Reminder Services, including, without limitation, no liability with respect to any Patient that does not receive an appointment reminder or any patient that does not keep a scheduled appointment. MMBS may elect to cease providing Appointment Reminder Services to Medical Practice for any reason following written notice of such cessation to Medical Practice.

**3.2.10 Insurance Eligibility Verification.** If Schedule "A" to the RCM Agreement indicates that MMBS is to provide Insurance Eligibility Verification Services to Medical Practice then Medical Practice shall provide each Patient's name and any other patient or insurance related information reasonably requested by MMBS to MMBS at least one (1) business day following the making of each Patient appointment with Medical Practice. If Schedule "A" to the RCM Agreement indicates that MMBS is to provide Insurance Eligibility Verification Services to Medical Practice then Medical Practice hereby authorizes MMBS to take any actions determined appropriate by MMBS relating to the Insurance Eligibility Verification Services. Medical Practice acknowledges and agrees that MMBS makes no warranties of any kind regarding the provision of Insurance Eligibility Verification Services and that MMBS has no liability of any kind relating to the Insurance Eligibility Verification Services, including, without limitation, no liability with respect to any refusal by an insurance provider to pay any insurance claims or any insurance coverage dispute. MMBS may elect to cease providing Insurance Eligibility Verification Services to Medical Practice for any reason following written notice of such cessation to Medical Practice.

**3.2.11 General Statement.** Medical Practice is solely responsible for the timely provision, accuracy, adequacy and completeness of any and all Billing Information and other data provided to Medical Practice hereunder, or input by Medical Practice into the Software or PM System. Medical Practice shall not take any action that could reasonably be expected to interfere with MMBS' performance of the RCM Services. Medical Practice acknowledges that MMBS is not obligated to provide any collection services for Medical Practice's billings and accounts receivable in the event of payment delinquencies by Payers. Medical Practice agrees that Medical Practice shall only submit (and shall only cause MMBS to submit) claims for reimbursement, which Medical Practice believes are true, correct and in accordance with applicable law and health plan coverage requirements. Medical Practice agrees to promptly correct and resubmit any Billing Information and claims which MMBS returns due to a compliance related error. Medical Practice acknowledges and agrees that MMBS may contact patients of Medical Practice and accept credit card and other payments from patients on behalf of Medical Practice. Medical Practice shall provide accurate patient contact information to MMBS promptly following MMBS' request.

**3.3 PM System.** Without limiting any terms of this Agreement, if the RCM Services include access to the PM System, then Medical Practice acknowledges and agrees that MMBS may elect at anytime during the Term, in MMBS' discretion, to provide Medical Practice with access to a practice management system different from the one specified in the RCM Agreement or otherwise being used by Medical Practice (a **"PM System Substitution"**) and to cease providing access to Medical Practice's then current practice management system; provided, that in the event of a PM System Substitution, MMBS shall use commercially reasonable efforts to transition the patient data maintained in the prior practice management system to the new practice management system. In the event of a PM System Substitution, Medical Practice shall provide MMBS with such assistance in facilitating such substitution as MMBS may reasonably request.

#### **4. Fees.**

**4.1 RCM Fees.** Medical Practice shall pay MMBS the monthly RCM Fees specified on Schedule "B" of the RCM Agreement.

**4.2 Billing Implementation Fee.** Medical Practice shall pay MMBS the Billing Implementation Fee specified on Schedule "B" of the RCM Agreement.

**4.3 Other Fees.** In addition to the RCM Fees and the Billing Implementation Fee, Medical Practice shall pay MMBS such other fees as are specified on Schedule "B" of the RCM Agreement.

**4.4 Overdue Payments.** Any payment owed by Medical Practice to MMBS hereunder and not paid to MMBS from Medical Practice's account (e.g. due to low balance, a stop payment order, or any other reason) (an "**Overdue Payment**") may accrue, at MMBS' discretion, late charges at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

#### **4.5 Payment.**

**4.5.1 Invoice.** Each month MMBS shall present Medical Practice with an invoice ("**Invoice**") setting forth the RCM Fees and other Fees (if any) payable to MMBS by Medical Practice for the prior month. Medical Practice shall pay MMBS the RCM Fees and other Fees (if any) detailed in each Invoice upon the date of such Invoice.

**4.5.2 Billing Implementation Fee.** The Billing Implementation Fee is payable on the execution of this Agreement by Medical Practice. The Billing Implementation Fee shall be paid by check, credit card or through the Automated Clearing House ("**ACH**") and MMBS shall have no obligation to issue a separate Invoice to Medical Practice with respect to the Billing Implementation Fee.

**4.6 Payment Method.** Other than the Billing Implementation Fee (which shall be paid by check, credit card or through ACH), Medical Practice shall pay MMBS for any other amounts due under this Agreement via electronic payment. Upon the Effective Date, Medical Practice shall have executed, completed and delivered to MMBS the electronic payment authorization form (the "**Electronic Payment Authorization Form**") provided to Medical Practice by MMBS. If the account or other information specified in such form changes during the Term, Medical Practice shall provide MMBS with a revised Electronic Payment Authorization Form in a timely manner so as to avoid incurring an Overdue Payment.

**4.7 Increasing the Number of Authorized Users.** Medical Practice acknowledges and agrees that the number of Users of Medical Practice that use the Software shall not exceed the number specified in this Agreement. The number of Users authorized to use the Software may be increased through such methods as are approved by MMBS in its discretion, including through the execution of an Addendum to this Agreement by Medical Practice and MMBS (the "**Add-On Addendum**"). Medical Practice acknowledges and agrees that MMBS may make any increase in the number of Users contingent upon the payment of such fees by Medical Practice to MMBS as deemed appropriate by MMBS and specified in the Add-On Addendum, including, without limitation, activation fees.

**4.8 Changes to Fees.** MMBS may change the fees and discounts set forth in this Agreement by providing at least thirty (30) days prior written notice (the "**Notice Period**") of such change to Medical Practice. Any such change shall take effect at the beginning of the next Renewal Term after the expiration of the Notice Period.

**4.9 Currency.** All amounts set forth in this Agreement are denominated and shall be paid in U.S. dollars.

**4.10 Suspension of Service.** If there are Overdue Payments outstanding for more than thirty (30) days, MMBS reserves the right to suspend Users' access to the Software and the RCM Services until such amounts are paid in full. Medical Practice shall continue to be obligated to pay the Fees during such suspension period.

**4.11 Taxes.** All amounts payable by Medical Practice to MMBS pursuant to this Agreement (including, without limitation, pursuant to any Statement of Work) are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature ("**Taxes**"), and all payments to MMBS are payable in full without reduction for Taxes. Medical Practice is responsible for payment of all Taxes, excluding taxes owed by MMBS based on MMBS' net income. If MMBS has the legal obligation to pay or collect Taxes for which Medical Practice is responsible pursuant to this Section, the appropriate amount shall be invoiced to and

paid by Medical Practice, unless Medical Practice provides MMBS with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **5. Hardware; Terms of Service; Medical Practice Data; Service Guidelines.**

**5.1 Hardware.** Medical Practice is solely responsible for acquiring, installing and maintaining any computer hardware necessary for Medical Practice to use the Software and receive the RCM Services. MMBS will not provide maintenance for any of Medical Practice's hardware. Medical Practice is solely responsible for acquiring and maintaining such internet connections as are necessary for Medical Practice to access and use the Software and the RCM Services.

**5.2 Terms of Service.** As a condition to Medical Practice's and its Users' use of the Software, MMBS reserves the right to require Medical Practice's Users to accept and abide by additional terms of service ("TOS"). Medical Practice shall cause each of its Users to comply with the terms of the Transaction Documents and the TOS. Notwithstanding any term of this Agreement to the contrary, Medical Practice acknowledges and agrees that, from time to time, MMBS may (in accordance with the process specified in the TOS and without the prior written consent of Medical Practice) change, remove, add to (including without limitation by way of additional terms) or otherwise modify the TOS. In the event of a conflict between the TOS and the other Transaction Documents, the terms of the other Transaction Documents shall prevail.

**5.3 Medical Practice Data.** Medical Practice is responsible for all activities that occur under logins assigned to Medical Practice's Users. Medical Practice shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of Medical Practice Data.

**5.4 Service Guidelines.** Medical Practice and its Users shall use the Software and any services provided by MMBS solely for Medical Practice's internal business purposes as contemplated by this Agreement and shall not use the Software or any services provided by MMBS to: (i) send spam or any other form of duplicative or unsolicited communications; (ii) violate any law, rule or regulation; (iii) transmit through or post on the Software or MMBS' website(s) unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (iv) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (v) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (vi) attempt to gain unauthorized access to the Software, Additional Services, RCM Services, computer systems or networks used to host or provide access to the Software; or (vii) harass or interfere with another user's use and enjoyment of the Software or the services provided by MMBS. MMBS may, without liability or notice to Medical Practice, remove or delete any material stored in the Software that MMBS determines, in its sole discretion, violates any of the guidelines set forth in this Agreement. In addition to any other remedies MMBS may have, MMBS reserves the right to terminate each of the Transaction Documents or to terminate any or all of the logins provided to Medical Practice or any User immediately and without notice, if MMBS becomes aware or determines that Medical Practice or any User is violating any of the foregoing guidelines. Medical Practice shall be responsible for verifying the accuracy of results produced using the Software and for proper use of any forms provided by MMBS. Medical Practice shall be responsible for following proper backup procedures to protect against loss or error resulting from use of any or all of the Software.

**6. Software Updates; Modifications to Services.** During the Term, MMBS may, in its sole discretion, update the Software. Such updates may include modifications to the Software that increase the speed, efficiency or ease of use of the Software, and may add additional capabilities or functionality to the Software. MMBS is under no obligation to make any such updates. MMBS may offer customizations to the Software requested by Medical Practice or additional modules to the Software that may provide specific functionality or services at an additional cost to Medical Practice. Any such customizations or modules shall be separately negotiated and priced. MMBS may require Medical Practice to agree to modified or additional terms in order to access any module, including, without limitation, through a "click-to-agree" addendum or other means acceptable to MMBS. Without limiting the foregoing, MMBS may determine, in its sole discretion, whether any specific functionality or services constitute customizations or



modules that may be separately negotiated and priced. For the avoidance of doubt, nothing in the Transaction Documents obligates MMBS to make any such customizations or modules available to Medical Practice or to require MMBS to make such modules available for free or at any set price. Notwithstanding anything in the Transaction Documents to the contrary, MMBS may, in its sole discretion, modify, update, revise, enhance or change any aspect of the RCM Services, the Additional Services and/or the Software. Notwithstanding anything in the Transaction Documents to the contrary, Medical Practice acknowledges and agrees that MMBS is under no obligation to provide Medical Practice with access to any third party software, website or service as part of the RCM Services or the Additional Services, through the Software or otherwise and to the extent that the Software, the Additional Services and/or the RCM Services provide access to any third party software, website or service MMBS may without prior notice or any liability to Medical Practice, suspend, limit or cancel such access for any reason.

## **7. SOW Services.**

**7.1 Statements of Work.** From time to time, the Parties may execute statements of work that describe the specific services to be performed by MMBS, including any work product to be delivered by MMBS (as executed by the Parties, a **"Statement of Work"**). Each Statement of Work will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein.

**7.2 Performance of Services.** MMBS will perform the services specified in each Statement of Work (the **"SOW Services"**) in accordance with the terms and conditions of this Agreement and of each applicable Statement of Work.

**7.3 Changes to Statement of Work.** Medical Practice may submit to MMBS written requests to change the scope of SOW Services (each such request, a **"Change Order Request"**). MMBS may approve or reject such Change Order Requests in its sole discretion. If MMBS approves a Change Order Request, then MMBS will promptly notify Medical Practice if it believes that such Change Order Request requires an adjustment to the SOW Fees (as defined below) or to the schedule for the performance of the SOW Services. In such event, the Parties will negotiate in good faith a reasonable and equitable adjustment to the SOW Fees and/or schedule, as applicable. MMBS will continue to perform SOW Services pursuant to the existing Statement of Work and will have no obligation to perform any Change Order Request unless and until the Parties have agreed in writing to such an equitable adjustment to the SOW Fees and/or schedule, as applicable.

**7.4 Medical Practice Responsibilities.** In connection with the SOW Services, Medical Practice will: (i) provide qualified personnel who are capable of performing Medical Practice's duties and tasks with respect to applicable SOW Services; (ii) provide MMBS with access to Medical Practice's sites and facilities during Medical Practice's normal business hours and as otherwise reasonably required by MMBS to perform the SOW Services; (iii) provide MMBS with such working space and office support (including access to telephones, photocopying equipment, and the like) as MMBS may reasonably request; and (iv) perform Medical Practice's duties and tasks under this Agreement, including under any Statement of Work, and such other duties and tasks as may be reasonably required to permit MMBS to perform the SOW Services. Medical Practice will also make available to MMBS any data, information and any other materials required by MMBS to perform the SOW Services, including, but not limited to, any data, information or materials specifically identified in this Agreement (collectively, **"Medical Practice Materials"**). Medical Practice will be responsible for ensuring that all such Medical Practice Materials are accurate and complete.

**7.5 SOW Fees and Expenses.** For MMBS' performance of the SOW Services, Medical Practice will pay MMBS the fees calculated in accordance with the terms set forth in this Agreement, including, any applicable Statement of Work (the **"SOW Fees"**). In addition, Medical Practice will reimburse MMBS for the following expenses incurred by MMBS or its personnel in connection with the performance of the SOW Services (the **"SOW Expenses"**): all reasonable out-of-pocket costs and all reasonable travel, lodging and other related expenses.

**7.6 SOW Payment Terms.** Unless otherwise specified in this Agreement, MMBS shall send an invoice (each, a “**SOW Invoice**”) to Medical Practice on a monthly basis for all applicable SOW Fees and SOW Expenses based on the SOW Services performed by MMBS during the preceding month. Unless otherwise specified in the applicable Statement of Work, all amounts specified in a SOW Invoice are due upon the issuance of such SOW Invoice by MMBS. Unless otherwise specified in the applicable Statement of Work, Medical Practice will pay each such SOW Invoice via electronic payment. Medical Practice hereby authorizes MMBS to automatically charge Medical Practice’s bank, credit card or other account (the “**Account**”) designated under the Electronic Payment Authorization Form an amount equal to the sum of any outstanding SOW Fees and SOW Expenses owing to MMBS pursuant to any SOW Invoice. Medical Practice shall not, under any circumstances: (i) revoke any authorization to charge the Account for any SOW Fees or SOW Expenses owing under this Agreement or any Statement of Work or (ii) contest any charges to the Account, which are made by MMBS in accordance with this Agreement or any applicable Statement of Work.

**7.7 Ownership.** MMBS will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, training manuals, techniques and materials of any kind used or developed by MMBS or its personnel in connection with performing the SOW Services (collectively “**MMBS Materials**”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Medical Practice will have no rights in the MMBS Materials except as expressly agreed to in writing by the Parties in the Statement of Work.

**7.8 Other Services.** Nothing in this Agreement or any Statement of Work will be deemed to restrict or limit MMBS’s right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Medical Practice acknowledges that MMBS may engage subcontractors to perform certain of the SOW Services, Additional Services and RCM Services.

**7.9 Non-Solicitation.** During the Term and for a period of twelve (12) months thereafter, Medical Practice will not recruit or otherwise solicit for employment any MMBS employees without MMBS’ express prior written approval.

## **8. Intellectual Property.**

**8.1 Medical Practice Intellectual Property.** Medical Practice represents and warrants that none of the content, materials, designs, text, names, data or other information provided by Medical Practice, its Users and/or its Patients to MMBS or MMBS networks or systems with respect to the Software, the Transaction Documents or otherwise, including Medical Practice Data (collectively, “**Medical Practice Content**”), infringes or violates the intellectual property or other proprietary rights of MMBS or any third party, and MMBS shall have no liability for any claims arising out of Medical Practice Content, including those claims based on infringement. Further, Medical Practice and its Users grant to MMBS a nonexclusive license to use Medical Practice Content, as well as any trade names and/or trademarks of Medical Practice, to the extent necessary for MMBS to provide the Software, the RCM Services, the Additional Services and the SOW Services (which includes, without limitation, the right to make copies, create illustrations, display personal and/or corporate name(s), and display other Medical Practice Content). Nothing in this Section 8.1 shall be deemed to limit MMBS’ rights under Section 10.2 of these Terms and Conditions or under the Business Associate Addendum.

**8.2 Restrictions.** Medical Practice acknowledges that in providing the Software, the RCM Services, the Additional Services and the SOW Services, MMBS utilizes: (i) the MMBS name, the MMBS logo, certain domain names, the product names associated with the Software and other trademarks; (ii) certain information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, website content, visual interfaces, interactive features, graphics, compilations, computer code, website elements, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (which

together with the Software shall be collectively referred to as “**MMBS IP**”) and that the MMBS IP is covered by intellectual property rights owned or licensed by MMBS (“**MMBS IP Rights**”). Except as otherwise expressly permitted herein, Medical Practice and its Users shall not, nor will they assist or encourage anyone else to: (i) sell, license, distribute, publicly perform or display, transmit, edit, adapt, modify, copy, translate or make derivative works based on the MMBS IP; (ii) disassemble, reverse engineer, or decompile any of the MMBS IP; or (iii) create Internet “links” to or from the Software, or “frame” or “mirror” any of MMBS’s content which forms part of the Software (other than on Medical Practices’ own internal intranets). Additionally, Medical Practice and its Users are not entitled to: (i) sell, grant a security interest in or make or transfer reproductions of the Software to other parties in any way, nor to rent, lease or license the Software to others without the prior written consent of MMBS; (ii) emulate or redirect the communication protocols used by the Software; (iii) access the Software, Additional Services or RCM Services in order to build a competitive product or service, (iv) copy any features, functions or graphics of the Software, RCM Services or Additional Services or (v) exploit the Software or any of its parts for any commercial purpose without MMBS’ express written consent. Nothing in the Transaction Documents shall be construed to give Medical Practice or its Users any right to inspect, possess, use, or copy the source code or object code used to create or constituting the Software. Neither Medical Practice nor its Users shall apply any process, technique, or procedure designed to ascertain or derive the source code of the Software, or attempt to do any of the foregoing.

**8.3 Ownership and Reservation of Rights.** Other than as expressly set forth in the Transaction Documents, no license or other rights in the MMBS IP Rights are granted to Medical Practice or its Users, and all such rights are hereby expressly reserved by MMBS. Additionally, and for avoidance of doubt, as between MMBS and Medical Practice, MMBS shall at all times retain sole and exclusive ownership of, or, as applicable, sole and exclusive rights as a licensee or sublicensee of, all of its copyrights, trademarks, trade names, trade dress, patents, software, source code, object code and other intellectual property rights with respect to the MMBS IP, including, without limitation, all of the proprietary material provided and/or displayed by MMBS at the Software, affiliated web sites, extranet, marketing materials or otherwise. Medical Practice acknowledges and agrees that the MMBS IP may contain certain licensed materials and MMBS’ licensors may independently protect their rights in the event of any violation of the Transaction Documents.

**9. Remedies for Breach of Medical Practice’s Obligations.** If Medical Practice or any of its Users materially breaches any of its or their obligations under this Agreement or any other Transaction Document, MMBS shall be permitted, at its sole discretion, to do any or all of the following (it being understood that such remedies are not exclusive of one another or any other remedies MMBS may have under this Agreement or at equity or law): (i) terminate each of the Transaction Documents and any license or other right granted to Medical Practice with respect to the Software without notice, in which case all Fees, RCM Fees, SOW Fees and SOW Expenses incurred prior to the date of termination shall remain due and owing to MMBS; (ii) temporarily suspend Medical Practice’s and its Users’ access to the Software without notice during which time the Fees, RCM Fees and SOW Fees shall continue to accrue and be due and owing; (iii) for unpaid Fees, RCM Fees, Billing Implementation Fees, SOW Fees and SOW Expenses, assess late fees as provided in Section 4.4; and/or (iv) collect from Medical Practice reimbursement for all costs, including attorneys’ fees and expenses and costs, incurred by MMBS in collecting any Fees, RCM Fees, Billing Implementation Fees, SOW Fees, SOW Expenses or other monies owed to it by Medical Practice, or otherwise enforcing its rights under the Transaction Documents.

## **10. HIPAA.**

**10.1 Business Associate Addendum.** The Parties acknowledge and agree that Medical Practice is a Covered Entity and MMBS is a Business Associate under HIPAA and each Party shall comply with the Party’s respective obligations under HIPAA. Without limiting the foregoing, each Party shall comply with the Business Associate Addendum attached to these Terms and Conditions as **Exhibit A** (the “**Business Associate Addendum**”). The Business Associate Addendum is hereby incorporated into this Agreement.

**10.2 De-Identified Information.** Notwithstanding anything to the contrary in the Transaction Documents, Medical Practice acknowledges and agrees that MMBS (i) may use Medical Practice Data to create de-identified data in accordance with the HIPAA de-identification requirements; (ii) may use, create, sell, provide to third parties, and otherwise exploit Medical Practice Data provided same has first been de-identified in accordance with HIPAA and (iii) owns all right, title and interest in such de-identified Medical Practice Data and any data, information and material created by MMBS with such de-identified Medical Practice Data.

## **11. Confidentiality.**

**11.1 Definition of Confidential Information.** “**Confidential Information**” shall mean the Software source and object code, information which concerns the management and business of either Party, files maintained by either Party, the contents and terms of the Transaction Documents, the business relationships and affairs of either Party and its clients, patients, and referral sources, the internal policies and procedures applicable to either Party’s personnel and the formulation of strategies and policies by either Party. It also includes displays, designs, descriptions, procedures, formulas, discoveries, inventions, specifications, drawings, sketches, models, samples, codes, improvements, concepts, ideas and past, present and future research, development, business activities, products or services and any other information provided by either Party to the other Party regardless of whether it is identified as confidential at the time of disclosure. “**Confidential Information**” excludes the information explicitly excluded under Section 11.3 as well as PHI as that term is defined in the Business Associate Addendum attached hereto. Notwithstanding any term of this Section 11 to the contrary, MMBS shall be permitted to disclose any Medical Practice Confidential Information to the extent deemed appropriate by MMBS to provide the RCM Services.

**11.2 Confidential Information Terms.** Except as expressly permitted in the Transaction Documents, each Party agrees to hold the other Party’s Confidential Information in strict confidence; provided that MMBS may disclose Confidential Information of Medical Practice to MMBS’ Representatives. Notwithstanding the above, either Party may disclose the other Party’s Confidential Information upon the order of any competent court or government agency; provided that prior to disclosure, to the extent possible, the receiving Party shall inform the other Party of such order and shall reasonably cooperate with the efforts of the disclosing Party, at the disclosing Party’s expense, to obtain a protective order or other action to protect the confidentiality of the Confidential Information. It is understood and agreed that in the event of a breach of this provision damages may not be an adequate remedy and each Party shall be entitled to injunctive relief to restrain any such breach, threatened or actual without the necessity of posting a bond or other security.

**11.3 Non-Confidential Information.** The term “**Confidential Information**” shall not include any information which: (i) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of the receiving Party, (ii) the receiving Party, through competent evidence, can demonstrate knowledge prior to disclosure, (iii) is disclosed to the receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality or (iv) is independently developed by the receiving Party without reference to the disclosing Party’s Confidential Information as evidenced by the written records of the receiving Party.

**11.4 Feedback.** If Medical Practice or any Users inform MMBS of any errors, difficulties or other problems with the Software or RCM Services, or provide any feedback or make any suggestions as to changes or modifications to the Software or RCM Services, including beta or other in-development versions of the Software (collectively, “**Feedback**”), then MMBS shall own all right, title and interest in that Feedback. Medical Practice hereby irrevocably assigns and agrees to assign all of its right, title and interest in and to the Feedback to MMBS. To the extent Medical Practice is unable to assign any of its rights in the Feedback to MMBS, Medical Practice hereby grants to MMBS a perpetual, irrevocable, worldwide license to sell, offer to sell, make, have made, import, use, disclose, copy, distribute, publicly perform, publicly display, modify, create derivative works of and otherwise fully exploit the Feedback. The Feedback shall be treated as MMBS’s Confidential Information and MMBS shall have the unrestricted right to use and disclose the Feedback for any purpose.

## **12. Warranties & Disclaimers.**

### **12.1 Warranties.**

**12.1.1** Medical Practice represents and warrants that it has the legal power and requisite authority to enter into the Transaction Documents to which it is a party.

**12.1.2** MEDICAL PRACTICE HEREBY AGREES AND ACKNOWLEDGES THAT MMBS IS IN NO WAY ACTING AS A MEDICAL PROVIDER WITH RESPECT TO ANY PATIENT OR ANY OF MEDICAL PRACTICE'S RELATED PARTIES AND PROVIDERS. MEDICAL PRACTICE FURTHER ACKNOWLEDGES AND AGREES THAT ANY TREATMENTS, PROCEDURES, INFORMATION, MEDICATIONS, PRODUCTS AND OTHER MATTERS REFERENCED BY THE SOFTWARE, THE RCM SERVICES, THE ADDITIONAL SERVICES AND/OR THE SOW SERVICES ARE NOT INTENDED AS A RECOMMENDATION OR ENDORSEMENT OF ANY COURSE OF TREATMENT, PROCEDURE, INFORMATION, PRODUCT OR MEDICATION AND THAT THE ULTIMATE RESPONSIBILITY FOR DIAGNOSING AND TREATING ANY PATIENT RESTS WITH THE PHYSICIANS AND THE PHYSICIAN EXTENDERS TREATING SUCH PATIENT.

**12.1.3** MEDICAL PRACTICE UNDERSTANDS AND AGREES THAT ITS USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA THROUGH THE SOFTWARE (INCLUDING RSS FEEDS) FROM A SOURCE OTHER THAN MMBS IS AT ITS OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS USERS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

**12.1.4** Medical Practice represents and warrants that all Physicians and Physician Extenders are duly licensed by the appropriate professional board or agency in the state where Medical Practice is located and/or such individual practices and that Medical Practice shall provide evidence of such licensing upon reasonable request. At any time that Medical Practice, the Physicians or Physician Extenders, or its Users cease to be duly licensed or authorized, Medical Practice shall immediately so inform MMBS and such unlicensed party shall immediately cease accessing and using the Software.

**12.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE TRANSACTION DOCUMENTS, MMBS MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. MMBS HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE, ANY PRODUCTS OR FEATURES IN CONNECTION WITH THE SOFTWARE, THE RCM SERVICES, THE ADDITIONAL SERVICES AND SOW SERVICES, INCLUDING, WITHOUT LIMITATION, ANY TREATMENTS, PROCEDURES, INFORMATION, DATA, PRODUCTS, MEDICATIONS AND OTHER MATTERS REFERENCED BY THE SOFTWARE, REMAINS WITH THE MEDICAL PRACTICE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MMBS EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SOFTWARE AND ANY SERVICE(S), PRODUCT(S), GOOD(S), INFORMATION, DATA OR MATERIALS PROVIDED BY MMBS AS PART OF THE SOFTWARE, RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE, THE MMBS IP, AND ANY RCM SERVICE, ADDITIONAL SERVICE OR SOW SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. IN ADDITION, EXCEPT AS EXPRESSLY PROVIDED HEREIN, ANY THIRD-PARTY MEDIA, CONTENT, SOFTWARE, SERVICES OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SOFTWARE OR THE RCM SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR



IMPLIED.

MMBS DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING (A) THE USE OR THE RESULTS OF THE USE OF ITS RCM SERVICES, SOFTWARE, WEBSITES OR ANY THIRD PARTY WEBSITES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, OR (B) THE ACCURACY OF DIAGNOSIS, PROCEDURE OR OTHER CODES, IMAGES, INFORMATION OR OTHER DATA PROVIDED BY THE SOFTWARE, RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES. MMBS IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER.

MEDICAL PRACTICE ACKNOWLEDGES THAT THE AGING AND AMOUNTS OF COLLECTIONS ARE SUBJECT TO NUMEROUS VARIABLES BEYOND MMBS' CONTROL. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A GUARANTY OR WARRANTY BY MMBS THAT ANY OR ALL FEES BILLED ON MEDICAL PRACTICE'S BEHALF (INCLUDING, WITHOUT LIMITATION, CO-PAYMENTS, DEDUCTIBLES AND COINSURANCE) SHALL BE COLLECTED OR COLLECTIBLE, IN WHOLE OR IN PART. MEDICAL PRACTICE ACKNOWLEDGES THAT MMBS IS NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS SUBMITTED ON MEDICAL PRACTICE'S BEHALF UNDER ANY CIRCUMSTANCES.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, MMBS DOES NOT GUARANTEE CONTINUOUS, ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO THE SOFTWARE, ITS WEBSITES AND THE CONTENTS THEREOF, SERVICE ELEMENTS OR RELATED SOFTWARE. MEDICAL PRACTICE ASSUMES THE ENTIRE RISK WITH RESPECT TO THE PERFORMANCE AND RESULTS IN CONNECTION WITH THE RCM SERVICE, ADDITIONAL SERVICE, SOW SERVICE AND MEDICAL PRACTICE'S USE OF THE SOFTWARE IN CONNECTION WITH MEDICAL PRACTICE'S HARDWARE. MMBS SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY THE INTERACTION OF THE SOFTWARE WITH ANY DEVICE OR ANY INFORMATION TECHNOLOGY INFRASTRUCTURE OF MEDICAL PRACTICE.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NEITHER MMBS NOR ITS AFFILIATES SHALL BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE USE OR INABILITY TO USE THE SOFTWARE OR ANY FEATURES OR PRODUCTS IN CONNECTION WITH THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. MMBS SHALL HAVE NO LIABILITY FOR ANY COMMUNICATION BETWEEN MMBS AND THE PATIENTS OF MEDICAL PRACTICE.

MEDICAL PRACTICE ACKNOWLEDGES THAT MMBS MAY USE THIRD PARTY WEBSITES, THIRD PARTY HELP DESK SYSTEMS AND OTHER THIRD PARTY SERVICES TO PROVIDE CERTAIN SUPPORT SERVICES AND ONLINE FORUMS TO MEDICAL PRACTICE. MEDICAL PRACTICE UNDERSTANDS THAT SUCH THIRD PARTY WEBSITES, THIRD PARTY HELP DESK SYSTEMS, ONLINE FORUMS AND OTHER THIRD PARTY SERVICES MAY NOT MEET THE REQUIREMENTS FOR THE PROTECTION OF PROTECTED HEALTH INFORMATION (AS DEFINED IN THE BUSINESS ASSOCIATE ADDENDUM) SET FORTH IN APPLICABLE LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, HIPAA AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT. MEDICAL PRACTICE AGREES THAT IT SHALL NOT, AND IT SHALL CAUSE ITS USERS TO NOT, SUBMIT ANY PROTECTED HEALTH INFORMATION (A) TO MMBS OUTSIDE OF MMBS'S PROPRIETARY WEB-BASED SOFTWARE MARKETING UNDER THE NAME CLAIM, INCLUDING BUT NOT LIMITED TO EMAIL TRANSMISSIONS, SUBMISSIONS TO ANY ONLINE FORUM MADE AVAILABLE BY MMBS TO ITS CUSTOMERS, AND SUBMISSIONS THROUGH ANY SUPPORT WEBSITE, PORTAL, OR ONLINE HELP DESK OR SIMILAR SERVICE MADE AVAILABLE BY MMBS OUTSIDE OF CLAIM; OR (B) DIRECTLY TO ANY THIRD PARTY INVOLVED IN THE PROVISION OF AN ONLINE FORUM, EMAIL, SUPPORT WEBSITE, ONLINE HELP DESK OR OTHER SERVICE DESCRIBED IN (A), ABOVE. REPEATED VIOLATIONS OF THIS REPRESENTATION BY MEDICAL PRACTICE WILL ENTITLE MMBS, IN MMBS' SOLE DISCRETION, TO RESTRICT MEDICAL PRACTICE'S ACCESS TO SUCH THIRD PARTY SERVICES AND/OR TAKE ANY OTHER ACTIONS REQUIRED OR PERMITTED BY THE BUSINESS ASSOCIATE ADDENDUM IN

CONNECTION WITH SUCH VIOLATIONS.

**12.3 Limitations by Applicable Law.** THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THE TRANSACTION DOCUMENTS APPLY TO MEDICAL PRACTICE TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION IN WHICH MEDICAL PRACTICE AND ITS USERS ARE LOCATED.

**12.4 Basis of the Bargain.** MEDICAL PRACTICE ACKNOWLEDGES AND AGREES THAT MMBS HAS OFFERED ITS PRODUCTS AND SERVICES AND ENTERED INTO THE TRANSACTION DOCUMENTS TO WHICH IT IS A PARTY IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN MEDICAL PRACTICE AND MMBS, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN MEDICAL PRACTICE AND MMBS. MEDICAL PRACTICE ACKNOWLEDGES AND AGREES THAT MMBS WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE, RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES TO MEDICAL PRACTICE ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

### **13. Limitation of Liability; Indemnification.**

**13.1 Limitation of Liability.** IN NO EVENT SHALL MMBS' AND ITS PRESENT AND FORMER SUBSIDIARIES', AFFILIATES', PARENTS', DIRECTORS', OFFICERS', EMPLOYEES', AND AGENTS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SOFTWARE, RCM SERVICES, ADDITIONAL SERVICES, SOW SERVICES AND/OR THE TRANSACTION DOCUMENTS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM MEDICAL PRACTICE UNDER THE TRANSACTION DOCUMENTS DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

**13.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL MMBS OR ITS PRESENT AND FORMER SUBSIDIARIES, AFFILIATES, PARENTS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS HAVE ANY LIABILITY TO MEDICAL PRACTICE, ITS USERS OR ANY THIRD PARTY FOR ANY LOST PROFITS, PAYER RECOUPMENTS OF REIMBURSEMENT, REFUNDS TO PAYERS OR OTHER LOST REIMBURSEMENT, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT MMBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**13.3 Limitation of Action.** No action (regardless of form) arising out of the Transaction Documents may be commenced by Medical Practice against MMBS more than two (2) years after the cause of action arose.

**13.4 Indemnification.** Medical Practice shall indemnify and hold harmless MMBS and its officers, directors, employees and agents, from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses (including reasonable attorneys' fees and expenses), arising, directly or indirectly, out of or relating to any claim or allegation based on (i) the use or operation of the Software by Medical Practice and/or the Users, including, without limitation, any non-authorized use of Medical Practice's user logins, (ii) a breach of any of the Transaction Documents by Medical Practice or any of its authorized Users, (iii) the accuracy, quality, integrity, legality, reliability or appropriateness of Medical Practice Data or any other content or data introduced to the Software by any User, (iv) violation of any applicable law, rule or regulation by Medical Practice or any of the Users, (v) the diagnosis and/or

treatment of any of Medical Practice's Patients, (vi) the submission of any false or fraudulent claim to any Payer and/or (vii) the negligent acts or willful misconduct of Medical Practice or its personnel.

**13.5 Sole Responsibility.** *Medical Practice agrees that the sole and exclusive responsibility for any medical decisions or actions with respect to a Patient's medical care and for determining the accuracy, completeness or appropriateness of any billing, clinical, coding, diagnostic, medical or other information provided by the Software, the RCM Services, Additional Services or the SOW Services resides solely with the Physicians and the Physician Extenders treating such Patient. MMBS does not assume any responsibility for how such information is used. Medical Practice acknowledges and agrees that the Software, the RCM Services, Additional Services and the SOW Services do not "recommend," "suggest," or "advise" proper prescribing or other treatment decisions and that the responsibility for the medical treatment, and any associated decisions regarding billing for medical services, rests with the Physicians and the Physician Extenders treating such Patient and revolves around such health care provider's judgment and such health care provider's analysis of the Patient's condition.*

#### **14. Termination.**

##### **14.1 Termination.**

**14.1.1 By Medical Practice.** Medical Practice may terminate this Agreement: (i) in the event of a material breach of this Agreement by MMBS, provided, that, Medical Practice provides written notice of such material breach to MMBS and such breach remains uncured thirty (30) days after MMBS's receipt of such notice; (ii) in accordance with the terms of the Business Associate Addendum; or (iii) immediately if MMBS becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**14.1.2 By MMBS.** MMBS may terminate each of the Transaction Documents: (i) as set forth in 10 of these Terms and Conditions; (ii) in accordance with the terms of the Business Associate Addendum, (iii) immediately if Medical Practice becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iv) if Medical Practice defaults on any of its payment obligations under this Agreement and such payment default is not cured within ten (10) days after receiving written notice of such default from MMBS, (v) immediately if MMBS provides Medical Practice of notice of any of the following issues: (a) if any of the representations or warranties by Medical Practice contained in this Agreement are false or incorrect when made or hereafter become false or incorrect, (b) in the event MMBS becomes aware that Medical Practice has failed to address any overpayment or denial of payment by any Payer within thirty (30) days after notification of such overpayment or denial of payment has been provided to Medical Practice, (c) in the event that Medical Practice shall have failed to complete inaccurate or incomplete claim forms upon request by MMBS within thirty (30) days of the date requested by MMBS or (d) Medical Practice submits inaccurate or inappropriate claims for billing or fails to provide documentation or information sufficient in MMBS' determination to cure any such inaccuracy or inappropriateness, and fail to correct any such inaccurate or inappropriate claim within thirty (30) days after notification by MMBS to Medical Practice or (vi) immediately upon the termination of any license of Medical Practice to use any of Modernizing Medicine's EMA software products or services. Without limiting the foregoing, following the expiration of the Initial Term, MMBS may terminate this Agreement by providing at least thirty (30) days prior written notice to Medical Practice of such termination.

**14.1.3 Changes.** If, during the Term, any federal, state or local law or regulation shall be enacted, or any decree of any court or any other administrative agency shall be entered or other condition shall arise, which, in the reasonable opinion of MMBS, would result in a material change in the cost of providing RCM Services to Medical Practice, MMBS and Medical Practice shall promptly enter into negotiations to revise the RCM Fees to provide MMBS with appropriate compensation under this Agreement. If such negotiations fail to result in an agreement between MMBS and Medical Practice as to amended fees within thirty (30) days after Medical Practice receives notice of the event giving rise to Medical Practice's

duty to negotiate set forth above, then MMBS shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Medical Practice.

**14.2 Outstanding Fees.** Termination shall not relieve Medical Practice of the obligation to pay any fees or expenses accrued or payable to MMBS prior to the effective date of termination or prior to the expiration of The Ninety Day Wind Down Period.

### **14.3 Effect of Termination.**

**14.3.1 Generally.** Upon termination or expiration of this Agreement for any reason, the License shall terminate and Medical Practice shall not use or access, directly or indirectly, the Software or any other MMBS IP. If Medical Practice has made any copies of any MMBS IP, Medical Practice shall either destroy or return to MMBS all such copies along with a certificate signed by Medical Practice that all such copies have been either destroyed or returned, respectively, and that no copy or any part of any MMBS IP has been retained by Medical Practice in any form. Termination of this Agreement for any reason shall not affect MMBS's right to recover damages for events occurring before termination. In the event either Party provides written notice of termination of any of the Transaction Documents to the other Party in accordance with the applicable Transaction Document, MMBS shall have the right to automatically charge Medical Practice's bank, credit card or other account designated under the Electronic Payment Authorization Form, an amount equal to the sum of any outstanding RCM Fees, SOW Fees, SOW Expenses or other amounts owed to MMBS plus, to be held as a deposit, an amount reasonably estimated by MMBS to cover any Fees, RCM Fees, SOW Fees or SOW Expenses, which are anticipated to be due and owing for the period commencing on the date of such notice through the termination date (which deposit shall be credited back to Medical Practice subsequent to termination to the extent the actual Fees, RCM Fees, SOW Fees and SOW Expenses due and owing for such period are less than the amount of such deposit). Medical Practice shall not, under any circumstances: (i) revoke any authorization to charge Medical Practice's bank, credit card or other account for any fees incurred or to reasonably anticipated to be incurred during the above-referenced termination period or (ii) contest any charges to Medical Practice's bank, credit card or other account, which are made by MMBS in accordance with any of the Transaction Documents.

**14.3.2 RCM Service Wind-Down.** In the event of the expiration or termination of this Agreement for any reason, MMBS may, in its sole discretion, continue to provide collection services for previously billed claims until the ninetieth (90<sup>th</sup>) day following the effective termination or expiration date ("**The Ninety Day Wind Down Period**"). MMBS shall be entitled to receive payment of its RCM Fees on all collections received for a period of ninety (90) days after the date of termination or expiration of this Agreement. Payment shall be made to MMBS on a monthly basis and each payment shall be due ten (10) days after the end of each month following the date of the termination or expiration of this Agreement.

**14.4 Survival.** Sections 1, 4.4, 4.11, 5.2, 5.3, 7.7, 7.9, 8, 9, 10, 11,12, 13, 14 and 15 shall survive the expiration or termination of this Agreement for any reason.

## **15. General Provisions.**

**15.1 Relationship of the Parties.** None of the Transaction Documents create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties and the status of the Parties shall be independent parties to a contractual arrangement. Neither Party shall have the authority to bind the other Party by contract or otherwise.

**15.2 Benefit to Others.** The representations, warranties, covenants and agreements contained in the Transaction Documents are for the sole benefit of the Parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons, including, but not limited to, third party rights for Medical Practice's Patients.

**15.3 Notices.** Any notice required by this Agreement or given in connection with therewith, shall be in writing and shall be given (i) if to MMBS, to Modernizing Medicine Billing Services, LLC, 3300 Douglas Boulevard, Suite 100, Roseville, California 95661, Attention: Clark Avery with a copy sent to Modernizing Medicine Billing Services, LLC, 3600 FAU Boulevard, Suite #202, Boca Raton, Florida 33431, Attention: General Counsel by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services with proof of delivery and (ii) if to Medical Practice, to the Medical Practice's address (or email address) set forth in this Agreement or such other address (or email address) as may be provided in writing from time to time by email or by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services with proof of delivery.

**15.4 Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**15.5 Force Majeure.** MMBS shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to a force majeure event or other circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, cyber war or attack, terrorism, insurrection, sabotage, embargo, fire, flood, tropical storm, earthquake, tornado, hurricane, labor disturbance, interruption of or delay in transportation, unavailability of third party services, failure of third party software or services or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Software, the RCM Services, the Additional Services or the SOW Services (each, a "Force Majeure Event").

**15.6 Inspection and Audit Rights.** MMBS shall have the right to audit or inspect and copy the books and records of Medical Practice to ensure compliance with Medical Practice's obligations under this Agreement. In the event of any investigation, proceeding or litigation involving any governmental entity, Medical Practice shall make available to MMBS for inspection and copy any clinical documentation reasonably necessary for MMBS to respond, participate or defend itself in any such investigation, proceeding or litigation.

**15.7 Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be unenforceable, such provision shall be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a Party, in which case such Party may terminate this Agreement by notice to the other Party.

**15.8 Assignment.** Neither Party may assign any of its rights or obligations hereunder or under any other Transaction Document, whether by operation of law or otherwise, without the prior express written consent of the other Party. Notwithstanding the foregoing, MMBS shall be permitted to assign each of the Transaction Documents without the prior written consent of Medical Practice: (i) to an affiliate, parent company or subsidiary or (ii) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a Party to assign its rights or obligations under any of the Transaction Documents in breach of this Section 15.8 shall be void and of no effect. Subject to the foregoing, each of the Transaction Documents shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**15.9 Governing Law.** Except as otherwise provided herein, each of the Transaction Documents shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of laws provisions.

**15.10 Venue.** The federal courts of the United States in and for the Northern District of California and the state courts of the State of California located in Placer County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to any of the Transaction Documents. Each Party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to



challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.

**15.11 Enforcement Costs.** If any legal action or other proceeding is brought for the enforcement or interpretation of any of the Transaction Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Transaction Documents, the prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses incurred in that action or proceeding and at all levels of trial and appeal, in addition to any other relief to which such Party may be entitled.

**15.12 Third Party Arrangements.** Medical Practice acknowledges and agrees that it shall be solely responsible for performance of all of its duties, obligations, and covenants arising under the Transaction Documents. In the event that Medical Practice enters into an arrangement with any other individual or entity to fulfill all or any part of its payment obligations pursuant to the Transaction Documents ("**third party arrangement**"), Medical Practice represents and warrants that any such third party arrangement shall not affect the obligations of Medical Practice to MMBS pursuant to the Transaction Documents. Medical Practice further represents and warrants that any such third party arrangement shall be in compliance at all times with all applicable federal, state, and local laws, regulations and ordinances including, without limitation, the Medicare and Medicaid Anti-Fraud and Abuse Amendments to the Social Security Act [42 U.S.C. Section 1320a-7a and 7b, and the regulations promulgated pursuant thereto, including 42 C.F.R. Section 1001.952(y)] and the Stark Law [42 U.S.C. Section 1395nn, and the regulations promulgated pursuant thereto]. Medical Practice acknowledges and agrees that MMBS is under no obligation to accept any payment from any third party, which is unsatisfactory to MMBS in its good faith business judgment. The Medical Practice agrees that it shall be responsible for promptly reimbursing MMBS for all fees required by the American Medical Association or other similar organization to be paid by MMBS to such organization relating to the Medical Practice and its employees, representatives, consultants, contractors or agents use of the Software and the RCM Services.

**15.13 Entire Agreement and Construction.** The Transaction Documents constitute the entire agreement between the Parties as to their subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning such subject matter. Except as otherwise set forth therein, no modification, amendment, or waiver of any provision of the Transaction Documents shall be effective unless in writing and signed by the Party against whom the modification, amendment, or waiver is to be asserted. Under no circumstances shall the terms of any purchase order submitted by Medical Practice to MMBS, whether before or after the execution of this Agreement, be deemed binding upon MMBS. Without limiting the foregoing, if, prior to the Effective Date, Medical Practice was a party to a Dermatology Billing Services Agreement with Aesyntix Billing Solutions, LLC or was otherwise a client of Aesyntix Billing Solutions, LLC, such Dermatology Billing Services Agreement and each other agreement between Aesyntix Billing Solutions, LLC and Medical Practice is hereby terminated in its entirety (except with respect to any obligations of Medical Practice to Aesyntix Billing Solutions, LLC under such agreement) and (except with respect to any obligation of Medical Practice to Aesyntix Billing Solutions, LLC under such agreement) no terms of such agreements shall survive such termination or have any further force or effect.

**15.14 Counterparts.** Each of the Transaction Documents requiring execution by a Party hereto may be executed in one or more counterparts, which may be delivered by fax or other electronic transmission, including email, each of which shall be deemed an original and which taken together shall form one legal instrument.

**15.15 Headings.** Headings used in each of the Transaction Documents are provided for convenience only and shall not be used to provide meaning or intent.

**15.16 Due Execution.** Medical Practice acknowledges that MMBS shall not be deemed bound by this Agreement, any Addendum thereto, any Statement of Work thereunder or any other Transaction Documents requiring execution unless and until the same shall have been duly executed by an authorized representative of MMBS and Medical Practice.

**Exhibit A**  
**Business Associate Addendum**

**I. GENERAL PROVISIONS**

**Section 1.1. Applicability.** This Business Associate Addendum (this “**Addendum**”) relates to Protected Health Information received by MMBS from or on behalf of the Medical Practice (“**PHI**”).

**Section 1.2. HIPAA Amendments.** The Parties acknowledge and agree that the Health Information Technology for Economic and Clinical Health Act and its implementing regulations impose requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the “**HITECH BA Provisions**”). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate Agreements are hereby incorporated by reference into this Addendum as if set forth in this Addendum in their entirety, effective on the later of the effective date of this Addendum or such subsequent date as may be specified by HIPAA.

**Section 1.3. Regulatory References.** A reference in this Addendum to a section in HIPAA means the section as it may be amended from time-to-time. Capitalized terms used in this Addendum without definition shall have the meanings given to them by HIPAA or by this Agreement, as applicable.

**II. OBLIGATIONS OF MMBS**

**Section 2.1. Use and Disclosure of PHI.** MMBS may use and disclose PHI as permitted or required under this Agreement (including this Addendum) or as Required by Law, but shall not otherwise use or disclose PHI. MMBS shall not use or disclose PHI received from the Medical Practice in any manner that would constitute a violation of HIPAA if so used or disclosed by the Medical Practice (except as set forth in Sections 2.1(a), (b) and (c) of this Addendum). To the extent MMBS carries out any of the Medical Practice’s obligations under the HIPAA Privacy Rule, MMBS shall comply with the requirements of the HIPAA Privacy Rule that apply to the Medical Practice in the performance of such obligations. Without limiting the generality of the foregoing, MMBS is permitted to use or disclose PHI as set forth below:

(a) MMBS may use PHI internally for MMBS’s proper management and administrative services or to carry out its legal responsibilities;

(b) MMBS may disclose PHI to a third party for MMBS’s proper management and administration, provided that the disclosure is Required by Law or MMBS obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify MMBS of any instances of which the person is aware in which the confidentiality of the PHI has been breached;

(c) MMBS may use PHI to provide Data Aggregation services as defined by HIPAA; and

(d) MMBS may use PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Without limiting any other rights of MMBS under this Agreement, MMBS may use, create, sell, disclose to third parties and otherwise exploit de-identified health information for any purposes not prohibited by law. MMBS owns all right, title and interest in such de-identified health information and any data, information and material created by MMBS with such de-identified health information. For the avoidance of doubt, the second and third sentences of this Section 2.1(d) shall survive the expiration or earlier termination of this Agreement.

**Section 2.2. Safeguards.** MMBS shall use reasonable and appropriate safeguards to prevent the use or disclosure of PHI except as otherwise permitted or required by this Addendum. In addition, MMBS shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media (“**EPHI**”) that it creates, receives, maintains or transmits on behalf of the Medical Practice. MMBS shall comply with the HIPAA Security Rule with respect to EPHI.

**Section 2.3. Minimum Necessary Standard.** To the extent required by the “minimum necessary” requirements of HIPAA, MMBS shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

**Section 2.4. Mitigation.** MMBS shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to MMBS) of a use or disclosure of PHI by MMBS in violation of this Addendum.

**Section 2.5. Subcontractors.** MMBS shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of MMBS. MMBS shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to MMBS under this Addendum.

**Section 2.6. Reporting Requirements.**

(a) If MMBS becomes aware of a use or disclosure of PHI in violation of this Agreement by MMBS or by a third party to which MMBS disclosed PHI, MMBS shall report any such use or disclosure to the Medical Practice without unreasonable delay.

(b) MMBS shall report any Security Incident involving EPHI of which it becomes aware in the following manner: (a) any actual, successful Security Incident will be reported to the Medical Practice in writing without unreasonable delay, and (b) any attempted, unsuccessful Security Incident of which MMBS becomes aware will be reported to the Medical Practice orally or in writing on a reasonable basis, as requested by the Medical Practice. If the HIPAA security regulations are amended to remove the requirement to report unsuccessful attempts at unauthorized access, the requirement hereunder to report such unsuccessful attempts will no longer apply as of the effective date of the amendment.

(c) MMBS shall, following the discovery of a Breach of Unsecured PHI, notify the Medical Practice of the Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later than sixty (60) days after discovery of the Breach.

**Section 2.7. Access to Information.** MMBS shall make available PHI in EMA to Medical Practice in accordance with this Agreement for so long as MMBS maintains the PHI in a Designated Record Set. If MMBS receives a request for access to PHI directly from an Individual, MMBS shall forward such request to Medical Practice within ten (10) business days. Medical Practice shall have the sole responsibility for determining whether to approve a request for access to PHI and to provide such access to the Individual.

**Section 2.8. Availability of PHI for Amendment.** MMBS shall provide PHI in EMA to Medical Practice for amendment, and incorporate any such amendments in the PHI (for so long as MMBS maintains such information in the Designated Record Set), in accordance with this Addendum and as required by 45 C.F.R. § 164.526. If MMBS receives a request for amendment to PHI directly from an Individual, MMBS shall forward such request to Medical Practice within ten (10)

business days. Medical Practice shall have the sole responsibility for determining whether to approve an amendment to PHI and to make such amendment.

**Section 2.9. Accounting of Disclosures.** Within thirty (30) business days of written notice by Medical Practice to MMBS that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), MMBS shall make available to Medical Practice such information as is in MMBS's possession and is required for Medical Practice to make the accounting required by 45 C.F.R. § 164.528. If MMBS receives a request for an accounting directly from an Individual, MMBS shall forward such request to Medical Practice within seven (7) business days. Medical Practice shall have the sole responsibility for providing an accounting to the Individual.

**Section 2.10. Availability of Books and Records.** Following reasonable advance written notice, MMBS shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by MMBS on behalf of, Medical Practice available to the Secretary for purposes of determining Medical Practice's compliance with HIPAA.

### **III. OBLIGATIONS OF THE MEDICAL PRACTICE**

**Section 3.1. Permissible Requests.** The Medical Practice shall not request MMBS to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Medical Practice.

**Section 3.2. Minimum Necessary Information.** When Medical Practice discloses PHI to MMBS, Medical Practice shall provide the minimum amount of PHI necessary for the accomplishment of Medical Practice's purpose.

**Section 3.3. Appropriate Use of PHI.** Medical Practice and its employees, representatives, consultants, contractors and agents shall not submit any Protected Health Information to MMBS (A) outside of EMA, including but not limited to submissions to any online forum made available by MMBS to its customers, email transmissions, and submissions through any support website, portal, or online help desk or similar service made available by MMBS outside of EMA; or (B) directly to any third party involved in the provision of an online forum, email, support website, online help desk or other service described in (A), above.

**Section 3.4. Permissions; Restrictions.** Medical Practice warrants that it has obtained and will obtain any consent, authorization and/or other legal permission required under HIPAA and other applicable law for the disclosure of PHI to MMBS. Medical Practice shall notify MMBS of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect MMBS's use or disclosure of PHI. Medical Practice shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts MMBS's use or disclosure of PHI under this Agreement (including under this Addendum) unless such restriction is Required By Law or MMBS grants its written consent.

**Section 3.5. Notice of Privacy Practices.** Except as Required By Law, with MMBS's consent or as set forth in this Agreement, Medical Practice shall not include any limitation in Medical Practice's notice of privacy practices that limits MMBS's use or disclosure of PHI under this Agreement (including this Addendum).

### **IV. TERMINATION OF THIS AGREEMENT**

**Section 4.1. Addendum Term.** Without limiting any other term of this Agreement (including this Addendum), this Addendum shall continue in full force and effect for so long as MMBS maintains any PHI.

**Section 4.2. Termination Upon Breach of this Addendum.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by either Party (the “**Non-Breaching Party**”) upon ninety (90) days written notice to the other Party (the “**Breaching Party**”) in the event that the Breaching Party materially breaches this BA Agreement in any material respect and such breach is not cured within such ninety (90) day period. Any determination of whether a material breach has been cured shall be made by MMBS in its sole discretion.

**Section 4.3. Return or Destruction of PHI upon Termination.** Upon termination of this Agreement, MMBS shall return or destroy all PHI received from Medical Practice or created or received by MMBS on behalf of Medical Practice and which MMBS still maintains as PHI. Notwithstanding the foregoing, to the extent that MMBS determines, in its sole discretion, that it is not feasible to return or destroy such PHI, this Addendum (including, without limitation, Section 2.1(d) of this Addendum) shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

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