

MU Services Terms and Conditions (Standard and Attestation)

The MU Services Terms and Conditions hereinafter set forth, as amended from time to time (these “**MU Terms and Conditions**”), form a part of the MU Services Statement of Work (Standard and Attestation) between Medical Practice and Modernizing Medicine (the “**MU Statement of Work**” and together with these MU Terms and Conditions, this “**SOW**”) and are hereby incorporated by reference into the MU Statement of Work, without the need for further action. All capitalized terms set forth herein shall have the meaning set forth in the MU Statement of Work unless expressly provided to the contrary herein. These MU Terms and Conditions were last updated on April 21, 2014.

A. Payment Terms

Modernizing Medicine is hereby authorized to charge Medical Practice’s credit card or bank account on file with Modernizing Medicine for any MU Services Fees due hereunder. Medical Practice shall promptly execute and return to Modernizing Medicine any electronic payment authorization forms that Modernizing Medicine may provide to Medical Practice to further evidence such authorization. Modernizing Medicine shall invoice (each, an “**MU Invoice**”) Medical Practice for all applicable MU Service Fees. Unless otherwise specified in an MU Invoice, all amounts specified in a MU Invoice are due upon the issuance of such MU Invoice by Modernizing Medicine.

The MU Service Fees are exclusive of all local, state, federal and foreign taxes, levies, or duties of any nature (“**Taxes**”), and all payments to Modernizing Medicine are payable in full without reduction for Taxes. Medical Practice is responsible for payment of all Taxes, excluding taxes owed by Modernizing Medicine based on Modernizing Medicine’s income. If Modernizing Medicine 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 Modernizing Medicine with a valid tax exemption certificate authorized by the appropriate taxing authority.

B. SOW Term

Unless earlier terminated as set forth herein, this SOW shall be effective as of the SOW Effective Date and shall be in force for the duration of the term of the Governing Agreement; provided, that, following the six (6) month anniversary of the SOW Effective Date this SOW shall be terminable by Medical Practice by providing at least ten (10) days, prior written notice to Modernizing Medicine. Medical Practice acknowledges and agrees that this SOW may be terminated by Modernizing Medicine at anytime, for any reason, in its sole discretion by providing at least ten (10) days prior written notice to Medical Practice. Section 3 of the MU Statement of Work and Sections A, B, C, D, F, G, H, I, J, K, L, M, N and O of these MU Terms and Conditions shall survive the expiration or termination of this SOW. Termination of this SOW for any reason shall not affect Modernizing Medicine’s right to recover damages for events occurring before termination.

C. Disclaimers.

MODERNIZING MEDICINE DOES NOT MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE MU SERVICES. MODERNIZING MEDICINE HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE MU SERVICES ARE MADE AVAILABLE ON AN “AS IS” AND “AS AVAILABLE”, “WITH ALL FAULTS” BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED.

MODERNIZING MEDICINE SHALL NOT BE LIABLE IN ANY WAY FOR LOSS OR DAMAGE OF ANY KIND RESULTING FROM THE MU SERVICES. MODERNIZING MEDICINE MAKES NO CLAIM OR REPRESENTATION REGARDING, AND EXPRESSLY DISCLAIMS RESPONSIBILITY FOR, THE ACCURACY, QUALITY, OR RELIABILITY OF THE MU SERVICES OR THE RESULTS OF THEIR USE.

MODERNIZING MEDICINE AND ITS REPRESENTATIVES MAKE NO GUARANTIES, REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE COMPLETENESS OR ACCURACY OF THE INFORMATION PROVIDED PURSUANT TO THE MU SERVICES. MODERNIZING MEDICINE AND ITS REPRESENTATIVES MAKE NO GUARANTY OF ANY KIND THAT MEDICAL PRACTICE OR ANY OF THE NAMED PROVIDERS WILL RECEIVE MEDICARE OR MEDICAID INCENTIVE PAYMENTS OR ANY OTHER GOVERNMENT FUNDS OR AVOID ANY GOVERNMENT IMPOSED PENALTIES. THE INFORMATION PROVIDED BY THE MU SERVICES IS NOT INTENDED AS LEGAL ADVICE AND ALL LEGAL INQUIRIES ABOUT TOPICS ADDRESSED BY THE MU SERVICES SHOULD BE DIRECTED TO MEDICAL PRACTICE'S LEGAL COUNSEL. MODERNIZING MEDICINE DISCLAIMS LIABILITY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER, DIRECTLY OR INDIRECTLY, RESULTING FROM MEDICAL PRACTICE'S USE OF OR RELIANCE ON ANY INFORMATION PROVIDED BY THE MU SERVICES.

IN NO EVENT SHALL MODERNIZING MEDICINE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE MU SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM MEDICAL PRACTICE FOR THE MU SERVICES.

IN NO EVENT SHALL MODERNIZING MEDICINE BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF DATA, LOSS OF USE, BUSINESS INTERRUPTION, OR COST OF COVER, EVEN IF MODERNIZING MEDICINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF MEDICAL PRACTICE IS LOCATED IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO IT, AND MEDICAL PRACTICE MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THIS SOW 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 NAMED PROVIDERS ARE LOCATED.

D. Indemnity

Medical Practice shall indemnify and hold harmless Modernizing Medicine 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 costs), which arise from any claim or allegation arising, directly or indirectly, out of or relating to the MU Services.

E. Medical Practice Responsibilities

In connection with the MU Services, Medical Practice will: (i) provide qualified personnel who are

capable of performing Medical Practice's duties and tasks with respect to applicable MU Services; and (ii) perform Medical Practice's duties and tasks under this SOW and such other duties and tasks as may be reasonably required to permit Modernizing Medicine to perform the MU Services. Medical Practice will also make available to Modernizing Medicine any data, information and any other materials required by Modernizing Medicine to perform the MU Services, including, but not limited to, any data, information or materials specifically identified in this SOW (collectively, "**MU Medical Practice Materials**"). Medical Practice will be responsible for ensuring that all such MU Medical Practice Materials are accurate and complete.

F. Ownership

Modernizing Medicine 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 Modernizing Medicine or its personnel in connection with performing the MU Services (collectively "**MU Modernizing Medicine 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 MU Modernizing Medicine Materials.

G. Other Services

Nothing in this SOW will be deemed to restrict or limit Modernizing Medicine'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 Modernizing Medicine may engage subcontractors to perform certain of the MU Services.

H. Relationship of the Parties.

This SOW does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between Medical Practice and Modernizing Medicine and the status of the parties shall be independent parties to a contractual arrangement. Neither Medical Practice nor Modernizing Medicine shall have the authority to bind the other party by contract or otherwise.

I. Waiver and Cumulative Remedies

No failure or delay by either party in exercising any right under this SOW shall constitute a waiver of that right. Other than as expressly stated therein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

J. Force Majeure

Modernizing Medicine 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 MU Services.

K. Severability

If any provision of this SOW 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 SOW 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 SOW by written notice to the other party.

L. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, Modernizing Medicine shall be permitted to assign this SOW: (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 this SOW in breach of this Section shall be void and of no effect. Subject to the foregoing, this SOW shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

M. Enforcement Costs

If any legal action or other proceeding is brought for the enforcement or interpretation of this SOW, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this SOW, 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.

N. Amendment

No modification, amendment, or waiver of any provision of this SOW shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted.

O. Counterparts

This SOW 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.