

## RCM STANDARD TERMS AND CONDITIONS (GASTROENTEROLOGY)

The RCM Standard Terms and Conditions (Gastroenterology) hereinafter set forth, as amended from time to time (these “**Terms and Conditions**”), form a part of the Revenue Cycle Management Agreement (Gastroenterology) between Client and gMed (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 September 28, 2015.

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

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

**1.2 “Automated Appointment Reminder Service”** means the gReminder™ service included in gGastro™.

**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 Client, 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 2.2.2 or other procedure codes, ICD-9 Codes (as defined in Section 2.2.2), ICD-10 Codes as defined in Section 2.2.2) or other diagnosis codes, and any supporting medical information that is necessary to obtain payment or reimbursement for services.

**1.5 “Billing Statement Services”** means using commercially reasonable efforts to prepare and submit billing statements and claims to Payers.

**1.6 “Charge Posting Services”** means using commercially reasonable efforts to post such charges as are deemed appropriate by gMed to gGastro.

**1.7 “Endoscopic Procedure Coding Services”** means using commercially reasonable efforts to provide coding and charge posting services for endoscopic procedures.

**1.8 “gMed”** means gMed, Inc., a Delaware corporation.

**1.9 “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.

**1.10 “Insurance Eligibility Verification Services”** means using commercially reasonable efforts to attempt to ascertain from information provided to gMed by Client, Payers or other sources deemed appropriate by gMed whether patients of Client are eligible for medical or other health benefits or insurance or Government Payer Program coverage for contemplated treatment by Client.

**1.11 “Modernizing Medicine”** means Modernizing Medicine, Inc., a Delaware corporation, and its subsidiaries.

**1.12 “Patient(s)”** means any person who was a previous or is a prospective or current patient of Client.

**1.13 “Payer”** means any Government Payer Program, insurance carrier or provider or other third party responsible for payment for health care items or services provided or furnished by Client or its Providers.

**1.14 “Payment Posting Services”** means using commercially reasonable efforts to post to gGastro amounts paid to Client by Payers.

**1.15 “Physician”** means an individual duly licensed by the appropriate state authorities to practice medicine or surgery.

**1.16 “Physician Extender”** means any medically trained and appropriately licensed professional, other than a Physician, including, without limitation, nurse practitioners and physician assistants.

**1.17 “Posting Services”** means Charge Posting Services and Payment Posting Services.

**1.18 “Prior Authorization Services”** means using commercially reasonable efforts to attempt to obtain prior authorization from the applicable Payer for medical procedures proposed to be conducted by a Client Provider.

**1.19 “Provider”** means a Physician and/or a Physician Extender.

**1.20 “RCM Practice Survey”** means the document referred to as RCM Practice Survey or other similar label completed by Client and returned to gMed on or prior to the Effective Date.

**1.21 “RCM Services”** has the meaning set forth in Schedule “A” to the RCM Agreement.

**1.22 “RCM Services Commencement Date”** shall be the date specified in Schedule “B” to the RCM Agreement as the RCM Services Commencement Date; provided that gMed may change such date to a later date in its discretion.

**1.23 “Reminder Statement Mailing Service”** means using commercially reasonable efforts to send statements to Client’s patients with respect to open balances as gMed deems appropriate. For the avoidance of doubt, gMed has no obligation to handle Patient inquiries or make collection calls or undertake similar communications or collection efforts with Patients.

**1.24 “Remittance Advice”** means an electronic or paper document showing or explaining the processing of claim(s) for payments or insurance benefits or entitlements, including, without limitation, payments, partial payments, deductible, coinsurance or copayment amount information, denied or rejected claims and/or other payment details, issued by a Payer or its agent or contractor processing the claim(s). The Remittance Advice may be, without limitation, an electronic remittance advice processed electronically through the HIPAA 835 transaction or an explanation of benefits document issued to Client’s patient.

**1.25 “Representative”** means each of gMed’s employees, directors, officers, affiliates, advisors, agents, vendors, any person or entity that provides any products or services that relate to the RCM Services or any other gMed products or services (including, without limitation, laboratories and other diagnostic, clinical and pathology testing providers), service providers, consultants and contractors and each of gMed’s affiliates (including, without limitation, Modernizing Medicine) and each of such affiliates’ employees, directors, officers, advisors, agents, vendors, any person or entity that provides any products or services that relate to any of such affiliates’ products or services (including, without limitation, laboratories and other diagnostic, clinical and pathology testing providers), service providers, consultants and contractors.

**1.26 “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, any Statement of Work (as defined below) and the Electronic Payment Authorization Form (as defined below).

## **2. RCM Services; Contact Information.**

**2.1 Exclusivity.** Client shall take such actions as may be necessary to designate gMed as the sole billing agent for Client. Except as required to collect for services provided by Client prior to the RCM Services Commencement Date, Client agrees that (i) Client shall not carry on any billing activities either on its own or through a third party during the term of this Agreement, (ii) Client shall use gMed’s products and services exclusively for all Patient service related billing and billing-related office workflow during the Term and (iii) Client will not split work between different billing systems ((i), (ii) and (iii) are referred to as the “**RCM Exclusivity**”).

## **2.2 Client Responsibilities.**

**2.2.1 Billing Information and Supporting Documentation.** When requested by gMed, Client shall submit to gMed 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 Client’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 Client and identify any 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 gMed to submit accurate and complete billing claims to the appropriate Payer; and (e) any other documentation that is necessary to obtain payment. Client shall also submit any further documentation as requested from time to time by gMed; including, without limitation, documentation that is necessary, in gMed’s sole discretion, to: (x) clarify or correct any documentation that gMed (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, Client hereby authorizes gMed to obtain any information from gMed’s products or services or from gMed’s Representatives that gMed deems appropriate to provide the RCM Services. Client shall comply with all gMed practices and procedures with respect to the submission of Billing Information and other information and documentation to gMed as gMed may inform Client of from time to time.

**2.2.2 Coding Activities.** Except as set forth in Section 2.2.11, Client 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 procedure 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 accurately, completely and properly identifying and describing services and products rendered or supplied by Client or Client’s Providers (collectively, “**Coding Activities**”). Client acknowledges and agrees that Client is solely and completely responsible for ensuring that all medical services forming the basis for Coding Activities were: medically necessary and appropriate; actually rendered; accurately, completely and otherwise properly documented; and properly communicated to gMed. Client is responsible for identifying the rendering Provider and, as applicable, the supervising, ordering and referring Provider for any services.

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

**2.2.4 Compliance.** Client shall comply, and shall cause each of Client'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, Client 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 Client's records; and (c) providing such patient authorization to gMed upon gMed's request. Client shall, within three (3) business days upon Client's receipt thereof, provide gMed with electronic access to or copies of any communications from patients or Payers with respect to the claims submitted pursuant to this Agreement, including, without limitation, Remittance Advice or other information showing payments, partial payments, deductible, copayment and coinsurance information or amounts, and all denied or rejected billing claims.

**2.2.5 Notification.** Client shall notify gMed 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 Client's, physicians or other healthcare providers or any other governmental agency having supervisory or regulatory authority with respect to Client's business. Client 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**"). Client shall notify gMed of the commencement of any Investigation within two (2) business days of first learning of such and gMed shall have the right to terminate this Agreement: (a) upon thirty (30) 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.

**2.2.6 Billing Claims.** If Client submits a request for the preparation of a claim for reimbursement to gMed, Client 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. Client agrees that gMed may prepare and submit all claims for reimbursement in Client's name and under its provider number, and Client shall indicate that gMed is acting as a billing agent for gMed to all Government Payer Programs and other Payers.

**2.2.7 Lockbox.** Client shall open and maintain a bank account in Client's name with a bank or similar organization of Client's choosing ("**Bank**") that shall be maintained in lockbox form into which payments from Payers and patients shall be deposited ("**Lock Box Account**"). Client shall request the Bank to forward digital copies of all checks, payments and Remittance Advice to gMed, so that gMed can complete proper payment posting. Without limiting the foregoing, Client will make all Remittance Advice and payments received by Client, as it relates to gMed billing services attributable to Client's patients available to gMed within seventy-two (72) hours of receipt through such methods as gMed may request.

Client shall be the only signatory on the Lock Box Account; *provided, however*, that gMed shall have the authority to deposit to, but not withdraw from, the Lock Box Account and shall have "read only" access to the account. Client shall arrange for the Bank to provide monthly bank statements describing deposits to and withdrawals from the Lock Box Account to both gMed and Client. To facilitate gMed's access to such lockbox and to carry-out the provisions of this Section, Client 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 gMed may request to the Bank.

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

**2.2.9 Appointment Reminders.** If Schedule "A" to the RCM Agreement indicates that gMed is to provide Automated Appointment Reminder Services to Client, then Client hereby agrees that Client shall use the gReminder™ service included in gGastro™ as an automated patient appointment reminder service. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Appointment Reminder Services and that gMed 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.

**2.2.10 Billing Statement Services.** If Schedule "A" to the RCM Agreement indicates that gMed is to provide Billing Statement Services to Client, then Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Billing Statement Services. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Billing Statement Services and that gMed has no liability of any kind relating to Billing Statement Services, including, without limitation, no liability with respect to any refusal by a Payer to pay any claims or any insurance or benefit coverage dispute. Client acknowledges that (i) gMed may elect to not send claims to Payers outside the United States and its territories, (ii) gMed currently only supports submission of CMS-1500 and UB-92/04 paper or electronic claim formats and (iii) gMed generally sends institutional claims in UB-92/04 formats, excluding Diagnosis Related Groups or Ambulatory Payment Classification. Client shall comply with all gMed practices and procedures with respect to the Billing Statement Services as established by gMed and communicated by gMed to Client from time to time. Without limiting the foregoing, Client agrees to provide gMed with Client's current fee schedules no later than 15 business days prior to the RCM Services Commencement Date and to promptly notify and provide gMed with any changes to Client's fee schedules. Client is solely responsible for negotiating fee schedules with Payers. Client acknowledges that, unless otherwise agreed to by gMed, gMed only processes claims for charges incurred after the RCM Services Commencement Date. Client agrees to notify its sales representative or project manager prior to the RCM Services Commencement Date if Client expects to process older claims using gGastro™.

**2.2.11 Endoscopic Procedure Coding Services.** If Schedule "A" to the RCM Agreement indicates that gMed is to provide Endoscopic Procedure Coding Services to Client, then Client hereby agrees that any such services shall be deemed Coding Activities under this Agreement and Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Endoscopic Procedure Coding Services. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Endoscopic Procedure Coding Services and that gMed has no liability of any kind relating to Endoscopic Procedure Coding Services, including, without limitation, no liability with respect to any refusal by a Payer to pay any claims or any insurance or benefit coverage dispute. Client agrees that gMed may rely on information available to gMed in gGastro or other gMed products or services in order to provide the Endoscopic Procedure Coding Services. Client shall comply with all gMed practices and procedures with respect to the Endoscopic Procedure Coding Services as established by gMed and communicated by gMed to Client from time to time. Without limiting any provisions of this Agreement, Client shall, without limitation, document all Billing Information necessary for properly coding items and

services and submitting valid claims in gGastro, including, but not limited to, patient demographics and insurance, diagnosis codes, procedure indications, findings and interventions. Client acknowledges and agrees that gMed may place such limitations and conditions on the provision of Endoscopic Procedure Coding Services as gMed may determine are appropriate.

**2.2.12 Posting Services.** If Schedule “A” to the RCM Agreement indicates that gMed is to provide Posting Services to Client, then Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Posting Services. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the Posting Services and that gMed has no liability of any kind relating to the Posting Services. Client acknowledges and agrees that all payments collected by Client staff in check, credit card or cash shall be recorded in gGastro™ by Client staff and that it is Client’s responsibility to track, record and deposit into the Lockbox all such payments. Client acknowledges that gMed’s policy (which policy is subject to change at gMed’s election) is to (i) post payment details after gMed receives the Remittance Advice and gMed confirms that payment has been deposited in Client’s Lockbox or Client receives an electronic funds transfer from the Payer and (ii) to only post what the Payer adjudicates. If gMed believes that the data provided by the Payer will lead to inaccurate posting, gMed may contact the Payer to request further clarification. Client shall instruct its Patients to remit all payments to the Lockbox.

**2.2.13 Reminder Statement Mailing Services.** If Schedule “A” to the RCM Agreement indicates that gMed is to provide Reminder Statement Mailing Services to Client, then Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Reminder Statement Mailing Services. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Reminder Statement Mailing Services and that gMed has no liability of any kind relating to Reminder Statement Mailing Services, including, without limitation, no liability with respect to any refusal by a Patient to pay any amounts. Client shall comply with all gMed practices and procedures with respect to Reminder Statement Mailing Services as established by gMed and communicated by gMed to Client from time to time. Client acknowledges and agrees that (i) as deemed appropriate by gMed, gMed shall carry patient credit balances as an unapplied credit in the patient’s account and gMed may post unapplied payments if a refund has not been issued for the patient’s unapplied credit, (ii) gMed is not required to issue credit balance refunds to patients as may be required by state unclaimed property laws or Client’s provider agreements with Payers, (iii) if gMed notifies Client of any insurance credit balances that are not a result of posting errors then Client shall be responsible to issue refunds or authorize take-backs to the Payer for the credit balance amount, (iv) gMed shall not be required to post or track payments resulting from any special arrangements between Payer and Client for a service or series of services and (v) gMed may charge an additional fee to send patient statements to patients outside the United States.

**2.2.14 Insurance Eligibility Verification.** If Schedule “A” to the RCM Agreement indicates that gMed is to provide Insurance Eligibility Verification Services to Client, then Client shall provide each Patient’s name and any other patient or insurance related information reasonably requested by gMed to gMed at least one (1) business day following the making of each Patient appointment with Client. If Schedule “A” to the RCM Agreement indicates that gMed is to provide Insurance Eligibility Verification Services to Client then Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Insurance Eligibility Verification Services. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Insurance Eligibility Verification Services and that gMed has no liability of any kind relating to the Insurance Eligibility Verification Services, including, without limitation, no liability with respect to any refusal by a Payer to pay any claims or any insurance or benefit coverage dispute.

**2.2.15 Prior Authorization.** If Schedule “A” to the RCM Agreement indicates that gMed is to provide Prior Authorization Services to Client, then Client shall promptly provide to gMed each Patient’s name for which prior authorization is appropriate, the procedure for which prior authorization is to be sought and any other patient or insurance-related information reasonably requested by gMed to obtain such prior authorization. If Schedule “A” to the RCM Agreement indicates that gMed is to provide Prior Authorization Services to Client then Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the Prior Authorization Services. Client acknowledges that certain Payers

may require patients to obtain prior authorization directly from the Payer, in which case gMed may direct the applicable patient to contact the Payer directly. Client acknowledges and agrees that gMed makes no warranties of any kind regarding the provision of Prior Authorization Services and that gMed has no liability of any kind relating to Prior Authorization Services, including, without limitation, no liability with respect to any refusal by a Payer to provide prior authorization, to pay any insurance claims or any insurance coverage dispute.

**2.2.16 General Statement.** Client hereby authorizes gMed to take any actions determined appropriate by gMed relating to the RCM Services. Client is solely responsible for the timely provision, accuracy, adequacy and completeness of any and all Billing Information and other data provided to Client hereunder, or input by Client into any gMed products or services. Client shall not take any action that could reasonably be expected to interfere with gMed's performance of the RCM Services. Client acknowledges that gMed is not obligated to provide any collection services for Client's billings and accounts receivable in the event of payment delinquencies by Payers. Client agrees that Client shall only submit (and shall only cause gMed to submit) claims for reimbursement, which Client believes are true, correct and in accordance with applicable law and health plan coverage requirements. Client agrees to promptly correct and resubmit any Billing Information and claims which gMed returns due to non-compliance with the HIPAA 837 health care claim transaction or any other compliance-related error. Client acknowledges and agrees that gMed may contact patients of Client and accept credit card and other payments from patients on behalf of Client. Client shall provide accurate patient contact information to gMed promptly following gMed's request.

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

**2.3.2 Trading Partner Agreement.** Neither Party may do any of the following: (a) change the definition, data condition, or use of a data element or segment in a standard or operating rule, except where necessary to implement State or Federal law, or to protect against fraud and abuse; (b) add any data elements or segments to the maximum defined data set; (c) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or (d) change the meaning or intent of the standard's implementation specification(s).

### **3. Fees.**

**3.1 RCM Fees.** Client shall pay gMed the monthly RCM Fees specified on Schedule "B" of the RCM Agreement.

**3.2 Billing Implementation Fee.** Client shall pay gMed the Billing Implementation Fee specified on Schedule "B" of the RCM Agreement.

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

**3.4 Expense Reimbursement.** Client will reimburse gMed for the following expenses incurred by gMed or its personnel in connection with the performance of the RCM Services (the "**RCM Expenses**"): all reasonable out-of-pocket costs and all reasonable travel, lodging and other related expenses.

**3.5 Overdue Payments.** Any payment owed by Client to gMed hereunder and not paid to gMed from Client's account (e.g. due to low balance, a stop payment order, or any other reason) (an "**Overdue Payment**") may accrue, at gMed's 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.

### **3.6 Payment.**

**3.6.1 Invoice.** Each month gMed shall present Client with an invoice (“**Invoice**”) setting forth the RCM Fees and other Fees (if any) payable to gMed by Client for the prior month. Client shall pay gMed the RCM Fees and other Fees (if any) detailed in each Invoice upon the date of such Invoice.

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

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

**3.8 Changes to Fees.** gMed 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 Client. Any such change shall take effect at the beginning of the next Renewal Term after the expiration of the Notice Period.

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

**3.10 Suspension of Service.** If there are Overdue Payments outstanding for more than thirty (30) days, gMed reserves the right to suspend the RCM Services and any other services then provided by gMed until such amounts are paid in full. Client shall continue to be obligated to pay the Fees during such suspension period.

**3.11 Taxes.** All amounts payable by Client to gMed 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 gMed are payable in full without reduction for Taxes. Client is responsible for payment of all Taxes, excluding taxes owed by gMed based on gMed’s net income. If gMed has the legal obligation to pay or collect Taxes for which Client is responsible pursuant to this Section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides gMed with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **4. Hardware; Software; Service Guidelines.**

**4.1 Hardware; Software.** Client is solely responsible for acquiring, installing and maintaining any computer hardware or software necessary for Client to receive the RCM Services. gMed will not provide maintenance for any of Client’s hardware or software unless otherwise specifically agreed upon in a separate agreement between Client and gMed.

**4.2 Service Guidelines.** Client and its personnel shall use any services provided by gMed solely for Client’s internal business purposes as contemplated by this Agreement and shall not use any products or services provided by gMed 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 gMed’s 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 any gMed products or services or the data contained therein; (vi) attempt to gain

unauthorized access to any gMed products or services, RCM Services or computer systems or networks used to host or provide access to gMed products or services; or (vii) harass or interfere with another user's use and enjoyment of any products or services provided by gMed. In addition to any other remedies gMed may have, gMed reserves the right to terminate each of the Transaction Documents immediately and without notice, if gMed becomes aware or determines that Client or any of its personnel are violating any of the foregoing guidelines.

**5. Modifications to Services.** Notwithstanding anything in the Transaction Documents to the contrary, gMed may, in its sole discretion, modify, update, revise, enhance or change any aspect of the RCM Services. Notwithstanding anything in the Transaction Documents to the contrary, Client acknowledges and agrees that gMed is under no obligation to provide Client with access to any third party software, website or service as part of the RCM Services and to the extent that the RCM Services provide access to any third party software, website or service gMed may without prior notice or any liability to Client, suspend, limit or cancel such access for any reason.

## **6. SOW Services.**

**6.1 Statements of Work.** From time to time, the Parties may execute statements of work that describe the specific services to be performed by gMed, including any work product to be delivered by gMed (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.

**6.2 Performance of Services.** gMed 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.

**6.3 Changes to Statement of Work.** Client may submit to gMed written requests to change the scope of SOW Services (each such request, a "**Change Order Request**"). gMed may approve or reject such Change Order Requests in its sole discretion. If gMed approves a Change Order Request, then gMed will promptly notify Client 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. gMed 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.

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

**6.5 SOW Fees and Expenses.** For gMed's performance of the SOW Services, Client will pay gMed the fees calculated in accordance with the terms set forth in this Agreement, including, any applicable Statement of Work (the "**SOW Fees**"). In addition, Client will reimburse gMed for the following expenses incurred by gMed 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.

**6.6 SOW Payment Terms.** Unless otherwise specified in this Agreement, gMed shall send an invoice (each, a **"SOW Invoice"**) to Client on a monthly basis for all applicable SOW Fees and SOW Expenses based on the SOW Services performed by gMed 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 gMed. Unless otherwise specified in the applicable Statement of Work, Client will pay each such SOW Invoice via electronic payment. Client hereby authorizes gMed to automatically charge Client'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 gMed pursuant to any SOW Invoice. Client 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 gMed in accordance with this Agreement or any applicable Statement of Work.

**6.7 Ownership.** gMed 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 gMed or its personnel in connection with performing the SOW Services (collectively **"gMed 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. Client will have no rights in the gMed Materials except as expressly agreed to in writing by the Parties in the Statement of Work.

**6.8 Other Services.** Nothing in this Agreement or any Statement of Work will be deemed to restrict or limit gMed'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. Client acknowledges that gMed may engage subcontractors to perform certain of the SOW Services and RCM Services.

**6.9 Non-Solicitation.** During the Term and for a period of twelve (12) months thereafter, Client will not recruit or otherwise solicit for employment any employees of gMed or its affiliates without gMed's express prior written approval.

## **7. Intellectual Property.**

**7.1 Client Intellectual Property.** Client represents and warrants that none of the content, materials, designs, text, names, data or other information provided by Client, its personnel and/or its Patients to gMed with respect to the Transaction Documents or otherwise (collectively, **"Client Content"**), infringes or violates the intellectual property or other proprietary rights of gMed or any third party, and gMed shall have no liability for any claims arising out of Client Content, including those claims based on infringement. Further, Client and its personnel grant to gMed a nonexclusive license to use Client Content, as well as any trade names and/or trademarks of Client, to the extent necessary for gMed to provide the RCM 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 Client Content). Nothing in this Section 7.1 shall be deemed to limit gMed's rights under the Business Associate Addendum.

**7.2 Restrictions.** Client acknowledges that in providing the RCM Services and the SOW Services, gMed utilizes: (i) the gMed name, the gMed logo, certain domain names, the product names associated with gMed's products and services 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 shall be collectively referred to as **"gMed IP"**) and that the gMed IP is covered by intellectual property rights owned or licensed by gMed (**"gMed IP Rights"**). Except as otherwise expressly permitted herein, Client and its personnel 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 gMed IP; (ii) disassemble, reverse engineer, or decompile any of the gMed IP; or (iii) create Internet “links” to or from the gMed IP, or “frame” or “mirror” any of gMed’s content which forms part of the gMed IP (other than on Clients’ own internal intranets). Additionally, Client and its personnel are not entitled to: (i) sell, grant a security interest in or make or transfer reproductions of the gMed IP to other parties in any way, nor to rent, lease or license the gMed IP to others without the prior written consent of gMed; (ii) emulate or redirect the communication protocols used by the gMed IP; (iii) access the gMed IP or RCM Services in order to build a competitive product or service, (iv) copy any features, functions or graphics of the gMed IP or RCM Services or (v) exploit the gMed IP or any of its parts for any commercial purpose without gMed’s express written consent. Nothing in the Transaction Documents shall be construed to give Client or its personnel any right to inspect, possess, use, or copy the source code or object code used to create or constituting the gMed IP. Neither Client nor its personnel shall apply any process, technique, or procedure designed to ascertain or derive the source code of the gMed IP, or attempt to do any of the foregoing.

**7.3 Ownership and Reservation of Rights.** Other than as expressly set forth in the Transaction Documents, no license or other rights in the gMed IP Rights are granted to Client or its personnel, and all such rights are hereby expressly reserved by gMed. Additionally, and for avoidance of doubt, as between gMed and Client, gMed 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 gMed IP, including, without limitation, all of the proprietary material provided and/or displayed by gMed at affiliated web sites, extranet, marketing materials or otherwise. Client acknowledges and agrees that the gMed IP may contain certain licensed materials and gMed’s licensors may independently protect their rights in the event of any violation of the Transaction Documents. Without limitation, gMed grants no license or other right under this Agreement to any government or government agency nor can any license or other right be acquired under a government contract or otherwise granted or provided to a government or government agency under this Agreement.

**8. Remedies for Breach of Client’s Obligations.** If Client or any of its personnel materially breaches any of its or their obligations under this Agreement or any other Transaction Document, gMed 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 gMed 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 Client with respect to gMed’s products or services 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 gMed; (ii) for unpaid Fees, RCM Fees, Billing Implementation Fees, SOW Fees and SOW Expenses, assess late fees as provided in Section 3.5; and/or (iii) collect from Client reimbursement for all costs, including attorneys’ fees and expenses and costs, incurred by gMed in collecting any Fees, RCM Fees, Billing Implementation Fees, SOW Fees, SOW Expenses or other monies owed to it by Client, or otherwise enforcing its rights under the Transaction Documents.

**9. HIPAA.** The Parties acknowledge and agree that Client is a Covered Entity and gMed 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. Confidentiality.**

**10.1 Definition of Confidential Information.** “**Confidential Information**” shall mean 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 10.3 as well as PHI as that term is defined in the Business Associate Addendum attached hereto. Notwithstanding any term of this Section 10 to the contrary, gMed shall be permitted to disclose any Client Confidential Information to the extent deemed appropriate by gMed to provide the RCM Services.

**10.2 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 gMed may disclose Confidential Information of Client to gMed’s 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.

**10.3 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.

**10.4 Feedback.** If Client or any of its personnel inform gMed of any errors, difficulties or other problems with any gMed products or services, or provide any feedback or make any suggestions as to changes or modifications to gMed’s products or services, including beta or other in-development versions of such products or services (collectively, “**Feedback**”), then gMed shall own all right, title and interest in that Feedback. Client hereby irrevocably assigns and agrees to assign all of its right, title and interest in and to the Feedback to gMed. To the extent Client is unable to assign any of its rights in the Feedback to gMed, Client hereby grants to gMed 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 gMed’s Confidential Information and gMed shall have the unrestricted right to use and disclose the Feedback for any purpose.

## **11. Warranties & Disclaimers.**

### **11.1 Warranties.**

**11.1.1** Client represents and warrants that it has the legal power and requisite authority to enter into the Transaction Documents to which it is a party. Client further represents and warrants that the information provided by Client to gMed in the RCM Practice Survey was accurate and complete as of the Effective Date.

**11.1.2** CLIENT HEREBY AGREES AND ACKNOWLEDGES THAT GMED IS IN NO WAY ACTING AS A MEDICAL PROVIDER WITH RESPECT TO ANY PATIENT OR ANY OF CLIENT’S RELATED PARTIES AND PROVIDERS. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT ANY TREATMENTS, PROCEDURES, INFORMATION, MEDICATIONS, PRODUCTS AND OTHER MATTERS REFERENCED BY ANY GMED PRODUCT OR SERVICE 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.

**11.1.3** CLIENT UNDERSTANDS AND AGREES THAT ITS USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAINING INFORMATION, MATERIALS, OR DATA FROM A SOURCE OTHER THAN GMED IS AT ITS OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS OR ITS PERSONNELS' PROPERTY OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA.

**11.1.4** Client represents and warrants that all Physicians and Physician Extenders are duly licensed by the appropriate professional board or agency in the state where Client is located and/or such individual practices and that Client shall provide evidence of such licensing upon reasonable request. At any time that Client, the Physicians or Physician Extenders, or its personnel cease to be duly licensed or authorized, Client shall immediately so inform gMed and such unlicensed party shall immediately cease accessing and using gMed's products and services.

**11.2 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE TRANSACTION DOCUMENTS, GMED MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. GMED 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 RCM SERVICES, THE ADDITIONAL SERVICES AND SOW SERVICES REMAINS WITH THE CLIENT. EXCEPT AS EXPRESSLY PROVIDED HEREIN, GMED EXPRESSLY DISCLAIMS ANY WARRANTY FOR ANY SERVICE(S), PRODUCT(S), GOOD(S), INFORMATION, DATA OR MATERIALS PROVIDED BY GMED AS PART OF THE RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE GMED 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 RCM SERVICES, THE ADDITIONAL SERVICES OR THE SOW 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.

GMED DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING (A) THE USE OR THE RESULTS OF THE USE OF ITS RCM SERVICES, 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 RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES. GMED IS NOT A HEALTH PLAN, HEALTH CARE PROVIDER OR PRESCRIBER.

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

EXCEPT AS EXPRESSLY PROVIDED HEREIN, GMED DOES NOT GUARANTEE CONTINUOUS,

ERROR-FREE, VIRUS-FREE OR SECURE OPERATION AND ACCESS TO ITS WEBSITES AND THE CONTENTS THEREOF, SERVICE ELEMENTS OR RELATED SOFTWARE. CLIENT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE PERFORMANCE AND RESULTS IN CONNECTION WITH THE RCM SERVICE, ADDITIONAL SERVICE AND SOW SERVICE. GMED SHALL HAVE NO LIABILITY FOR ANY COMMUNICATION BETWEEN GMED AND THE PATIENTS OF CLIENT.

CLIENT ACKNOWLEDGES THAT GMED MAY USE THIRD PARTY WEBSITES, THIRD PARTY HELP DESK SYSTEMS AND OTHER THIRD PARTY SERVICES TO PROVIDE CERTAIN SUPPORT SERVICES AND ONLINE FORUMS TO CLIENT. CLIENT 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. CLIENT AGREES THAT IT SHALL NOT, AND IT SHALL CAUSE ITS PERSONNEL TO NOT, SUBMIT ANY PROTECTED HEALTH INFORMATION (A) TO GMED OUTSIDE OF GGASTRO, INCLUDING BUT NOT LIMITED TO EMAIL TRANSMISSIONS, SUBMISSIONS TO ANY ONLINE FORUM MADE AVAILABLE BY GMED TO ITS CUSTOMERS, AND SUBMISSIONS THROUGH ANY SUPPORT WEBSITE, PORTAL, OR ONLINE HELP DESK OR SIMILAR SERVICE MADE AVAILABLE BY GMED OUTSIDE OF GGASTRO 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 CLIENT WILL ENTITLE GMED, IN GMED'S SOLE DISCRETION, TO RESTRICT CLIENT'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.

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

**11.4 Basis of the Bargain.** CLIENT ACKNOWLEDGES AND AGREES THAT GMED 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 CLIENT AND GMED, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN CLIENT AND GMED. CLIENT ACKNOWLEDGES AND AGREES THAT GMED WOULD NOT BE ABLE TO PROVIDE THE RCM SERVICES, ADDITIONAL SERVICES OR SOW SERVICES TO CLIENT ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

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

**12.1 Limitation of Liability.** IN NO EVENT SHALL GMED'S AND ITS PRESENT AND FORMER SUBSIDIARIES', AFFILIATES', PARENTS', DIRECTORS', OFFICERS', EMPLOYEES', AND AGENTS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE 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 FEES ACTUALLY PAID BY THE CLIENT TO GMED UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

**12.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL GMED OR ITS PRESENT AND FORMER SUBSIDIARIES, AFFILIATES, PARENTS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS HAVE ANY LIABILITY TO CLIENT, ITS PERSONNEL 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 GMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

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

**12.4 Indemnification.** Client shall indemnify and hold harmless gMed and its affiliates, 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) a breach of any of the Transaction Documents by Client or any of its personnel, (ii) the accuracy, quality, integrity, legality, reliability or appropriateness of any Client Materials or other content or data provided by Client or its personnel to gMed, (iii) violation of any applicable law, rule or regulation by Client or any of its personnel, (v) the diagnosis or treatment of any of Client's Patients, (vi) the submission of any false or fraudulent claim to any Payer, (vii) the Prior Authorization Services, Insurance Eligibility Verification, Appointment Reminder Services or Coding Activities or (viii) the negligent acts or willful misconduct of Client or its personnel.

**12.5 Sole Responsibility.** *Client 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 RCM Services or the SOW Services resides solely with the Physicians and the Physician Extenders treating such Patient. gMed does not assume any responsibility for how such information is used. Client acknowledges and agrees that the RCM Services and the SOW Services do not "direct," "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.*

### **13. Termination.**

#### **13.1 Termination.**

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

**13.1.2 By gMed.** gMed may terminate each of the Transaction Documents: (i) as set forth in Section 8 of these Terms and Conditions; (ii) in accordance with the terms of the Business Associate Addendum, (iii) immediately if Client 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 Client 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 gMed, (v) immediately if gMed provides Client of notice of any of the following issues: (a) if any of the representations or warranties by Client contained in this Agreement are false or incorrect when made or hereafter become false or incorrect, (b) in the event gMed becomes aware that Client 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 Client, (c) in the event that Client shall have failed to complete inaccurate or incomplete claim forms upon request by gMed within thirty (30) days of the date requested by gMed, (d) in the event Client

engages in activities that result, or would result or necessitate, material changes or modifications to the procedures or activities by which gMed delivers the RCM Service or (e) Client submits inaccurate or inappropriate claims for billing or fails to provide documentation or information sufficient in gMed's determination to cure any such inaccuracy or inappropriateness, and fails to correct any such inaccurate or inappropriate claim within thirty (30) days after notification by gMed to Client or (vi) immediately upon the termination of any license of Client to use any of gMed's products or services. Without limiting the foregoing, following the expiration of the Initial Term, gMed may terminate each of the Transaction Documents by providing at least thirty (30) days prior written notice to Client of such termination.

**13.1.3 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 gMed, would result in a material change in the cost of providing RCM Services to Client, gMed and Client shall promptly enter into negotiations to revise the RCM Fees to provide gMed with appropriate compensation under this Agreement. If such negotiations fail to result in an agreement between gMed and Client as to amended fees within thirty (30) days after Client receives notice of the event giving rise to Client's duty to negotiate set forth above, then gMed shall have the right to terminate this Agreement upon thirty (30) days prior written notice to Client.

**13.2 Outstanding Fees.** Termination shall not relieve Client of the obligation to pay any fees or expenses accrued or payable to gMed prior to the effective date of termination or prior to the expiration of The Ninety Day Wind Down Period (as defined below).

### **13.3 Effect of Termination.**

**13.3.1 Generally.** Termination of this Agreement for any reason shall not affect gMed'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, gMed shall have the right to automatically charge Client'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 gMed plus, to be held as a deposit, an amount reasonably estimated by gMed 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 Client 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). Client shall not, under any circumstances: (i) revoke any authorization to charge Client'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 Client's bank, credit card or other account, which are made by gMed in accordance with any of the Transaction Documents.

**13.3.2 RCM Service Wind-Down.** In the event of the expiration or termination of this Agreement for any reason, gMed 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**"). gMed 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 gMed 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.

**13.4 Survival.** Sections 1, 3.5, 3.11, 5.2, 5.3, 6.7, 6.9, 7, 8, 9, 10,11, 12, 13 and 14 shall survive the expiration or termination of this Agreement for any reason.

## **14. General Provisions.**

**14.1 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.

**14.2 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 Client's Patients.

**14.3 Notices.** Any notice required by this Agreement or given in connection with therewith, shall be in writing and shall be given (i) if to gMed, to gMed, Inc., 7400 Carmel Executive Park, Suite 205, Charlotte, NC 28226, Attention: RCM Operations Manager with a copy sent to Modernizing Medicine, Inc., 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 Client, to the Client'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.

**14.4 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.

**14.5 Force Majeure.** gMed 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 RCM Services or the SOW Services (each, a "**Force Majeure Event**").

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

**14.7 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.

**14.8 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, gMed shall be permitted to assign each of the Transaction Documents without the prior written consent of Client: (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 14.8 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.

**14.9 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 North Carolina, without regard to its conflict of laws provisions.

**14.10 Venue.** The federal courts of the United States in and for the Western District of North Carolina and the state courts of the State of North Carolina located in Mecklenburg County, North Carolina 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.

**14.11 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.

**14.12 Third Party Arrangements.** Client 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 Client 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**"), Client represents and warrants that any such third party arrangement shall not affect the obligations of Client to gMed pursuant to the Transaction Documents. Client 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]. Client acknowledges and agrees that gMed is under no obligation to accept any payment from any third party, which is unsatisfactory to gMed in its good faith business judgment. The Client agrees that it shall be responsible for promptly reimbursing gMed for all fees required by the American Medical Association or other similar organization to be paid by gMed to such organization relating to the Client and its employees, representatives, consultants, contractors or agents use of the RCM Services.

**14.13 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 Client to gMed, whether before or after the execution of this Agreement, be deemed binding upon gMed.

**14.14 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.

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

**14.16 Due Execution.** Client acknowledges that gMed 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 gMed and Client.

[Remainder of page left intentionally blank]

**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 gMed from or on behalf of the Client (“**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 GMED**

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

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

(b) gMed may disclose PHI to a third party for gMed’s proper management and administration, provided that the disclosure is Required by Law or gMed 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 gMed of any instances of which the person is aware in which the confidentiality of the PHI has been breached;

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

(d) gMed may use PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Without limiting any other rights of gMed under this Agreement, gMed may use, create, sell, disclose to third parties and otherwise exploit de-identified health information for any purposes not prohibited by law. gMed owns all right, title and interest in such de-identified health information and any data, information and material created by gMed 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.** gMed 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, gMed 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 Client. gMed 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, gMed 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.** gMed shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to gMed) of a use or disclosure of PHI by gMed in violation of this Addendum.

**Section 2.5. Subcontractors.** gMed 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 gMed. gMed 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 gMed under this Addendum.

**Section 2.6. Reporting Requirements.**

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

(b) gMed 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 Client in writing without unreasonable delay, and (b) any attempted, unsuccessful Security Incident of which gMed becomes aware will be reported to the Client orally or in writing on a reasonable basis, as requested by the Client. 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) gMed shall, following the discovery of a Breach of Unsecured PHI, notify the Client 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.** gMed shall make available PHI in gGastro to Client in accordance with this Agreement for so long as gMed maintains the PHI in a Designated Record Set. If gMed receives a request for access to PHI directly from an Individual, gMed shall forward such request to Client within ten (10) business days. Client 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.** gMed shall provide PHI in gGastro to Client for amendment, and incorporate any such amendments in the PHI (for so long as gMed maintains such information in the Designated Record Set), in accordance with this Addendum and as required by 45 C.F.R. § 164.526. If gMed receives a request for amendment to PHI directly from an Individual, gMed shall forward such request to Client within ten (10) business days. Client 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 Client to gMed 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), gMed shall make available to Client such information as is in gMed's possession and is required for Client to make the accounting required by 45 C.F.R. § 164.528. If gMed receives a request for an accounting directly from an Individual, gMed shall forward such request to Client within seven (7) business days. Client 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, gMed shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by gMed on behalf of, Client available to the Secretary for purposes of determining Client's compliance with HIPAA.

### III. OBLIGATIONS OF THE CLIENT

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

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

**Section 3.3. Appropriate Use of PHI.** Client and its employees, representatives, consultants, contractors and agents shall not submit any Protected Health Information to gMed (A) outside of gGastro, including but not limited to submissions to any online forum made available by gMed to its customers, email transmissions, and submissions through any support website, portal, or online help desk or similar service made available by gMed outside of gGastro; 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.** Client 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 gMed. Client shall notify gMed 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 gMed's use or disclosure of PHI. Client shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts gMed's use or disclosure of PHI under this Agreement (including under this Addendum) unless such restriction is Required By Law or gMed grants its written consent.

**Section 3.5. Notice of Privacy Practices.** Except as Required By Law, with gMed's consent or as set forth in this Agreement, Client shall not include any limitation in Client's notice of privacy practices that limits gMed'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 gMed 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 gMed in its sole discretion.

**Section 4.3. Return or Destruction of PHI upon Termination.** Upon termination of this Agreement, gMed shall return or destroy all PHI received from Client or created or received by gMed on behalf of Client and which gMed still maintains as PHI. Notwithstanding the foregoing, to the extent that gMed 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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