

modmed synapSYS Marketing Terms

Last Updated: 19 October 2020.

1. Introduction.

1.1. The Agreement. These modmed synapSYS Marketing Terms (including the attached exhibits, these “**Terms**”) are incorporated into and form part of each Order. The “**Agreement**” is the Order and these Terms.

1.2. TOU. These Terms incorporate by reference, and Company’s and its users use of the Services are governed by, the Terms of Use at modmed.com/terms-of-use/ (the “**TOU**”). These Terms will govern if there is any conflict between these Terms and the TOU. The Order and these Terms are a “Transaction Document” under the TOU.

1.3. No Connection with Certified Application Programming Interfaces. The parties acknowledge and agree that no Target Product is an application that connects to any of ModMed’s (or its affiliates’) products or services through any application programming interface that has been established and maintained by ModMed and is certified pursuant to the Office of the National Coordinator for Health Information Technology’s Health IT Certification Program (a “**Certified API**”). If, in the future, any Target Product becomes such an application, Company will immediately inform ModMed, and ModMed may immediately terminate the Agreement upon written notice to Company.

1.4. No Data Access Needed. Company acknowledges and agrees that: (i) the Agreement and Services are separate from the creation of, access to, or use of any application programming interface or other interface to any of ModMed’s (or its affiliates’) products or services and any access to or use of any data, including electronic protected health information (as defined in 45 C.F.R. § 160.103) or electronic health information (as defined in 45 C.F.R. § 171.102), in any such products or services, (ii) the Services are not necessary for the creation of, access to, or use of any such application programming interface or other interface, and (iii) any creation of, access to, or use of any application programming interface or other interface to any of ModMed’s (or its affiliates’) products or services or any access to or use of any data in any such products or services will be subject to a separate agreement between ModMed (or its affiliate) and Company.

1.5. Definitions. Capitalized terms used but not defined in these Terms have the meanings given in exhibit A or, if not defined in exhibit A, then the meanings in the TOU.

2. Marketing Activities.

2.1. Marketing. Subject to Company’s compliance with the terms of the Agreement, including payment of all Fees, ModMed will provide the marketing activities specified on exhibit B for the Marketing Tier specified on the Order. The marketing activities specified on exhibit B will be in addition to the basic application placement, access, and listing that ModMed may offer without charge with respect to products or services with which data is exchanged through an application programming interface or other interface as described in Section 1.4 hereof, including, where applicable, the Target Products.

2.2. ModMed Leads. Company will use all information provided regarding ModMed Leads only to solicit such ModMed Leads for the Target Products. Company will not share with, sell to, exchange with, or disclose to any third party such information.

2.3. Company Customers. With respect to Company’s customers, including those resulting from ModMed Leads, Company will: (i) set its own terms and conditions for sale or service, including prices, (ii) contract directly with all of its customers, (iii) be solely responsible for collections of amounts due to Company, and (iv) be solely responsible for all aspects of implementation, training, and support related to its products and services, including the Target Products. ModMed will neither be a party to nor bound by any such contract.

3. Intellectual Property.

3.1. Mark Licenses.

3.1.1. Company Marks. Company grants to ModMed a non-exclusive, non-transferable (except as permitted in section 9.3), royalty-free, limited license to display and use the Company Marks to market the Target Products as specified in exhibit B for the applicable Marketing Tier and otherwise perform ModMed’s obligations and exercise ModMed’s rights under the Agreement.

3.1.2. ModMed Marks. ModMed grants to Company a non-exclusive, non-transferable (except as permitted in section 9.3), royalty-

free, limited license to display and use the ModMed Marks to accurately and appropriately reference ModMed on Company's websites and other marketing materials.

3.1.3. Approval. The licensee under this section 3.1 must obtain the licensor's prior written consent for each use of the licensor's Marks. Such approval will not be unreasonably withheld and will be deemed given if there is no response within 15 business days after the licensor's receipt of the written request for approval.

3.1.4. No Other Rights. Except for the express licenses granted in this section 3.1, nothing in the Agreement will grant or be deemed to grant to the other party any right, title, or interest in a party's Marks or related goodwill. The licensee will use the licensor's Marks in accordance with any guidelines or policies provided by the licensor. The licensee will and hereby does assign to the licensor any right, title, or interest it may obtain in or to the licensor's Marks or related registrations or applications, including goodwill. All uses of the licensor's Marks and all associated goodwill will accrue and inure solely to the benefit of the licensor.

3.2. Materials.

3.2.1. Company Materials. Company will supply ModMed with Company Materials in quantities that ModMed may reasonably request for ModMed to use as described below at no charge to ModMed. Company grants to ModMed a non-exclusive, non-transferable (except as permitted in section 9.3), royalty-free, limited license to use, copy, modify, display, perform, reproduce, and otherwise distribute and disseminate the Company Materials in order to market the Target Products as specified in exhibit B for the applicable Marketing Tier and otherwise perform ModMed's obligations and exercise ModMed's rights under the Agreement. All Company Materials will comply with all applicable Laws. ModMed must obtain Company's prior written approval for any material modifications to Company Materials that ModMed may make prior to any use. Such approval will not be unreasonably withheld and will be deemed given if there is no response within 15 business days after Company's receipt of the written request for approval.

3.2.2. ModMed Materials. ModMed grants to Company a non-exclusive, non-transferable (except as permitted in section 9.3), royalty-free, limited license to use, copy, display, perform, reproduce, and otherwise distribute and disseminate any ModMed Materials that ModMed may provide or make available to Company solely in order to market ModMed's products and services in accordance with the Agreement, to the extent Company chooses to do so. All ModMed Materials will comply with all applicable Laws in the form ModMed provides them to Company. Company must obtain ModMed's prior written approval for any material modifications to ModMed Materials that Company may make prior to any use. Such approval will not be unreasonably withheld.

3.3. Approval Requests. The requests for approvals and the resulting approvals related to the use of Marks and materials described in this section 3 may be provided via email to the email address provided by the party to receive such request or approval.

4. **Fees.**

4.1. Payment. Company will pay: (i) the first annual Fees upon the Effective Date, (ii) subsequent annual Fees by each anniversary of the Effective Date, and (iii) any other Fees as specified in the Order. If Company does not make a payment when due, Company will pay ModMed a late charge at the rate of 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. All payments to ModMed are not refundable except as otherwise expressly provided in these Terms. If ModMed provides wiring instructions to Company, Company will pay Fees in that manner until directed otherwise by ModMed.

4.2. Fair Market Value. Each party agrees that the compensation payable to ModMed under or in connection with the Agreement is consistent with fair market value in an arms' length transaction for the promotion and other activities to be performed by ModMed under the Agreement.

5. **Term and Termination.**

5.1. Term. The Agreement will commence on the Effective Date and continue for the Initial Term. Upon expiration of the Initial Term, the Agreement will automatically renew for Renewal Terms, unless either party delivers to the other party written notice of non-renewal at least 60 days prior to renewal.

5.2. Termination for Material Breach. If a party materially breaches the Agreement, the other party may terminate the Agreement upon a subsequent written notice if the breach has not been cured within 30 days after a first written notice specifying the applicable breach.

5.3. Termination by ModMed. ModMed may terminate the Agreement for convenience upon 15 days' prior written notice to Company and, if so terminated, ModMed will issue Company a pro rata refund of prepaid Fees reflecting the remainder of the then-current Term.

5.4. Effect of Termination. Upon termination for any reason of the Agreement: (i) all obligations under the Agreement, including relating to marketing, will cease, (ii) all rights and licenses granted to a party pursuant to the Agreement will automatically terminate, and (iii) ModMed will have no further obligation to provide ModMed Leads to Company.

5.5. Survival. Any provisions of the Agreement that, by their terms, should survive the termination of the Agreement, will survive, including sections 4, 5.5, 6, and 9 of these Terms.

6. **Indemnity.**

Company will indemnify ModMed and its affiliates and its and their officers, directors, employees, agents, representatives, advisors, contractors, and consultants (collectively, "**Indemnified Parties**") from and against any and all claims, actions, suits, demands, liabilities, damages, losses, penalties, interest, fines, costs, and expenses (including reasonable attorneys' fees and legal costs) arising out of or related to: (i) the Target Products or any other Company product or service, (ii) Company's relationship or activities related to its customers or potential customers, (iii) the Company Marks or Company Materials, or (iv) Company's act or omission relating to the Agreement or violation of any Law.

7. **Compliance.**

7.1. Compliance with Laws. Company will comply with all Laws in performing under the Agreement and in providing the Target Products.

7.2. Debarment. Neither Company nor any of its owners, employees, agents, or contractors has ever been, and is not currently, suspended, declared ineligible, excluded, sanctioned, debarred from, or otherwise excluded from federal or state government procurement or nonprocurement programs, including any exclusion from Federal

Health Care Programs by the Office of Inspector General of the U.S. Department of Health and Human Services. Company will screen its employees, agents, and contractors on a monthly basis against the excluded person list of the Office of Inspector General of the U.S. Department of Health and Human Services, the sam.gov list of sanctioned individuals and entities, and the Office of Foreign Assets Control (OFAC) sanctions lists. Company will notify ModMed if Company or any of its employees, agents, or contractors is sanctioned within 2 business days of learning of the sanction. If this section 7.2 ceases to be true due to the sanction of Company's employees, agents, or contractors, Company will immediately remove, or cause to be removed, the sanctioned employees, agents, and contractors from performance under the Agreement and prevent such persons from providing any Target Products to customers or having access to any data relating to any Target Products or the customers using Target Products.

8. **Changes.**

ModMed may change these Terms at any time. Unless otherwise indicated, changes will be effective upon the date the revised Terms with such changes are posted. Company will check these Terms regularly for changes to these Terms. ModMed may try to notify Company of material changes to these Terms, such as by sending an email notification or by other reasonable methods, but changes will be effective regardless of whether Company receives any such notice. If a change to these Terms materially diminishes Company's rights under these Terms, then Company may, within 30 days of the date the relevant changes were posted, terminate the Agreement upon written notice to Company. In such case and, if so terminated, ModMed will issue Company a pro rata refund of prepaid Fees reflecting the remainder of the then-current Term.

9. **Miscellaneous.**

9.1. Notices.

9.1.1. Methods. Unless otherwise expressly set forth in the Agreement, any notice required or permitted under the Agreement must be in writing and must be: (i) delivered in person, (ii) sent by certified or registered mail, return receipt requested, or (iii) sent for next business day delivery by a nationally-recognized overnight air courier, in each case properly posted and fully prepaid to the appropriate address (in the Order or as may be updated pursuant to section 9.1.3). Notices to ModMed

must be addressed to the attention of ModMed's General Counsel.

9.1.2. Notice Date. Notices sent in accordance with section 9.1.1 will be deemed given: (a) at the time of actual delivery in person as set forth in clause (i) above, (b) 3 business days after deposit in the mail as set forth in clause (ii) above, or (c) 1 business day after delivery to an overnight air courier as set forth in clause (iii) above.

9.1.3. Changes. Either party may change its address for notices by notice to the other party given in accordance with this section 9.1.

9.2. ModMed Affiliates. ModMed may use ModMed's affiliates to perform and exercise its rights under the Agreement.

9.3. Assignment. Company may not assign or delegate the Agreement, in whole or in part, without ModMed's prior written consent. ModMed may freely assign the Agreement. Any assignment or attempted assignment in violation of this section 9.3 will be void. The Agreement will bind and inure to the benefit of the parties and their successors and permitted assigns.

9.4. Entire Agreement; Amendment. The Agreement (i.e., the Order and these Terms, which incorporate the TOU) constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written understandings and agreements relating to such subject matter. Except as provided in section 8, the Agreement may be amended or modified only by a written agreement signed by both parties.

9.5. No Exclusivity. Company acknowledges that the Agreement is non-exclusive and nothing in the Agreement will be deemed to limit ModMed's right to offer similar services to third parties. Nothing in the Agreement will be deemed to restrict ModMed from selling, marketing, or licensing, whether by itself or through any third party, or from engaging others to market or solicit the sale or license of products or services similar to the Target Products anywhere in the world to any existing, prospective, or future customer, including any ModMed Leads, or from entering into any agreement with any third party.

EXHIBIT A

Definitions

“Agreement” has the meaning in section 1.1 of these Terms.

“Company” has the meaning given in the Order.

“Company Marks” means Company’s Marks that are provided or made available by Company to ModMed for use under the Agreement.

“Company Materials” means materials related to Target Products, including advertising and marketing materials, product information, installation, operating and maintenance manuals, technical descriptions, and support materials.

“Effective Date” means the effective date specified in the Order.

“Federal Health Care Programs” has the meaning set forth at 42 U.S.C. § 1320a-7b(f).

“Fees” means: (i) the fees for the Marketing Tier specified in the Order and (ii) any other fees specified in the Order.

“Initial Term” means the period beginning upon the Effective Date and continuing for the duration specified on the Order.

“Laws” means any statute, law, regulation, ordinance, rule, code, order, constitution, treaty, common law, judgment, decree, or governmental requirement enacted, promulgated, or imposed by any governmental authority at any level (including municipal, county, province, state, national, or foreign), including HIPAA and other Privacy Laws, health care fraud and abuse laws (e.g., the federal Anti-Kickback Statute, Stark Law, and False Claims Act), and any standards generally adopted by an industry organization (e.g., the Payment Card Industry) that applies to products or services offered by a party (e.g., PCI-DSS).

“Marketing Tier” means the marketing tiers described in exhibit B.

“Marks” means corporate and trade names, trademarks, service marks, and logos.

“ModMed” has the meaning given in the Order.

“ModMed Leads” means existing and prospective customers of ModMed or its affiliates who both: (i) are prospective customers of the Target Products and (ii) express interest in one or more Target Products.

“ModMed Marks” means ModMed’s Marks that are provided or made available by ModMed to Company for use under the Agreement.

“ModMed Materials” means marketing materials relating to ModMed and its products and services that ModMed may provide or make available to Company.

“Order” means a modmed synapSYS Marketing Order executed by ModMed and Company.

“Privacy Laws” means all Laws regarding information protection, including the privacy, confidentiality, collection, use, handling, processing, security, transfer, or free movement of Protected Health Information, Confidential Information, or personally identifiable information, including as applicable the California Consumer Protection Act (CCPA), the General Data Protection Regulation (GDPR), and other similar Laws that may be enacted.

“Renewal Term” means each 1-year period following what, absent a renewal of the Term, would have been the expiration of the Initial Term.

“Target Product” means a Company product or service specified in an Order.

“Term” means collectively the Initial Term and Renewal Terms.

“Terms” has the meaning in section 1.1 of these Terms.

EXHIBIT B

Marketing Tiers Description

Standard Tier.

- Annual Fee: \$2,500
- Marketing Activities:
 - Prominent placement on the modmed SynapSYS Marketplace by a “tile” or similar listing with Company’s logo, a description of Company and the Target Product, and a link to a Company website.
 - ModMed will provide a method to collect contact information for ModMed Leads and will provide that information to Company.

Enhanced Tier.

- Annual Fee: \$5,000
- Marketing Activities: The activities under the Standard Tier, plus:
 - Access to a user interface sandbox environment for demonstration purposes. (This is a different sandbox from a developer sandbox that ModMed may otherwise provide outside of the Agreement and is not related to the creation of, access to, or use of any application programming interface or other interface to any of ModMed’s (or its affiliates’) products or services).
 - Access to training materials on ModMed’s training website, which is currently called ModMedU.

Premier Tier.

- Annual Fee: \$25,000
- Marketing Activities: The activities under the Enhanced Tier, plus:
 - Listing under the “Premier” section of the SynapSYS Marketplace.
 - 1 promotional event per year as mutually agreed upon by the parties.