

## ModMed Lab Interface Terms

Last Updated: November 17, 2021.

### 1. Introduction.

1.1. The Agreement. These ModMed Lab Interface Terms (including the attached exhibits, these “**Lab Terms**”) are incorporated into and form part of each Order Form. The “**Agreement**” is the Order Form, these Lab Terms and, if applicable, any SOWs.

1.2. Definitions. Capitalized terms used but not defined in these Lab Terms have the meanings given in exhibit A.

### 2. Interfaces.

2.1. Development. ModMed and Lab will cooperate in each developing their respective side of the Interface to provide the Functionality to Common Customers. Lab acknowledges that ModMed may use third parties to create and provide the Interface. The parties acknowledge and agree that none of the Interfaces covered by the Agreement are certified application programming interfaces.

2.2. Types of Interfaces. The Order Form will identify the Functionality of the Interface, including the Field.

2.2.1. Results. If the Functionality includes Results, then: (i) the Interface will permit Lab to send Results to the ModMed EHR and (ii) Lab will not transmit, directly or indirectly, Results for more than one patient, more than one visit, or with more than one accession number, in any message sent to the ModMed EHR.

2.2.2. Orders. If the Functionality includes Orders, then the Interface will permit Common Customers to send Orders to Lab.

2.2.3. Format. Lab will provide the Orders and Results, as applicable, in the formats and following the protocols that ModMed reasonably requests.

2.3. Common Customers.

2.3.1. Adding and Removing Common Customers. Lab may request to add and remove Common Customers by submitting such requests in the manner directed by ModMed or otherwise agreed upon by the parties. ModMed will not unreasonably deny such requests. Lab will be responsible for keeping

ModMed’s list of Common Customers up to date. A Common Customer may not use an Interface until ModMed has documented that such customer is a Common Customer in accordance with the process described above. Lab is responsible for all Fees for a Common Customer until ModMed has documented that such Common Customer has been removed in accordance with the process described above.

2.3.2. Lab’s Customers. With respect to Lab’s customers, Lab will: (i) set its own terms and conditions for sale or service, including prices, (ii) contract directly with all of its customers, and (iii) be solely responsible for collections of amounts due to Lab. ModMed will neither be a party to nor bound by any such contract. Lab will not charge Common Customers any fees or costs to use the Interface (for clarity, such restriction is limited only to use the Interface and does not include Lab charging Common Customers for use of Lab’s products and services).

2.4. Support. Once established, each party will use commercially reasonable efforts to maintain and support the currency and operation of its side of the Interface so that it continues to function properly. Each party will be responsible for supporting its respective products and services. Lab will endeavor to provide ModMed with notice of unplanned downtime related to Lab’s side of the Interface, as ModMed may receive support requests from Common Customers related to such downtime.

### 3. Professional Services.

3.1. SOWs. If Lab desires to order professional services from ModMed, then the parties may execute SOWs that describe SOW Services. Each SOW will be governed by and incorporate by reference these Lab Terms. If there is a conflict between these Lab Terms and the terms of a SOW, these Lab Terms will control unless the SOW states that a specific provision of these Lab Terms will be superseded by a specific provision of the SOW, in which case such SOW provision will apply only to such SOW. Any changes to a SOW must be agreed upon in writing by the parties.

3.2. Performance of Services. ModMed will perform the SOW Services in accordance with these Lab Terms and the applicable SOW. Lab will perform its obligations in the SOW and cooperate with

ModMed as reasonably requested by ModMed so that ModMed may perform the SOW Services.

3.3. SOW Fees and Expenses. Lab will pay ModMed the Fees and expenses specified in the SOW.

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

##### 4.1. Fees.

4.1.1. Setup Fees. If the Order Form includes a setup Fee, then ModMed will invoice such Fee on or after the Effective Date.

4.1.2. Annual Maintenance Fees. If the Order Form includes an annual Fee, then: (i) on or after the Effective Date ModMed will invoice Lab for such Fee for each Common Customer listed on the Order Form, (ii) ModMed will invoice Lab for such Fee for each Common Customer when added during the Term, and (iii) ModMed will invoice Lab for such Fee in advance each year of the Term on or around the annual anniversary of the Effective Date for each then-current Common Customer. ModMed will prorate the annual Fees for Common Customers added during the Term based on the days remaining in the year of the Term. If the annual Fee in the Order Form is on a per-Instance basis, then: (a) the annual Fee will apply to each Instance and (b) Lab acknowledges that a Common Customer may have multiple Instances. If the annual Fee in the Order Form is not on a per-Instance basis, then the annual Fee will apply to each Common Customer.

4.1.3. Transaction Fees. If the Order Form includes transaction Fees, then ModMed will invoice Lab for such Fee monthly in arrears.

4.1.4. Inhouse Use. If an Order Form includes pricing for Inhouse Use, then such pricing will apply only to Inhouse Use and any other Interfaces will be subject to the non-Inhouse Use pricing.

4.2. Payment. Lab will pay all invoices within 30 days of the date of the invoice. If Lab does not make a payment when due, Lab 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. Except as otherwise expressly provided in the Agreement, all payments to ModMed are not refundable, including any annual Fees for Common Customers removed during a year of the Term. If

ModMed provides wiring instructions to Lab, Lab will pay Fees in that manner until ModMed directs otherwise.

##### 4.3. Changes to Fees.

4.3.1. After the Initial Term, ModMed may change the Fees upon 60 days prior written notice to Lab. Any such change in Fees will take effect at the beginning of the next Renewal Term after such 60-day period.

4.3.2. If ModMed determines that it is necessary to change the methodology for calculating the Fees in order to comply with applicable Law, then ModMed may propose a new methodology that: (i) Lab is able to implement within a reasonable time without undue burden and (ii) does not result in an increase in the compensation that Lab would pay to ModMed absent such change in methodology. Any such proposal is subject to Lab's approval, which approval will not be unreasonably withheld.

4.4. 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 services 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 after the Initial Term upon 30 days' prior written notice to Lab. If the Agreement is so terminated, ModMed will issue Lab a pro rata refund of any prepaid Fees.

5.4. Termination For Compliance Reasons. ModMed may terminate the Agreement upon 30 days' written notice to Lab if ModMed determines that any term of the Agreement violates applicable Law,

including the federal Anti-Kickback Statute, the Stark Law, the False Claims Act, or the information blocking prohibition of the 21st Century Cures Act.

5.5. Termination Due to Exclusion, Debarment, or Suspension. ModMed may terminate the Agreement upon written notice to Lab if Lab or any of Lab's owners is excluded from participation in a Federal Health Care Program or otherwise debarred, declared ineligible, suspended, or otherwise sanctioned by any federal or state government procurement or non-procurement program.

5.6. Effect of Termination. Upon termination for any reason of the Agreement: (i) all obligations under the Agreement will cease and (ii) all rights and licenses granted to a party under the Agreement will automatically terminate.

5.7. Survival. Any provisions of the Agreement that, by their terms, should survive the termination of the Agreement, will survive, including sections 4, 5.7, 6, 7, 8.1.2, 9, 10, 11.5, 11.6, and 13.

## 6. Intellectual Property.

6.1. Retention of Rights. Each party will retain all of its Intellectual Property Rights.

6.2. Attribution.

6.2.1. For ModMed. ModMed may include Lab in ModMed's listings of labs connected to the ModMed EHR, including on ModMed's websites.

6.2.2. For Lab. Lab may include ModMed in Lab's listings of electronic health record systems connected to Lab, including on Lab's websites.

6.2.3. Restrictions. Except as expressly permitted in the Agreement, neither party: (i) will refer to the other in any press release, marketing materials, or advertisements of any kind without first obtaining the other party's prior written consent and (ii) grants the other party any right, title, or interest in or to such party's names or trademarks. All use of a party's names or trademarks by the other party, including all goodwill, will inure to the benefit of the party.

6.3. Feedback. If either party ("**Feedback Provider**") provides the other party ("**Feedback Receiver**") with any feedback related to the Feedback Receiver's products, software, or services

(collectively, "**Feedback**"), then: (i) the Feedback Receiver will have no obligation to use Feedback, (ii) the Feedback Receiver will own such Feedback and will have the unrestricted right to use such Feedback for any purpose, and (iii) the Feedback Provider will not receive any compensation related to such Feedback. The Feedback Provider hereby assigns to the Feedback Receiver all right, title, and interest in and to such Feedback. To the extent the Feedback Provider is unable to assign to the Feedback Receiver any of its rights in or to such Feedback, the Feedback Provider grants to the Feedback Receiver a transferable, royalty-free, fully paid-up, perpetual, irrevocable, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit or dispose of such Feedback. Feedback will be treated as the Feedback Receiver's Confidential Information.

## 7. Confidentiality.

7.1. Definition. "**Confidential Information**" means information that: (i) is disclosed in writing or other tangible form and conspicuously marked as being confidential or proprietary or (ii) the Receiving Party knows, or under the circumstances should know, is considered confidential or proprietary by the Disclosing Party.

7.2. Exclusions.

7.2.1. General. Confidential Information will not include any information that: (i) at the time disclosed to or obtained by the Receiving Party is generally available in the public domain, (ii) after disclosed to or obtained by the Receiving Party becomes generally available in the public domain through no fault of the Receiving Party or anyone acting at its direction, (iii) is disclosed without restrictions on use or disclosure to the Receiving Party by a third party who has the right to make such a disclosure, (iv) was rightfully in the Receiving Party's possession prior to the time disclosed to or obtained by the Receiving Party without restrictions on use or disclosure, or (v) is independently developed by the Receiving Party without reference or access to the Disclosing Party's Confidential Information.

7.2.2. PHI. Any PHI of a Common Customer that may be exchanged by the parties in performing under the Agreement will not comprise the Confidential Information of

either party under the Agreement; instead, the PHI in each party's possession or control will be subject to that party's agreement with the Common Customer.

7.2.3. Non-PHI Common Customer Data.

Confidential Information also does not include non-PHI Common Customer data or information exchanged through the Interfaces or otherwise in connection with the Agreement. Each party may use such data and information, subject to that party's agreement with the Common Customer.

7.3. Obligations.

7.3.1. Restrictions on Use and Disclosure.

The Receiving Party will: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information of a similar nature, but in no event with less than a reasonable degree of care, (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to perform its obligations under the Agreement, and (iii) not disclose the Disclosing Party's Confidential Information to anyone except to the Receiving Party's employees and representatives who have a need to know the Confidential Information in order for the Receiving Party to perform under the Agreement; provided, that each such employee and representative: (A) is informed of the confidential nature of such Confidential Information, (B) is directed by the Receiving Party to treat such Confidential Information as confidential, and (C) is bound by written obligations not to use or disclose the Confidential Information that are no less protective than those in the Agreement (except for advisors who are bound by professional codes of conduct having equivalent effect). The Receiving Party will be liable to the Disclosing Party for any unauthorized use or disclosure of the Disclosing Party's Confidential Information by the Receiving Party's employees and representatives.

7.3.2. Notice. The Receiving Party will promptly notify the Disclosing Party in writing in the event the Receiving Party becomes aware of any actual or suspected unauthorized use or disclosure of the Disclosing Party's Confidential Information by any of the

Receiving Party's employees, representatives, or other parties, and will provide such reasonable assistance as the Disclosing Party requests regarding remediation, mitigation, or taking enforcement action (which assistance will be at no charge to the Disclosing Party).

7.4. Required Disclosures. If the Receiving Party is requested or required by Law to disclose any of the Disclosing Party's Confidential Information, the Receiving Party, to the extent permitted, will provide the Disclosing Party prompt notice of any such request or requirement so that the Disclosing Party may, at the Disclosing Party's expense, seek a protective order or other appropriate remedy. The Receiving Party will reasonably cooperate with the Disclosing Party to this end. If a protective order or other remedy cannot be obtained by the Disclosing Party, the Receiving Party may disclose to the appropriate authority only that portion of the Confidential Information that it is required to disclose. Any information disclosed under this section 7.4 will continue to be the Disclosing Party's Confidential Information and subject to the provisions of this section 7 unless and until an exception under section 7.2 applies to such information.

7.5. Return of Confidential Information. Subject to the rest of this section 7.5, upon the conclusion of the Term the Receiving Party will discontinue all use of the Disclosing Party's Confidential Information. Within 30 days after the Disclosing Party's written request, the Receiving Party will either return to the Disclosing Party or destroy, in the Receiving Party's discretion, all of the Disclosing Party's Confidential Information, including all copies in whole or in part and, except to the extent infeasible to do so, any materials that contain any of the Disclosing Party's Confidential Information. The Receiving Party may retain 1 copy of each item of the Disclosing Party's Confidential Information solely for evidentiary purposes. The Receiving Party is not obligated to return or destroy any of the Disclosing Party's Confidential Information subsisting in backups of corporate systems created in the ordinary course of business. The terms and conditions of this section 7 will continue to apply to any of the Disclosing Party's Confidential Information permitted to be maintained by the Receiving Party in this section 7.5; provided, that the Receiving Party may not, for any purpose, use or disclose any such Disclosing Party Confidential Information.

7.6. Injunctive Relief. In the event of a breach or threatened breach of the Receiving Party's

confidentiality obligations, the Receiving Party acknowledges that the Disclosing Party will suffer immediate and irreparable harm for which money damages will be inadequate and impossible to calculate and, in addition to any other remedy that may be available at law or in equity, the Disclosing Party will be entitled to seek equitable relief without requirement of posting bond or other security.

7.7. Confidentiality of the Agreement. Neither party to the Agreement will disclose the terms of the Agreement to any third party without the consent of the other party, except as required by applicable Laws. Each party may disclose the terms of the Agreement: (i) in connection with the requirements of a public offering or securities filing, (ii) in confidence to accountants, banks, and financing sources and their advisors, (iii) in confidence in connection with the enforcement of the Agreement or rights under the Agreement, or (iv) in confidence in connection with a merger or acquisition or proposed merger or acquisition, or the like.

7.8. Other Permitted Disclosures. Nothing in the Agreement will be construed to prohibit or restrict any communication in a manner that violates the Communications Condition of Certification at 45 C.F.R. § 170.403(a). Neither party will impose any prohibition or restriction on the other party or any third party that prohibits or restricts any communication in a manner that violates the Communications Condition of Certification.

## 8. **Warranties.**

8.1.1. Mutual. Each party represents and warrants to the other party that: (i) it is duly organized, validly existing, and in good standing under the Laws of the state of its incorporation or other organization, (ii) it has the necessary rights, power, and authority to enter into and perform under the Agreement, (iii) the Agreement constitutes a legal, valid, and binding obligation when executed, and (iv) its execution and performance of the Agreement does not conflict with or result in a material default under any other agreement to which it is a party or by which it is bound.

8.1.2. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY

## WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 9. **Indemnity.**

9.1.1. By Lab. Lab will defend the ModMed Indemnified Parties from and against all Claims arising out of or related to: (i) Lab's gross negligence or willful misconduct, (ii) Lab's products and services, including the infringement, violation, or misappropriation of a third party's Intellectual Property Rights by Lab's products and services, (iii) Lab's agreements with Common Customers, or (iv) Lab's breach of the Agreement. Lab will indemnify the ModMed Indemnified Parties from and pay: (a) all damages, fines, costs, and attorneys' fees finally awarded against the ModMed Indemnified Parties in any Claim under this section 9.1.1, (b) all out-of-pocket costs (including attorneys' fees) reasonably incurred by the ModMed Indemnified Parties in connection with the investigation or defense of a Claim under this section 9.1.1 (other than attorneys' fees and costs incurred without Lab's consent after Lab has assumed defense of the Claim), and (c) all amounts that Lab agrees to pay to any third party to settle any Claim under this section 9.1.1.

9.1.2. By ModMed. ModMed will defend the Lab Indemnified Parties from and against all Claims arising out of or related to the infringement, violation, or misappropriation of a third party's Intellectual Property Rights by the ModMed EHR. ModMed will indemnify the Lab Indemnified Parties from and pay: (a) all damages, fines, costs, and attorneys' fees finally awarded against the Lab Indemnified Parties in any Claim under this section 9.1.2, (b) all out-of-pocket costs (including attorneys' fees) reasonably incurred by the Lab Indemnified Parties in connection with the investigation or defense of a Claim under this section 9.1.2 (other than attorneys' fees and costs incurred without ModMed's consent after ModMed has assumed defense of the Claim), and (c) all amounts that ModMed agrees to pay to any third party to settle any Claim under this section 9.1.2.

9.1.3. Procedures. In the event of a Claim under section 9.1.1 or section 9.1.2, the indemnified party will: (i) give the indemnifying party prompt written notice of the Claim, (ii) grant the indemnifying party full and complete control over the defense and settlement of the Claim, and (iii) at the indemnifying party's

expense, provide assistance in connection with the defense and settlement of the Claim as the indemnifying party may reasonably request. The indemnified party will have the right to observe the defense of the Claim at its own expense and with counsel of its own choosing. The indemnifying party will not settle or compromise any Claim without the indemnified party's prior written consent unless such settlement or compromise: (a) unconditionally and completely releases all Lab Indemnified Parties or ModMed Indemnified Parties (as applicable), (b) does not contain any stipulation to, admission, or acknowledgement of any wrongdoing by any Lab Indemnified Party or ModMed Indemnified Party (as applicable), and (c) does not impose any obligations on the Lab Indemnified Parties or ModMed Indemnified Parties (as applicable) other than solely the payment of money damages paid wholly by the indemnifying party.

## 10. **Limitations of Liability.**

10.1.1. Waiver of Non-Direct Damages. EXCEPT AS PROVIDED IN SECTION 10.1.3, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT, INCLUDING LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SUCH PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

10.1.2. Cap on Liability. EXCEPT AS PROVIDED IN SECTION 10.1.3, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THE AGREEMENT (INCLUDING WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY LAB TO MODMED DURING THE 6 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

10.1.3. Exclusions from Limitations. THE LIMITATIONS IN THIS SECTION 10 WILL NOT APPLY TO: (i) A PARTY'S BREACH OF SECTION 7, (ii) A PARTY'S OBLIGATIONS IN

SECTION 9, (iii) LAB'S PAYMENT OBLIGATIONS RELATED TO FEES, AND (iv) LAB'S INFRINGEMENT OF MODMED'S INTELLECTUAL PROPERTY RIGHTS.

10.1.4. Independent Allocations of Risk. EACH PROVISION OF THE AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THE AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THE AGREEMENT. THE LIMITATIONS IN THIS SECTION 10 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THE AGREEMENT.

## 11. **Compliance.**

11.1. Compliance with Laws. Each party will comply with all applicable Laws, including Laws governing the privacy and security of personal information (including HIPAA and state Privacy Laws), health care fraud and abuse laws (e.g., the federal Anti-Kickback Statute, Stark Law, and False Claims Act), and the 21st Century Cures Act, in performing under the Agreement.

11.2. Business Associate. The parties acknowledge and agree that ModMed is acting as a Business Associate of Common Customers (and that ModMed is not Lab's Business Associate) when providing to Lab or receiving from Lab Common Customers' PHI in connection with Lab's products and services. The Agreement is not intended to create, nor should it be construed as, a Business Associate agreement. Lab acknowledges and agrees that any PHI exchanged through the Interface with the Common Customer will be a covered entity-to-covered entity exchange of PHI for treatment, payment, or healthcare operations purposes as permitted under HIPAA and other applicable Privacy Laws.

11.3. Debarment. Neither party 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 non-procurement 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. Each party 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 and the sam.gov list of sanctioned individuals and entities. Each party will notify the other party if the notifying party or any of its employees, agents, or contractors is sanctioned within 2 business days of learning of the sanction. If this section 11.3 ceases to be true due to the sanction of a party's employee, agent, or contractor, such party will immediately remove, or cause to be removed, the sanctioned employee, agent, and contractor from performance under the Agreement and prevent such person from providing any products and services to Common Customers and from accessing any Common Customer data. For the avoidance of doubt, if either party allows a sanctioned employee, agent, or contractor to provide any products or services to Common Customers or access any Common Customer data in violation of this section 11.3, such party will be in material breach of the Agreement.

11.4. Security Breaches. Lab will inform ModMed promptly (which may be orally) of any Security Breach and share such information about the Security Breach that Lab possesses at the time. Lab will keep ModMed apprised on a recurring basis of Lab's investigation, problem identification, and resolution efforts, providing any information that ModMed reasonably requests. Lab will notify ModMed in writing once the Security Breach is resolved, including a description of the cause and the steps taken to prevent or mitigate recurrence. Lab will cooperate with ModMed and take the actions that ModMed reasonably requests to prevent, remediate, or mitigate any Security Breach.

11.5. Investigations. Upon the other party's reasonable request, ModMed and Lab will cooperate with any governmental, regulatory body or organization, or similar investigation regarding or relating to the Agreement. Such cooperation will not constitute a waiver by either party of any attorney-client or other privilege.

11.6. Records and Audits. Upon ModMed's request, Lab will provide on an annual basis or other frequency reasonably required by ModMed attestations rendered by qualified, independent, third-party organizations demonstrating Lab's compliance with applicable Laws. Lab will keep accurate records of all transactions relating to the Agreement and will preserve such records during the Record Period. During the Record Period, Lab

will, upon prior notice from ModMed, provide ModMed and ModMed's representatives with access to Lab's premises, records, whether stored in tangible or intangible form, and personnel. Lab will fully cooperate with ModMed in connection with such an audit. ModMed and its representatives may audit, interview employees, review and inspect Lab's premises and records, and make copies of records, to confirm that Lab has been and is in compliance with the Agreement, including that Lab has paid all amounts due under the Agreement. Any such audit will be at ModMed's expense. If an audit reveals that Lab has underpaid ModMed any amounts due under the Agreement: (i) Lab will immediately pay ModMed the amount of such underpayment and (ii) if Lab has underpaid ModMed by 5% or more of the amounts due for the period covered by the audit, Lab will also immediately reimburse ModMed its costs associated with such audit.

## 12. **Changes.**

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

## 13. **Miscellaneous.**

13.1. No Exclusivity. Lab 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.

13.2. Independent Contractors. ModMed and Lab are each independent contracting parties. Nothing in the Agreement creates, or should be construed to create, any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any agreement with any third party.

- 13.3. Governing Law; Venue. The Agreement will be governed by and interpreted in accordance with the Laws of the State of Florida, without regard to any provision of Florida law that would require or permit the application of the substantive law of another jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of the federal and state courts in or with jurisdiction over Palm Beach County, Florida. Each party: (i) consents to the exercise of personal jurisdiction over each of the parties by such courts, (ii) waives any right to plead, claim, or allege that such courts are an inconvenient forum, and (iii) will bring all suits, actions, or proceedings arising from or in connection with the subject matter of the Agreement in such courts, unless such party seeks injunctive relief that, in such party's reasonable judgment, would not be effective or timely unless obtained in another venue.
- 13.4. Notices. 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 (for ModMed: 4850 T-Rex Ave., Suite 200, Boca Raton, FL 33431, and for Lab: the address in the Order Form). Notices to ModMed must be addressed to the attention of ModMed's General Counsel. Notices sent in accordance with this section 13.4 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 (b) 1 business day after delivery to an overnight air courier as set forth in clause (iii) above. Either party may change its address for notices by notice to the other party given in accordance with this section 13.4.
- 13.5. ModMed Affiliates.
- 13.5.1. ModMed may use ModMed's Affiliates to perform and exercise its rights under the Agreement.
- 13.5.2. If Lab would like to create an interface with the electronic health record system of a ModMed Affiliate, then Lab would need to enter into a separate Affiliate Agreement. In such a case: (i) each Affiliate Agreement will be a separate agreement, (ii) Lab will pay all fees related to such Affiliate Agreement directly to such ModMed Affiliate, (iii) each ModMed Affiliate will be solely responsible for its performance under its Affiliate Agreement, (iv) Lab must bring all claims arising out of or related to an Affiliate Agreement solely against the applicable ModMed Affiliate and not against ModMed or any other ModMed Affiliate, and (v) any breach by such ModMed Affiliate will not be deemed a breach by ModMed or any other ModMed Affiliate or a breach of the Agreement or any other Affiliate Agreement.
- 13.6. Force Majeure. Neither Lab nor ModMed will have any liability to the other party, nor will it be deemed to have breached the Agreement, for any failure or delay in the performance of any obligation under the Agreement (except the obligation to make payments as and when due) to the extent caused by a Force Majeure Event. The party claiming a Force Majeure Event will: (i) give the other party prompt written notice of the Force Majeure Event, (ii) use commercially reasonable efforts to remedy and resolve the Force Majeure Event and continue to perform as much as possible given the Force Majeure Event, and (iii) resume full performance upon the remedy or removal of the Force Majeure Event.
- 13.7. Assignment. Neither party may assign or delegate the Agreement, in whole or in part, without the other party's prior written consent; provided, that either party may assign the Agreement upon written notice without the other party's consent to an Affiliate or in connection with a reorganization. In addition, ModMed may assign the Agreement upon written notice without Lab's consent in connection with a merger or sale of all or substantially all of its stock or assets. Any assignment or attempted assignment in violation of this section 13.7 will be void. The Agreement will bind and inure to the benefit of the parties and their successors and permitted assigns.
- 13.8. No Third-Party Beneficiary. Except as expressly set forth in the Agreement, there are no third-party beneficiaries to the Agreement.
- 13.9. Entire Agreement; Amendment. The Agreement (i.e., the Order Form, these Lab Terms, and, if applicable, any SOWs) 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, including any electronic data interchange (or EDI) agreements, interconnectivity agreements, or prior orders related to any such agreements between the parties. Except as provided in section 12, the Agreement may be

amended or modified only by a written agreement signed by both parties.

13.10. Severability. If any judicial or administrative authority declares void or unenforceable any provision of the Agreement, then the parties will replace such provision with a substitute that as closely as possible reflects the parties' original intent (including economics and allocations of risk) and is enforceable, and the validity of the other provisions and of the Agreement as a whole will not be affected.

13.11. Waiver. Any waiver of the provisions of the Agreement or of a party's rights or remedies associated with the Agreement must be in writing and signed by the party waiving its rights or remedies to be effective. Failure or delay by a party to enforce the provisions of, or rights or remedies associated with, the Agreement will not be construed as a waiver of the party's rights or remedies or prejudice the party's right to take subsequent action. A party exercising or enforcing any right or remedy associated with the Agreement will not preclude the party from enforcing any other right or remedy.

13.12. Interpretation. Headings used in the Agreement are for convenience only and will not be used in interpreting the Agreement. The Agreement was drafted by both parties and will not be construed against either party. Unless the context otherwise requires, for purposes of the Agreement: (i) the terms "include," "includes," and "including" are to be construed as inclusive, not exclusive, and are deemed to be followed by the words "without limitation", (ii) reference to "days" means calendar days, unless specified as "business days", (iii)

references to termination of the Agreement means any expiration or termination of the Agreement, (iv) words used in the singular have a comparable meaning when used in the plural, and vice-versa, (v) references to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, these Lab Terms; and (vi) references to a statute means such statute as amended and includes any successor legislation and any regulations or other Laws promulgated under such statute.

13.13. Insurance. Each party has and will maintain during the Term: (i) worker's compensation insurance with statutory limits and employer's liability coverage with a minimum limit of \$500,000 per occurrence; (ii) automobile liability insurance covering all owned, non-owned, and hired vehicles consistent with statutory limits as may be required by law and with a minimum limit of \$1,000,000 per occurrence; (iii) general liability insurance with a minimum limit of \$5,000,000 per occurrence, which may be met through a combination of primary and excess (umbrella) policy limits; (iv) professional liability insurance with a minimum limit of \$5,000,000 per occurrence; and (v) network and privacy insurance or similar cyber-risk insurance with a minimum limit of \$5,000,000 per claim and \$5,000,000 annual aggregate. Each party will promptly notify the other party of any material change or cancellation of the required insurance coverages. A party will upon request furnish to the other party a certificate of insurance as evidence of the required insurance.

## **EXHIBIT A**

### **Definitions**

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with an entity (where “control,” for purposes of this definition, means direct or indirect ownership or control 50% or more of the voting interests of the subject entity).

“**Affiliate Agreement**” means an order form and related terms between Lab and a ModMed Affiliate.

“**Agreement**” has the meaning in section 1.1.

“**Business Associate**” has the meaning in HIPAA.

“**Claim**” means third-party claims, demands, proceedings, suits, or causes of action of any kind, whether asserted or threatened.

“**Common Customer**” means a customer of both the ModMed EHR and Lab that utilizes the Interface.

“**Confidential Information**” has the meaning in section 7.1.

“**Disclosing Party**” means the party disclosing Confidential Information to the other party.

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

“**Enhanced Functionality**” means Enhanced Orders and Enhanced Results.

“**Enhanced Orders**” means an Order that includes: (i) history of present illness, (ii) family history of melanoma, if present, (iii) previous history of melanoma with melanoma staging, if applicable, (iv) a Continuity of Care Document (CCD), and (v) digital photographic images.

“**Enhanced Results**” means the ability for Lab to include certain suggested diagnosis codes in Results.

“**Enhanced Start Date**” means the date that a Common Customer or Lab first uses Enhanced Functionality or such earlier date the parties agree upon.

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

“**Feedback**” has the meaning in section 6.3.

“**Feedback Provider**” has the meaning in section 6.3.

“**Feedback Receiver**” has the meaning in section 6.3.

“**Fees**” means: (i) setup fees, annual fees, and transaction fees; (ii) professional services fees; and (iii) any other fees in an Order Form or SOW.

“**Field**” has the meaning in the Order Form.

“**Force Majeure Event**” means an event beyond the reasonable control of, and without fault or negligence of, a party.

“**Functionality**” means the functionality of the Interface set forth in the Order Form, including the Field, whether the Interface includes Orders, Results, or both, and standard or Enhanced Functionality.

“**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.

“**Inhouse Use**” means use of an Interface where Lab and the Common Customer are the same legal entity.

“**Initial Term**” means the period beginning upon the Effective Date and continuing for 2 years.

“**Intellectual Property Rights**” means any and all rights in, related to, under, or arising out of patents; copyrights; corporate and trade names, logos, and service and other marks; Confidential Information, trade secrets, know how, and other intellectual property or proprietary rights, in any jurisdiction, and all related applications and registrations.

“**Interface**” means an interface between the ModMed EHR and Lab’s systems that will provide the Functionality to Common Customers.

**“Instance”** means each URL that ModMed assigns to a Common Customer for such Common Customer’s ModMed EHR instance.

**“Lab”** has the meaning given in the Order Form.

**“Lab Indemnified Parties”** means Lab and its officers, directors, employees, and agents.

**“Lab Terms”** has the meaning in section 1.1.

**“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), the 21st Century Cures Act, and any standards generally adopted by an industry organization that applies to products or services offered by a party.

**“ModMed”** has the meaning given in the Order Form.

**“ModMed EHR”** means the ModMed electronic health record system identified in exhibit B.

**“ModMed Indemnified Parties”** means ModMed, its Affiliates, and any of its or their officers, directors, employees, contractors, and agents.

**“Order”** means an order of a laboratory test.

**“Order Form”** means a lab order form referencing these Lab Terms that is signed by ModMed and Lab.

**“PHI”** means Protected Health Information as defined in HIPAA.

**“Privacy Laws”** means all Laws regarding information protection, including any cybersecurity, data protection and data privacy Laws, and any other

Laws pertaining to the privacy, confidentiality, collection, use, handling, processing, security, transfer, or free movement of individually identifiable information (e.g., PHI and other personally identifiable information), including as applicable the California Consumer Protection Act, the General Data Protection Regulation, and other similar Laws.

**“Receiving Party”** means the party receiving Confidential Information of the other party.

**“Record Period”** means the period during the Term and continuing for 7 years following the Term.

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

**“Result”** means results from a laboratory test.

**“Security Breach”** means a confirmed: (i) circumvention of security controls or (ii) unauthorized access to Sensitive Data, that in each case has resulted in the loss or disclosure of Sensitive Data for which Privacy Laws or other Laws require notifications or other acts.

**“Sensitive Data”** means: (i) the Disclosing Party’s Confidential Information, (ii) PHI, (iii) personally identifiable information of Common Customers or the other party, or (iv) other Common Customer sensitive data.

**“SOW”** means a statement of work referencing these Lab Terms that is signed by ModMed and Lab.

**“SOW Services”** means the professional services that ModMed agrees to perform in a SOW.

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

**“URL”** means Uniform Resource Locator.

## **EXHIBIT B**

### **ModMed-Entity Specific Terms**

#### **Exscribe, Inc.**

- ModMed EHR: Exscribe
- Additional Terms:
  - The Interface is an HL7 interface that can include Orders and Results.
  - The setup Fee is a one-time Fee.

#### **Modernizing Medicine, Inc.**

- ModMed EHR: EMA
- Additional Terms:
  - The Interface is a bidirectional HL7 interface that can include Orders and Results, either via VPN or a third-party provider.
  - The setup Fee is a one-time Fee.
  - The annual maintenance Fee is calculated on a per-Instance basis.
  - The Fees include transaction Fees.
  - EMA provides the option for standard and Enhanced Functionality. (Enhanced Functionality is currently not available for other ModMed electronic health record systems.)
  - Upon the Enhanced Start Date, all Interfaces will be subject to the enhanced transaction Fee.
  - ModMed determines which diagnosis codes are available for Lab to include with Enhanced Results.

#### **Modernizing Medicine Gastroenterology, Inc.**

- ModMed EHR: gGastro
- Additional Terms:
  - The Interface is an HL7 interface that can include Orders and Results.
  - The setup Fee is charged on a per-Common Customer basis. ModMed will invoice Lab the setup for each Common Customer, including those added after the Effective Date.
  - The annual maintenance Fee is calculated on a per-Common Customer basis.

#### **Modernizing Medicine Podiatry Systems, Inc.**

- ModMed EHR: Sammy
- Additional Terms:
  - The Interface is an HL7 PDF Results interface.
  - The setup Fee is a one-time Fee.
  - The annual maintenance Fee is calculated on a per-Common Customer basis.
- ModMed EHR: TRAKnet
- Additional Terms:
  - The Interface is an HL7 ORU Results interface, with an embedded PDF.
  - The setup Fee is a one-time Fee.
  - The annual maintenance Fee is calculated on a per-Common Customer basis.