

ModMed

Certified API Terms of Use

Last Updated: December 23, 2022

1. INTRODUCTION

- 1.1. In these Certified API Terms of Use (“[CAPI TOU](#)”), Modernizing Medicine, Inc. and its affiliates (including Modernizing Medicine Gastroenterology, Inc., Modernizing Medicine Podiatry Systems, Inc., and Exscribe, Inc.) will be referred to as “[ModMed](#)” and terms like “[we](#)”, “[our](#)”, or “[us](#)”. Capitalized terms used in these CAPI TOU without definition will have the meanings in Appendix 1.
- 1.2. These CAPI TOU govern your access to and use of our CAPI Services. Please read these CAPI TOU carefully before you use the CAPI Services as they are a legal agreement between ModMed and you once they are accepted. The CAPI Services are also governed by our [Terms of Use](#) (“[TOU](#)”), which also include terms related to other ModMed services, including our websites. These CAPI TOU are incorporated into and are part of the [TOU](#) (the CAPI TOU and the [TOU](#), collectively, the “[CAPI Terms](#)”). Please also review our [Privacy Policy](#) to learn about our information collection, use, and privacy practices. For example, our [Privacy Policy](#) applies to any personal information we may collect when you use the CAPI Services. For clarity, these CAPI TOU do not apply to the Proprietary APIs, which terms may be found [here](#).
- 1.3. **By using or accessing any of the CAPI Services you accept and agree to be bound by the CAPI Terms.** If you do not agree with any portion of the CAPI Terms, then do not use any CAPI Services. You represent and warrant that you are at least 18 years old and that you possess the legal ability to accept the CAPI Terms.
- 1.4. If you are using the CAPI Services on behalf of an entity, then: (i) you represent and warrant that you have the authority to bind that entity to the CAPI Terms, (ii) you agree to be bound by the CAPI Terms on behalf of that entity, (iii) you will

require all users to comply with the CAPI Terms, and (iv) references to “you”, “your”, and similar terms refer to that entity.

1.5. If you have a Primary Agreement to use the CAPI Services. “Primary Agreement” means: (i) for ModMed Customers, your Transaction Documents (as defined in the TOU), (ii) if you are a ModMed Vendor, a written, binding agreement between you and ModMed, and (iii) for Application providers who are not ModMed Customers or ModMed Vendors, a written, binding agreement between you and each ModMed Customer or Patient containing appropriate terms to cover the Data you will be exfiltrating, or transmitting to us, via the APIs. The Primary Agreement will set forth your rights and obligations related to Data, including its access, use, provisioning, and retention. ModMed enters into unique Primary Agreements with ModMed Customers and ModMed Vendors. The CAPI Terms supplement Primary Agreements with respect to use of the CAPI Services. In the event of a conflict between a Primary Agreement and the CAPI Terms, (a) the CAPI Terms will control regarding use of the CAPI Services and (b) the Primary Agreement will control regarding other matters, such as the use, provisioning, and retention of Data.

2. REGISTRATION AND DEVELOPMENT PROCESS

2.1. ModMed Customers. If you are a ModMed Customer and not using the CAPI Services as an Application provider, then you will use your System user account information as your Credentials to authenticate and to access and use the CAPI.

2.2. Patients. If you are a Patient, then you will use your patient portal user account information as Credentials to authenticate and to use the CAPI. Please note that your provider is responsible for providing you with your Credentials and your Credentials are specific to a particular ModMed Customer (e.g., if you are a patient of multiple ModMed Customer, then you will need to enter your Credentials for each ModMed Customer).

2.3. Application Providers. If you are an Application provider:

2.3.1. To access and use the CAPI Services, you must register by providing certain information [here](#). You must provide us with true, accurate, and complete information on your registration and keep all provided information up to date. As part of our review of your registration, we may request additional information. Once you have completed your registration, we may provide you with additional Credentials.

2.3.2. If we offer a Test Environment, you may use your Credentials to access the Test Environment. In the Test Environment, you may only use test data; you may not upload, transmit, or otherwise enter any “live” or “real” data. Performance in the Test Environment may differ from that in the Production Environment.

2.3.3. In certain cases, for Data to be exchanged via the CAPIs the applicable ModMed Customer or Patient must activate use of such CAPIs in our Systems. We are not responsible for any ModMed Customer’s failure or delay in activating any CAPIs or deactivation of any CAPIs.

2.4. **Credentials.** You must protect your Credentials. Do not let anyone else use your Credentials and do not use anyone else’s Credentials. Notify us immediately if: (i) your Credentials are lost or stolen, (ii) you become aware of any unauthorized use of your Credentials, or (iii) you become aware of any unauthorized use of the CAPI Services or any other breach of security that might affect the CAPI Services. You are fully responsible for any activity under your account. Credentials may not be embedded in open source projects.

3. **USE OF THE CAPI SERVICES**

3.1. **Permission to Use the CAPI Services.** If you are a ModMed Customer or a Patient, then we grant you the right to use the CAPI Services to provide an Application access to your Data. If you are an Application provider, we grant you the right to: (i) access and use the CAPI Services in a Production Environment, (ii) use the CAPI Services to help you develop your Applications, and (iii) market, offer, and distribute your Applications. TOU section 3.3.9 will not apply to the CAPI Services.

3.2. **Limited Rights.** All rights we grant in the CAPI Terms are personal to you and you may not transfer, assign, or sublicense them to others. We may revoke these rights if you violate the CAPI Terms or any applicable Laws. The CAPI Services are the proprietary property of ModMed or its third-party licensors and are protected by intellectual property and other Laws. No rights are granted to you relating to the CAPI Services except for the express rights granted to you in the CAPI Terms. We reserve all rights in the CAPI Services not expressly granted in these CAPI TOU.

3.3. **Compliance; Regulatory.**

3.3.1. You will, at your cost and expense, obtain all necessary regulatory approvals, licenses, and permits applicable to your business and your performance under the CAPI Terms, and comply with all applicable Laws in

performing under the CAPI Terms (and, if you are an Application provider, in providing your Applications). You will not export the CAPI Services in violation of applicable Laws.

3.3.2. If you are an Application provider, you must: (i) collect, process, use, store, disclose, provide, and transfer Data only in compliance with all applicable Laws, privacy policies, and third-party rights, (ii) if applicable, only use Data for the limited purposes authorized in your Primary Agreement, (iii) if applicable, notify ModMed Customers that their Data will be available to your Applications, and (iv) provide legally-compliant privacy notices and protections.

3.3.3. If you will be using the CAPIs to access or send Protected Health Information on behalf of ModMed or a ModMed Customer, then you must first have one or more Business Associate agreements (each a "Business Associate Agreement") with either us or each ModMed Customer to the extent required by HIPAA. The CAPI Terms are not a Business Associate Agreement and may not be construed as creating any Business Associate relationship. By using the APIs to access or send Protected Health Information, you represent and warrant that you have signed all Business Associate Agreements or other arrangements as may be required for such access or transmission to comply with HIPAA or any other applicable Laws.

3.4. Additional Obligations. Except as expressly authorized by these CAPI TOU, you will:

3.4.1. Not interfere with anyone else's use of the CAPI Services;

3.4.2. Not copy, reproduce, sell, license, rent, lease, distribute, display, transfer, modify, or make derivative works from the CAPI Services;

3.4.3. Not remove, alter, or tamper with any copyright, trademark, or other proprietary rights or legal notices associated with the CAPI Services;

3.4.4. Not decompile, disassemble, reverse engineer, or otherwise attempt to discover or derive any proprietary software code or information associated with the CAPI Services or the underlying ideas, algorithms, structure, or organization of the Systems (except to the extent such restriction is prohibited by applicable Law);

3.4.5. Not use the CAPI Services to defame, harass, abuse, threaten, stalk, or defraud any entity or person;

- 3.4.6. Not submit, upload, post, or transmit any Data or other material that: (i) you do not have a right to reproduce, display, or transmit, (ii) infringes intellectual, proprietary, or other rights of any party, or (iii) is harmful or unlawful;
- 3.4.7. Ensure that your use of the CAPI Services will not generate excessive load on the CAPI Services or the Systems or cause the CAPI Services or Systems to behave inaccurately or inconsistently;
- 3.4.8. Not interfere in any way with the operation of the CAPI Services or Systems or any server, network, or system associated with the CAPI Services or Systems;
- 3.4.9. Not attempt to breach, defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any firewall, encryption, security, authentication routines, or software protection mechanisms in the CAPI Services or Systems, including any such mechanism used to restrict or control the functionality of the CAPI Services or Systems;
- 3.4.10. Not use any automated program, tool, or process (including web crawlers, scrapers, robots, bots, spiders, and automated scripts) to access the CAPI Services, the Systems, or any server, network, or system associated with the CAPI Services or Systems, or to extract, collect, harvest, or gather content or data from the CAPI Services or Systems; and
- 3.4.11. Not allow Applications to do or attempt to do any of the acts prohibited by this section 3.4 or assist or permit any person in engaging in any of the acts prohibited by this section 3.4.

3.5. No Viruses. You represent and warrant that your use of the CAPIs (and, if you are an Application provider, your Application) will not contain or introduce any viruses or other harmful or malicious code, software, computer instructions, devices, or techniques that can or were designed to threaten, infect, damage, disable, or shut down the CAPI Services or the Systems or any other technology, software, solution, equipment, or computer system (e.g., no viruses, worms, Trojan horses, malware, etc.).

3.6. Open Source. If you are an Application provider, you represent and warrant that your Applications will not contain any software code that is subject to a license that, when used in conjunction with the CAPI Services, requires our software code, or other software code combined or distributed with our software code, to be: (i) disclosed or distributed in source code form, (ii)

licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

3.7. Costs and Technology Requirements. You will be responsible for all of your own costs to perform under the CAPI Terms. You are solely responsible for providing and maintaining, at your own risk, option, and expense, appropriate software, hardware, and other technology needed for you to receive and use the CAPI Services, which must comply with the CAPI Terms and the Documentation. Please note that additional work may be required to use the CAPI Services for ModMed Customers who have licensed on-premise electronic health records systems.

3.8. Customer Support. If you are an Application provider, you will be solely responsible for all aspects of the sales, enrollment, implementation of, training, maintenance, and support related to a ModMed Customer's use of your Applications.

3.9. ModMed Customer Acknowledgements. If you are a ModMed Customer, you acknowledge and agree that: (i) the Applications are Third-Party Services (as defined and further described in the TOU), which for example you access and use at your own risk; (ii) you are solely responsible for selecting which, if any, Applications you use and for screening and selecting the providers of the Applications; (iii) you are solely responsible for activating and deactivating the CAPIs used or accessed by any Applications; (iv) by activating use of the CAPIs by an Applications, you give, and you direct ModMed to enable you to give, the Application and its provider access to your Data; (v) once an Application and its provider has access to your Data, the provider may share your Data with its developers, suppliers, affiliates, and other individuals and entities; and (vi) ModMed is not responsible for any Application, the use or disclosure of Data by an Application or its provider, or any other acts or omissions by an Application provider. An Application provider's use and disclosure of your Data is governed solely by the agreement between you and the Application provider.

3.10. Patient Acknowledgments. If you are a Patient, you acknowledge and agree that: (i) the Applications are Third-Party Services (as defined and further described in the TOU), which for example you access and use at your own risk; (ii) you are solely responsible for selecting which, if any, Applications you use and for screening and selecting the providers of the Applications; (iii) you are solely responsible for activating and deactivating the CAPIs used or accessed by any Applications; (iv) by activating use of the CAPIs by an Applications, you give, and you direct ModMed to enable you to give, the Application and its provider access to your Data; (v) once an Application and its provider has access to your Data, the provider may share your Data with its developers,

suppliers, affiliates, and other individuals and entities; and (vi) ModMed is not responsible for any Application, the use or disclosure of Data by an Application or its provider, or any other acts or omissions by an Application provider. An Application provider's use and disclosure of your Data is governed solely by the agreement between you and the Application provider.

4. **CHANGES TO THE CAPI TERMS AND THE CAPI SERVICES**

4.1. **Changes to the CAPI Terms.** We may change the CAPI Terms at any time. The date last updated is at the top of the CAPI Terms. Please check the CAPI Terms regularly to ensure that you are aware of any changes to the CAPI Terms. We will use reasonable efforts to notify you of material changes to these CAPI TOU before such changes take effect to afford you with a reasonable opportunity to update your Applications to preserve compatibility with the CAPI Services, such as by posting a notice directly on the CAPI Services, by sending an email notification (if you have provided your email address to us), or by other reasonable methods. Your use of the CAPI Services after changes to the CAPI Terms means you have accepted the changes. If you do not agree with the changes, stop using the CAPI Services before the changes take effect or immediately upon learning of changes that have already taken effect. If you accessed or used the CAPI Services before the initial effective date of the CAPI Terms, your use of the CAPI Services after such effective date means you have accepted the CAPI Terms and that you agree that the CAPI Terms govern your use of the CAPI Services.

4.2. **Changes to, and Monitoring of, the CAPI Services.** (i) We may modify the operation of, or any feature of, the CAPI Services at any time. We will use reasonable efforts to notify you of material changes to the CAPI Services before such changes take effect to afford you with a reasonable opportunity to update your Applications to preserve compatibility with the CAPI Services, such as by posting a notice directly on the CAPI Services, by sending an email notification (if you have provided your email address to us), or by other reasonable methods. (ii) We also may, with or without notice, and without liability to you or any other party: (a) investigate any suspected or alleged misuse of the CAPI Services and cooperate with any law enforcement or other governmental entity or any other third parties in such investigation and (b) disclose information about your use of the CAPI Services in connection with a law enforcement or other governmental entity investigation or in response to a lawful court order or subpoena. ModMed may monitor your use of the CAPI Services (including accessing and using the Applications) in order to verify your compliance with the CAPI Terms, improve the CAPI Services and Systems, and assess the quality and security of the Applications. Currently, ModMed does not charge

any fees specific to the CAPI. If in the future we charge fees for the CAPIs, we will update these CAPI TOU to include a description of such fees.

4.3. Updates.

4.3.1. ModMed may, but does not have to, develop and provide updates for our CAPI Services, which may include upgrades, bug fixes, patches, and other error corrections and new features (collectively, “Updates”). Updates may also change or completely remove certain features and functionality. You agree that ModMed has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality.

4.3.2. Portions of the CAPI Services may not properly operate if you do not install all Updates, so we encourage you to promptly install all Updates. We may also suspend your access to CAPI Services until you install certain Updates after providing you a reasonable opportunity to update your technology. For clarity, all Updates are part of the CAPI Services and subject to the CAPI Terms.

5. TERMINATION AND SUSPENSION

5.1. **Your Termination.** Subject to any obligations in a Primary Agreement you have with ModMed, you may terminate your use of the CAPI Services by providing written notice to ModMed at api@modmed.com.

5.2. **Termination and Suspension.** You acknowledge and agree that, to the extent not inconsistent with applicable Law: (i) ModMed may at any time and without liability, terminate or suspend your access to the CAPI Services, in whole or in part, including if ModMed determines that: (a) you have violated the CAPI Terms, a Primary Agreement, or any applicable Law, (b) any term of the CAPI Terms violates applicable Law, including the federal Anti-Kickback Statute, the Stark Law, the 21st Century Cures Act, or the False Claims Act, (c) you or any of your owners is excluded from participation in a Federal Health Care Program (as defined in at 42 U.S.C. § 1320a-7b(f)) or otherwise debarred, declared ineligible, suspended, or otherwise sanctioned by any federal or state government, or (d) if ModMed believes your use of the CAPI Services is unauthorized presents a security threat, is for fraudulent purposes, or interferes with others’ use of the CAPI Services, (ii) such termination or suspension may happen without prior notice, and (iii) in the event of such termination or suspension, ModMed may immediately deactivate and terminate your account and terminate your access to the CAPI Services.

5.3. Suspension and Downtime. To the extent not inconsistent with applicable Law, we may limit, suspend access to or shut down the CAPI Services entirely or in part at any time, including in order to: (i) fix problems with the CAPI Services, (ii) conduct routine maintenance, or (iii) update the CAPI Services as described in section 4.3. The CAPI Services may not always be available and should not be relied upon in an emergency. In the event of downtime, other temporary limits on, or unavailability of the CAPI Services, including to fix problems with the CAPI Services, conduct routine maintenance, update the CAPI Services, provide support services, remediate unplanned downtime, or other planned or unplanned purpose, we will make commercially reasonable efforts to ensure that the period of unavailability is no longer than necessary to achieve the applicable purpose. ModMed will endeavor to implement such limitation or suspension of access or shutdown of the CAPI Services in a consistent and non-discriminatory manner and, if applicable, consistent with any service level agreements under the CAPI Terms or the Primary Agreement.

5.4. Effect of Termination.

5.4.1. Upon any termination of the CAPI Terms: (i) all rights granted to you under the CAPI Terms will cease and (ii) you must cease all use of the CAPI Services.

5.4.2. Any provisions of the CAPI Terms that, by their nature should survive the termination of the CAPI Terms, will survive, including sections: 5.4, 6.1, 6.3, 7, 8, 9, and 10.

6. PROPRIETARY RIGHTS

This section 6 applies to Application providers. ModMed Customers should refer to their Primary Agreement regarding these matters.

6.1. Retention of Rights. Each party will retain all of its intellectual property rights.

6.2. Attribution.

6.2.1. ModMed may: (i) include you in our listings of companies connected via the APIs, including on our websites, and (ii) in the course of promoting, marketing, or demonstrating the Systems or CAPI Services, produce and distribute incidental depictions, including screenshots, video, or other content, from ModMed Customers' use of the Applications.

6.2.2. You may make appropriate and truthful reference to ModMed in the documentation for the Applications; provided, that: (i) you must not either

directly or indirectly, promote or advertise any Application as being sponsored, endorsed, or recommended by ModMed and (ii) unless we have provided you prior written consent in each instance, all references to ModMed must be limited to plain word marks (e.g., no using our logos). You must obtain our prior written consent before any other use of ModMed's name or other references to ModMed (e.g., in marketing materials, blogs, press releases, etc.).

6.2.3. Except as expressly permitted in the CAPI Terms or the Primary Agreement, neither party will refer to the other in any press release, marketing materials, advertisements, or other public broadcast or communication of any kind without first obtaining the other party's prior written consent.

6.3. **Feedback.** If you provide us with any comments, suggestions, ideas, or other feedback (together, "Feedback"), you agree that: (i) you have no obligation to provide Feedback, (ii) we have no obligation to use Feedback, (iii) we have an unrestricted right to use and exploit any Feedback you do provide, including the right to permit others to do both, and (iv) you are not entitled to receive any compensation for any Feedback.

6.4. **Data.** You acknowledge that: (i) ModMed Customers have granted ModMed the right to use Protected Health Information and other data to create data that is de-identified in accordance with the HIPAA de-identification standard and (ii) ModMed may use, sell, provide to third parties, and otherwise commercialize any such de-identified data for any purpose not prohibited by Law. You agree that nothing in the CAPI Terms will be deemed to restrict ModMed's ability to commercialize, market, license, use, provide to third parties, exploit, transform, or sell such de-identified patient and other data.

7. **NO WARRANTIES**

THE CAPI SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE FULLEST EXTENT PERMITTED BY LAW, MODMED MAKES NO AND DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE CAPI SERVICES, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS, INCLUDING ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE IN TRADE. MODMED DOES NOT WARRANT: (i) THAT THE CAPI SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, (ii) THAT ANY DEFECT OR ERROR WILL BE CORRECTED, (iii) THAT THE CAPI SERVICES WILL BE SECURE AND FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (iv) THAT

ANY DATA PROVIDED BY OR THROUGH THE CAPI SERVICES WILL BE CURRENT OR ACCURATE, OR (v) AGAINST ANY LOSS OR CORRUPTION OF ANY DATA OR SUBMISSIONS. YOUR USE OF THE CAPI SERVICES IS ENTIRELY AT YOUR OWN RISK.

8. **LIMITATIONS OF LIABILITY**

8.1. IN NO EVENT WILL WE (WHICH, AS A REMINDER, INCLUDES OUR AFFILIATES) OR ANY OF OUR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, CONTRACTORS, OR CONSULTANTS BE LIABLE TO YOU (WHETHER UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR ANY OTHER THEORY) FOR (i) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, OR INFORMATION OF ANY KIND) ARISING OUT OF OR RELATED TO YOUR USE OF THE CAPI SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR (ii) DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS EXCEEDING, IN THE AGGREGATE FOR ALL CLAIMS, THE GREATER OF: (A) THE AMOUNTS PAID BY YOU, IF ANY, SPECIFICALLY FOR THE CAPI SERVICES ASSOCIATED WITH THE CLAIM IN THE 6 MONTHS PRIOR TO THE EVENTS GIVING RISE TO SUCH CLAIM OR (B) \$500.

8.2. EACH PROVISION OF THE CAPI TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS 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 CAPI TERMS. THE LIMITATIONS IN THE CAPI TERMS WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

8.3. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INCIDENTAL, OR OTHER DAMAGES OR TOTAL LIABILITY, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

9. **INDEMNITY**

In addition to any indemnification obligations you may have, you will indemnify ModMed (which, as a reminder, includes affiliates) and our respective 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)

third-party claims arising out of or related to your use of, inability to use, or reliance upon the CAPI Services, (ii) the Applications, including your provision of or use of any Application, (iii) an Application provider's act or omission (including a Data incident or breach), or (iv) your violation of the CAPI Terms or applicable Law.

10. MISCELLANEOUS

10.1. **Notice.** ModMed may provide you with notices, including those regarding changes to these CAPI TOU, by postings on our websites, on the CAPI Services, or by other means (e.g., via email).

10.2. **Governing Law.** The CAPI Terms and any claim or dispute between you and ModMed arising out of or relating to the CAPI Services or the CAPI Terms will be governed by and construed 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. Any claim or dispute between the parties will be resolved on an individual basis in the state or federal courts of the State of Florida and the United States, respectively, in or with jurisdiction over Palm Beach County, Florida. If you are a United States city, county, or state government entity, then the following applies instead of the language above: the parties agree to remain silent regarding governing Law and venue.

10.3. **Regulatory Acknowledgments.** The parties' intent is that the CAPI Terms comply with the 21st Century Cures Act (including the Application Programming Interfaces Conditions and Maintenance of Certification Requirements at 45 C.F.R. § 170.404) and any provision of the CAPI Terms that does not comply with the 21st Century Cures Act will be replaced as described in section 10.5. Nothing in the CAPI Terms will be construed to prohibit or restrict any communication in a manner that violates the Condition of Certification at 45 C.F.R. § 170.403(a). Each party acknowledges and intends that the terms contained in the CAPI Terms that relate to the content and manner of a request for access, exchange, or use of electronic health information (as defined at 45 C.F.R. § 171.102) reflect the parties' mutual agreement (in an arm's-length transaction without coercion) and meet the "content" and "manner requested" conditions of the Content and Manner Exception at 45 C.F.R. §§ 171.301(a) and (b)(1), respectively.

10.4. **Waiver.** A waiver of a provision of the CAPI Terms must be in writing and signed by the party entitled to the benefit of such provision. ModMed's failure to exercise or enforce any right or provision of the CAPI Terms will not constitute a waiver of such right or provision.

- 10.5. **Severability.** If any provision of the CAPI Terms is declared void or unenforceable by any judicial or administrative authority, 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 CAPI Terms as a whole will not be affected.
- 10.6. **Independent Contractor.** No joint venture, partnership, employment, or agency relationship exists between you and ModMed as a result of the CAPI Terms or use of the CAPI Services. ModMed is not a third-party service provider under PCI-DSS.
- 10.7. **Force Majeure.** ModMed will not be liable for failure or delay in performing its obligations if such failure or delay is due to a force majeure event or other circumstances beyond ModMed's reasonable control, including acts of any governmental body, war, cyber war or attack, terrorism, insurrection, sabotage, embargo, fire, flood, severe weather, earthquake, tornado, hurricane, labor disturbance, pandemic or other public health emergency, interruption of or delay in the internet or 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 CAPI Services.
- 10.8. **Interpretation.** Headings used in the CAPI Terms are for convenience only and will not be used in interpreting the CAPI Terms. The CAPI Terms will be deemed to be drafted by both parties and will not be construed against either party. Unless the context otherwise requires, the term "include" (and its variants) are to be construed as inclusive, not exclusive, and are deemed to be followed by the words "without limitation."
- 10.9. **No Exclusivity.** You acknowledge that the CAPI Terms are non-exclusive and nothing in the CAPI Terms will be deemed to limit ModMed's right to offer similar services to third parties. Nothing in the CAPI Terms 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 Applications anywhere in the world to any existing, prospective, or future customer, including any ModMed Customer, or from entering into any agreement with any third party.
- 10.10. **Entire Agreement.** The CAPI Terms set forth the entire agreement between the parties regarding the CAPI Services and supersede any prior or contemporaneous communications (whether written or oral) between the parties, but solely with respect to the CAPI Services. Except as expressly set

forth in the CAPI Terms, there are no third-party beneficiaries to the CAPI Terms.

APPENDIX 1 **Definitions**

1. “Application” means applications, websites, products, and services that use or access the CAPIs and that are not developed or provided by ModMed.
2. “Business Associate” has the meaning in HIPAA.
3. “CAPIs” means (i) ModMed’s Certified APIs that permit a party to access and send Data, including the EMA Certified FHIR API, the gGastro Certified FHIR API, the Exscribe Certified FHIR API, and the TrakNet Certified FHIR API, and (ii) the Sammy FHIR application programming interfaces that permit a party to access and send Data (which, for clarity, is not a Certified API).
4. “CAPI Services” means the CAPIs, the Documentation, Test Environment, Production Environment, Test Data, and all other products and services provided with or through the CAPIs.
5. “Certified APIs” means application programming interfaces that are certified to the certification criteria established by the Office of the National Coordinator for Health IT at 45 C.F.R. § 170.315(g)(7)-(9) or (g)(10).
6. “Credentials” means any username, client identification number, password, keys, “secret”, or tokens that you use to access or use the CAPI Services, including those we provide you in relation to the CAPI Services.
7. “Data” means data, information, or other content stored or to be stored in the Systems or otherwise transmitted or accessed via the CAPIs. Data does not include data that is subject to PCI-DSS, which data may not be stored in the Systems or otherwise transmitted via the CAPIs.
8. “Documentation” means the specifications, requirements, or other documentation that ModMed provides or makes available related to the CAPIs, including those [here](#).
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.
10. “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 (e.g., the Payment Card Industry) that applies to products or services offered by a party (e.g., PCI-DSS).

11. "ModMed Customer" means customers of ModMed's cloud-based or licensed on-premise electronic health records systems (including our Electronic Medical Assistant® or EMA®, gGastro®, Exscribe, TrakNet, and Sammy systems), associated systems (such as practice management systems), and related services.
12. "ModMed Vendor" means a supplier, service provider, or other vendor of ModMed.
13. "Patient" means a patient of a ModMed Customer who has requested access to his or her Data through an Application.
14. "PCI-DSS" means the Payment Card Industry Data Security Standards.
15. "Production Environment" means a live-access, production environment of the CAPIs.
16. "Proprietary APIs" means application programming interfaces that are not Certified APIs.
17. "Protected Health Information" has the meaning given in HIPAA.
18. "Systems" means: (i) with respect to ModMed Customers, ModMed's cloud-based or licensed on-premise electronic health records systems, including our Electronic Medical Assistant® or EMA®, gGastro®, Exscribe, TrakNet, and Sammy systems, and associated systems such as practice management systems and related services, and (ii) with respect to ModMed, the ModMed technology, software, hardware, equipment, network, or other systems specified in the Primary Agreement.
19. "Test Data" means sample data that ModMed provides or makes available.
20. "Test Environment" means a "sandbox" environment for testing and development purposes.