

# Amendment to Modulo LLC Terms of Use Applicable to U.S. Government Users and Subscribers

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LAST UPDATED: JUNE 25TH, 2018

This Amendment is an agreement between Modulo LLC including its affiliates (collectively, “Modulo LLC”) and the United States Government and applies to any U.S. Government agency users and account holders, who use or access the Services (the “Agency” or “you”).

You, as a United States Government entity, are required, when entering into agreements with other parties, to follow applicable federal laws and regulations, including those related to ethics; privacy and security; accessibility; federal records; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum. Modulo LLC and the Agency (together, the “Parties”) agree that modifications to Modulo LLC’s general Terms of Use available at <https://www.modulodesignstudio.com/legal>, and is appropriate to accommodate your legal status as a government entity, your public (in contrast to private) mission, and other special circumstances. Accordingly, the Agreement is hereby modified by this Amendment as it pertains to the Agency’s use of the Services. Capitalized terms that are not expressly defined in this Amendment have the meanings given to them in the Agreement.

A. Government entity.

“You” and “your” within the Agreement shall mean the Agency itself and shall not apply to, or bind in their individual capacity (i) the individual(s) who utilize the

Services on the Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. Modulo LLC will look solely to the Agency to enforce any violation or breach of the Agreement by such individuals, subject to U.S. federal law.

B. Public purpose.

Any requirement(s) set forth in the Agreement that use the Services be limited to private, personal and/or non-commercial purposes is hereby waived.

C. Agency content serving the public.

Modulo LLC agrees that the Agency may distribute or otherwise publish, via the Services, Agency Content which may contain or constitute promotions, advertisements or solicitations for goods or services, so long as the material relates to the Agency's mission and complies with any requirements set forth in the Agreement relating to Content.

D. Indemnification.

All provisions of the Agreement whereby you indemnify Modulo LLC are hereby waived. Liability of the Agency for any breach of the Agreement or this Amendment or any claim arising from the Agreement or this Amendment, shall be determined under the U.S. Federal Tort Claims Act, or other U.S. governing authority. Liability of Modulo LLC for any breach of the Agreement or this Amendment, or any claim arising from the Agreement or this Amendment, shall be determined by applicable U.S. federal law.

E. Governing law and jurisdiction.

Provisions in the Agreement related to dispute resolution are deleted. In their place, the Agreement and this Amendment shall be governed, interpreted and enforced in accordance with the federal laws of the United States of America, and jurisdiction shall be in U.S. federal courts. By mutual consent, the Parties may elect to use alternative dispute resolution (ADR) methods. To the extent permitted by U.S. federal law, the laws of the State of California will apply in the absence of federal law.

F. Changes to standard Agreement.

Modulo LLC may update or change the Agreement after 30 days' prior notice to you at the email address you designate on your account details page. You shall notify Modulo LLC of any change in the notification email address during the life of this Amendment.

#### G. Access and use.

Modulo LLC acknowledges that the Agency's use of the Services may energize significant citizen engagement. Language in the Agreement allowing Modulo LLC to terminate any Services, or close the Agency's account, is modified to reflect the Parties' agreement that Modulo LLC may unilaterally terminate Services and/or terminate the Agency's account only for breach of the Agency's obligations under the Agreement or its material failure to comply with the instructions and guidelines posted on the websites of the Services, or if Modulo LLC ceases to operate any Services generally. Modulo LLC will provide the Agency with a reasonable opportunity to cure any breach or failure on the Agency's part.

#### H. Provision on crawlers.

Any provision(s) in the Agreement prohibiting "crawling" or "spidering" of any Modulo LLC website, or any similar processes, is amended to allow the Agency to apply such processes solely to its pages, channels or repositories, and solely to fulfill the Agency's obligations under the U.S. Federal Records Act or other applicable U.S. federal law or regulation.

#### I. Ownership of names.

Any provision(s) in the Agreement related to Modulo LLC's ownership of and right to change your selected user name(s), user ID(s), domain name(s), channel name(s), and group name(s), are modified to reasonably accommodate the Agency's proprietary, practical, and/or operational interest in its own publicly-recognized name and the names of Agency programs.

#### J. Modifications of user Content.

Modulo LLC agrees that the right reserved in the Agreement to modify your Content is limited to technical actions necessary to index, format, display, troubleshoot and

make accessible to the public your Content. It does not include the right to substantively edit or otherwise alter the meaning of your Content, other than at your direction. Notwithstanding the foregoing, nothing in this Amendment shall result in an expansion of your rights as a United States Government entity under the Copyright Act of 1976 (17 U.S.C. §§101 et seq.), specifically including Section 105 of the Act.

K. Limitation of liability.

The Parties agree that nothing in the Agreement limiting Modulo LLC's liability in any way grants Modulo LLC a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of any applicable U.S. federal law.

L. Uploading, deleting.

The Parties understand and agree that you are not obligated to provide any Content to the Services, and you reserve the right to remove any and all of your Content at your sole discretion, subject to the data deletion and retention practices described in the Privacy Policy.

M. No endorsement.

Modulo LLC agrees that your seals, insignia, trademarks, logos, flags, program identifiers, service marks, trade names, and the fact that you use the Services, shall not be used by Modulo LLC in such a manner as to state or imply that the Services are endorsed, sponsored or recommended by the Agency or by any other element of the U.S. Federal Government, or are considered by you or these entities to be superior to the products or services of other providers. Except for pages, screens and other Content whose design and substance is under the control of the Agency, or for links to or promotion of such pages, screens or Content, Modulo LLC agrees not to display any Agency or government seal, insignia, logo, flag, program identifier, service mark or trade name on the Modulo LLC website, unless permission to do so has been granted by the Agency or by other relevant federal government authority. Modulo LLC may list the Agency's name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than that of any other third party name.

N. No business relationship created.

The Parties are independent entities and nothing in the Agreement or this Amendment creates an agency, partnership, joint venture, or employer/employee relationship.

O. No cost agreement.

Nothing in the Agreement or this Amendment obligates you to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from the Agreement or this Amendment are contingent upon the payment of fees by one party to the other. Despite the foregoing, the provisions in Section R (Separate future action for fee based services) will apply if Agency decides to purchase a Subscription or any other fee-based service provided by Modulo LLC.

P. Provision of data.

In the case of termination of service by Modulo LLC, within 30 days of such termination Modulo LLC will provide you, at your written request, with all Agency-related user-generated survey content that is publicly visible on the websites of the Services. Data will be provided in a commonly used file or database format as Modulo LLC deems appropriate. Modulo LLC will not provide data if doing so would violate its Privacy Policy. The Agency acknowledges that the backup of Agency-related user-generated Content is the sole responsibility of the Agency. If the Agency cancels its Modulo LLC account, it is the Agency's sole responsibility to download or export (using the relevant functionality provided by the Services) any survey data from its account that it desires to retain before effecting such cancellation.

Q. Separate future action for fee based services.

Modulo LLC provides the Services at a basic level free of charge to the public, but this may change in the future. You acknowledge that while Modulo LLC will provide you with some services and features for free, Modulo LLC reserves the right to begin charging for those services and features at some point in the future. Modulo LLC will provide you with at least 30 days' advance notice of a change involving the charging of fees for the basic level of service. You also understand that Modulo LLC may currently offer other premium and enterprise services for a fee. The Parties understand that fee-based services are categorically different than free products, and are subject to federal procurement rules and processes. Before the Agency decides to

enter into a premium or enterprise subscription, or any other fee-based service that Modulo LLC or alternative providers may offer now or in the future, you agree to determine that the Agency has a need for those additional services for a fee, to consider the subscription's value in comparison with comparable services available elsewhere, to determine that Agency funds are available for payment, to properly use the Government Purchase Card if that card is used as the payment method, to review any then-applicable Agreement for conformance to federal procurement law, and in all other respects to follow applicable federal acquisition laws, regulations, and agency guidelines when initiating that separate action.

R. Precedence; Further amendment; Termination.

This Amendment constitutes an amendment to the Agreement; any language in the Agreement indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. If there is any conflict between this Amendment and the Agreement, or between this Amendment and other addenda, rules or policies associated with the Services, this Amendment shall prevail. This Amendment may be further amended only upon written agreement executed by both Parties. The Agency may close the Agency's account and terminate this Agreement at any time, but the Agency shall not be entitled to a refund of any fees paid.

S. Posting and availability of this Amendment.

This Amendment shall be posted with the Terms of Use posted on the Modulo LLC website either by incorporation of its text or via an integral link. The Parties agree this Amendment contains no confidential or proprietary information, and either Party may release it to the public at large. You may also post it for the benefit of other U.S. Government agencies interested in using the Services on federal informational websites.

T. Security.

Modulo LLC will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. Recognizing the changing nature of the Web, Modulo LLC will continuously work with users to ensure

that its Services meet users' requirements for the security of systems and data. Modulo LLC agrees to discuss implementing additional security controls as deemed necessary by the Agency to conform to the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 et seq.

#### U. Federal records.

The Agency acknowledges that use of the Services may require management of federal records. The Agency and user-generated content may meet the definition of federal records as determined by the Agency. If Modulo LLC holds federal records, the Agency must manage those federal records in accordance with all applicable records management laws and regulations, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), and regulations of the National Archives and Records Administration (NARA) at 36 CFR Chapter XII Subchapter B. Managing the records includes, but is not limited to, secure storage, retrievability, and proper disposition of all federal records including transfer of permanently valuable records to NARA in a format and manner acceptable to NARA at the time of transfer. The Agency is responsible for ensuring that Modulo LLC is compliant with applicable records management laws and regulations through the life and termination of its relationship with Modulo LLC.

#### V. Assignment.

Neither party may assign its obligations under this Amendment or Agreement to any third party without prior written consent of the other. Despite the foregoing, Modulo LLC may, without the Agency's consent, assign its obligations under this Amendment or Agreement to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization or consolidation, or the sale of all or substantially all of Modulo LLC's assets.

Additional items for discussion and possible inclusion in this Amendment: Modulo LLC understands current federal law, regulation and policy may affect the Agency's use of Modulo LLC's products and services in ways not addressed in the clauses above. Much depends on the nature of the products and services offered by Modulo LLC (which may change from time to time), and how the Agency makes use of those services (which also may change). Among the topics the Agency may seek to discuss with Modulo LLC in the

future, and which may lead to a agreement on amendments or additional clauses to this Amendment, are the matters of privacy and accessibility.