

Modelve Professional Services Terms and Conditions

1 Interpretation

1.1 Definitions

In this document, unless expressly provided otherwise:

"Commencement Date" means the commencement date set out in the Order Form or, if no commencement date is stated, the date that Modelve countersigns the Order Form.

"Confidential Information" means all information, regardless of its form, relating to a party or its businesses or affairs which:

- (a) is proprietary or confidential in nature or which is treated by that party as confidential; and
- (b) is not lawfully in the public domain.

Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the Recipient (as defined below) at the time of disclosure; (c) rightfully obtained by the Recipient on a non-confidential basis from a third party; or (d) independently developed by the Recipient.

"Consumer Laws" means all relevant consumer laws including, but not limited to:

- (a) the Australian Consumer Law;
- (b) Canadian consumer protection laws; and
- (c) United States of America consumer protection laws.

"Customer" means the customer named on the Order Form.

"Customer Data" means any data inputted or provided by the Customer for the purposes of Modelve performing the Services.

"Data Breach" means any confirmed unauthorized access to, acquisition of, or disclosure of Customer Data that compromises the confidentiality, integrity, or availability of such Customer Data, and which is determined by Modelve, acting reasonably, to require notification to affected individuals or regulators under applicable Privacy Laws. For clarity, "Data Breach" does not include unsuccessful attempts or activities that do not compromise the security of Customer Data.

"Intellectual Property Rights" means any and all intellectual and industrial property rights of whatever nature (whether or not registered or registrable) including, but not limited to:

- (a) all technical information, know how, trade and service marks, business names, domain names, copyright, designs, patents, logos, drawings, inventions, discoveries, research developments, trade secrets, rights in circuit layouts and rights in data bases;
- (b) any application or right to apply for registration of any of the rights in clause (a) and all renewals and extensions of those rights; and
- (c) the right to have Confidential Information kept confidential.

"IT Systems" means all of a Party's information technology systems including, without limitation, all databases.

"Modelve" means the service provider entity specified on the Order Form, being:

- (a) Modelve Pty Ltd (ACN 674783049) an Australian company
- (b) Modelve Canada Ltd a Canadian company

Or otherwise means Modelve Pty Ltd

"Modelve IP" means any Intellectual Property Rights owned by or licensed to Modelve and provided to the Customer in relation to provision of the Services, including any Intellectual Property Rights in:

- (a) the Software and the underlying source code; and

- (b) all end use documentation, including the knowledge base and API documentation; and

- (c) professional services material, including generators or templates aligned to industry standards, diagnostic frameworks, methodologies and toolkits, modelling blueprints and libraries, valuation models and audit pack templates, training materials, data models and middleware or ELT pipelines.

"Order Form" means the Modelve order form signed by the Customer and Modelve that may set out, without limitation, details of the Services purchased by the Customer and the pricing for the Services.

"Party" or **"Parties"** means Modelve and/or the Customer.

"Payment Method" means a current, valid, accepted method of payment for the Customer, as set out in the Order Form or as otherwise provided by the Customer to Modelve in writing from time to time.

"Personal Information" means personal information or personal data as defined in the applicable Privacy Law, and where not defined, means information about an identified or reasonably identifiable individual, whether recorded in material form or not. This includes information that, alone or in combination with other information, can be used to identify an individual.

"Privacy Laws" means all applicable privacy laws including, but not limited to:

- (a) the Australian Privacy Principles and the *Privacy Act 1988* (Cth);
- (b) the privacy laws of Canada; and
- (c) the privacy laws of the United States of America.

"Related Entity" means any company that controls, is controlled by, or is under common control with Modelve, where "control" means the power to direct the management or policies of a company.

"Services" means the professional services Modelve is engaged to provide to the Customer, as set out in the Order Form and in accordance with these terms and conditions and any other agreement between Modelve and the Customer.

"Software" means any software that is proprietary or licensed to Modelve that is used in connection with the Services. Software also includes any user documentation and any update, modification or release of any part of that software after this Agreement is entered into by the parties.

"Term" means the term set out in the Order Form.

"Tax Invoice" means an invoice that complies with the requirements of applicable tax laws (including GST, VAT, sales tax or similar) in the jurisdiction in which the supply is made.

2 General

These Terms and Conditions and the Order Form (together, the **"Agreement"**) shall apply to the supply of Services by Modelve to the Customer and shall prevail over all other agreements, documents and communication regarding the supply of Services to the Customer.

3 Orders and Services

- 3.1 An order will be deemed to be accepted on the date that Modelve countersigns the Order Form.
- 3.2 Subject to the Customer's rights under any applicable Consumer Laws, once accepted by Modelve, no Order Form may be reduced or cancelled, without consultation and first receiving Modelve's approval, which must not be unreasonably withheld.

3.3 Modelve will provide the Services that the Customer orders pursuant to the Order Form.

4 Payment

- 4.1 The prices for all Services are as set out in the Order Form (**Service Fee**). Unless otherwise stated, all prices, fees and costs are in the currency stated in the Order Form and exclude taxes, duties and excises.
- 4.2 Services will be billed in advance, to be paid on receiving a Tax Invoice from Modelve, or otherwise as set out in the Order Form.
- 4.3 Modelve will submit a correctly rendered invoice for the Service Fee to the Customer. An invoice will be correctly rendered if it is a valid Tax Invoice rendered in accordance with the Order Form. Payment of the Service Fee must be made by the Customer:
- (a) within the time specified in the Order Form, and if no time is specified then within 30 days of receipt of the correctly rendered invoice;
 - (b) by direct credit to the nominated bank account of Modelve as advised to the Customer from time to time; and
 - (c) in immediately available funds and without set-off, counter claim, condition or, unless required by law, deduction or withholding.
- 4.4 If, within 14 days of receiving written notice requesting payment of any outstanding sum under this Agreement, the Customer has not made payment, then Modelve may immediately:
- (a) cancel an order; and/or
 - (b) terminate this Agreement.

5 Licence

- 5.1 In consideration of the Customer paying Modelve all amounts owing to Modelve under the Order Form, Modelve grants to the Customer, and the Customer accepts, a non-exclusive, non-transferable, perpetual licence to use the Modelve IP in connection with the Services and solely for the Customer's internal purposes, and subject to this Agreement.
- 5.2 The Customer may permit its employees, agents, third party consultants and/or contractors ("**Users**") to use the Modelve IP in connection with the Services and solely for the Customer's internal purposes, provided such Users first agree to abide by this Agreement
- 5.3 The Professional Services do not include the supply of any Software or any continuing right to access or use Modelve's hosted software (including any modules, APIs or middleware). Any access to Software is provided only under a separate Subscription Agreement (www.modelve.com/terms) and is subject to payment of applicable subscription fees. Any credentials, keys, sandbox or other temporary access provided during the Services are for implementation, testing or evaluation in connection with the Services only, are not production-use rights, may be withdrawn at any time, and will automatically terminate on the earlier of completion of the Services or expiry/termination of the relevant subscription. For clarity, no support, maintenance, hosting, service levels or data-retention obligations apply to any Software unless Customer maintains an active subscription, and while Deliverables may generate Modelve Background IP licensed under this clause, the Deliverables themselves do not include the Software.

6 Intellectual Property Rights

- 6.1 Any and all Modelve IP is and will remain the exclusive property of Modelve and/or its licensors, including any modifications, improvements, upgrades and derivative works. Nothing in this Agreement intends to transfer any Modelve IP to, or to vest any Modelve IP in, the Customer. The Customer is only entitled to the limited use of the Modelve IP granted to the Customer in this Agreement.
- 6.2 Subject to clauses 6.3 and 6.4, any and all Intellectual Property Rights created, developed or acquired by Modelve in performing

the Services in connection with this Agreement, will remain the property of Modelve.

- 6.3 If, in providing the Services, Modelve is engaged to create any Intellectual Property, specifically for use by the Customer (the "**Developed Intellectual Property**"), Modelve agrees that all Intellectual Property Rights in, and title to, the Developed Intellectual Property will vest absolutely in the Customer. For the avoidance of doubt, Developed Intellectual Property does not include any Modelve IP (including any background Modelve IP) or any Intellectual Property Rights of a Third Party. Customer hereby grants Modelve, a right and license to use the Developed Intellectual Property for its internal business purposes.
- 6.4 Modelve agrees that title to, and all Intellectual Property Rights (including future copyright) in the Developed Intellectual Property will automatically be transferred and assigned to the Customer without the need for any further action on the part of either party.
- 6.5 The Customer agrees not to take any action to jeopardise, limit or interfere with Modelve IP. Any unauthorised use of Modelve IP is a violation of this Agreement as well as a violation of intellectual property laws, including (as applicable and without limitation) copyright laws and trademark laws.
- 6.6 Modelve and its suppliers and/or licensors will have the right, but not the obligation, to defend or settle, at their discretion, any legal action arising from a claim that the use of Modelve IP under this Agreement, including by the Customer, infringes any patent, copyright, or other ownership rights of a third party. The Customer agrees to provide Modelve with written notice of any such claim within 10 days of the Customer's notice thereof and provide reasonable cooperation in Modelve's defence. Modelve and its suppliers and/or licensors have sole discretion and control over such defence and all negotiations for a settlement or compromise of the claim. The remedies provided in this Section constitute the Customer's sole and exclusive remedy and Modelve's entire liability, for any such claim of infringement or alleged infringement. Notwithstanding anything in this clause, Modelve cannot bind the Customer to any settlement or compromise for which the Customer is liable without the Customer's consent.
- 6.7 Modelve has no liability for any claim of intellectual property infringement where:
- (a) the Modelve IP has been modified by parties other than Modelve and the infringement claim would not have occurred in the absence of such modification; or
 - (b) where the Customer's use of the Modelve IP in conjunction with Customer Data where use with such use and/or data gives rise to the infringement claim; or
 - (c) where the Customer uses the Modelve IP outside the permitted scope of this Agreement.
- 6.8 A Party ("**Discloser**") may disclose Confidential Information to the other Party ("**Recipient**") during the term of this Agreement. Subject to clause 6.9, the Recipient must hold in confidence and not disclose (including without limitation, distribute, transmit or transfer) or use for any purpose other than in accordance with this Agreement, the Confidential Information or any portion thereof, except to the extent the disclosure is required by law.
- 6.9 The Recipient must only disclose Confidential Information to the Recipient's employees, agents, third party consultants, systems integrators and/or contractors ("**Permitted Recipients**") to the extent such persons have a need to know such information for the purposes of this Agreement and provided each Permitted Recipient shall be obligated in writing to comply with this Agreement relating to use and disclosure of Confidential Information.
- 6.10 Both Parties acknowledge and agree that any breach of this clause 6 may cause Modelve immediate and irreparable harm and that damages for any such breach may be inadequate. Accordingly, Modelve is entitled to seek to obtain injunctive relief for any breach or threatened breach of this clause 6 by the Customer.

- 6.11 Both Parties acknowledge and agree that any breach of clauses 6.8 and 6.9 by the Recipient may cause the Discloser immediate and irreparable harm and that damages for any such breach may be inadequate. Accordingly, the Discloser is entitled to seek to obtain injunctive relief for any breach or threatened breach of clauses 6.8 and 6.9 by Modelve.
- 6.12 Nothing contained in this clause 6 will be construed as limiting Modelve's or the Customer's right to any other remedies at law, including without limitation the recovery of damages for breach of this Agreement.
- 6.13 This clause 6 will survive the termination of this Agreement.

7 Third Party Software

- 7.1 The Customer acknowledges that the Services may utilise third party software. Modelve will have a licence to use or is otherwise entitled under a valid and enforceable agreement to use, any third party software required to provide the Services. Modelve has no reason to believe and is not aware that the Software infringes the Intellectual Property of any third party.
- 7.2 Any licensor of Modelve whose software is used to provide the Services will be a third party beneficiary with respect to this Agreement, and such licensor or supplier will have the right to enforce this Agreement as it relates specifically to its software in its own name as if it were Modelve. Modelve will provide the Customer prior written notice of the identity of such third parties.

8 Customer Data

- 8.1 The Customer may deliver Customer Data in order for Modelve to provide the Services. The Customer or its licensors will own all rights in the Customer Data. The Customer is solely responsible for the legality, integrity and quality of the Customer Data.
- 8.2 For the duration of the Term, the Customer grants Modelve a non-exclusive, non-transferable licence to use the Customer Data solely for the purposes of providing the Services in accordance with the Agreement.
- 8.3 Modelve will, in providing the Services, comply with its Privacy Policy and all applicable Privacy Laws.
- 8.4 The Customer agrees that any Personal Information that is included in Customer Data or is otherwise provided to, or acquired by Modelve, in connection with the Services:
- (a) may be used, stored, manipulated, transferred or otherwise dealt with by Modelve, its Related Entities and any of their respective contractors or agents for any purpose in connection with the provision of the Services; and
 - (b) has been provided to Modelve after the Customer has acquired the relevant individual's informed consent to the use of that Personal Information by Modelve, its Related Entities and any of their respective contractors or agents as contemplated or permitted by the Agreement.
- 8.5 Modelve must maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and Personal Information and shall not access the Customer Data or Personal Information except to provide the Services and discharge any other obligations under this Agreement. Modelve shall restrict access to the Customer Data and Personal Information to only those employees, contractors or agents that require such access to meet Modelve's obligations under this Agreement.

9 Term and Termination

- 9.1 This Agreement will commence on the Commencement Date and continue for the duration of the Term.
- 9.2 Either Party may terminate this Agreement if other Party (**Breaching Party**) breaches any term of this Agreement and within 30 days of providing the Breaching Party written notice of the breach:

- (a) if the breach is capable of remedy, and the breach has not been remedied; or
- (b) if the breach is not capable of remedy, and the Breaching Party fails to make other arrangements to the reasonable satisfaction of the other Party.

10 Warranties

- 10.1 The Customer agrees that except as otherwise set out in this Agreement, the Services and Modelve IP are provided on an "as is" basis.
- 10.2 Except as otherwise set out in this Agreement, Modelve expressly disclaims all warranties of any kind, whether express or implied, statutory or otherwise, including without limitation any implied warranties of **merchantability** or **fitness for a particular purpose**, or that the Services will be uninterrupted, error-free or completely secure. Nothing in this clause affects those consumer guarantees and remedies for breach of those guarantees which cannot be excluded under any relevant Consumer Laws.

11 Limitation of Liability

Subject to the Customer's rights and remedies under any applicable Consumer Laws and otherwise, to the maximum extent permitted by law:

- (a) neither Party will be liable in respect of any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement and the provision of the Services; and
- (b) the aggregate liability of either Party arising out of or in connection with this Agreement and the provision of the Services will be limited to a sum equal to the Service Fee paid by the Customer to Modelve during the 12 months prior to the event giving rise to the liability or claim.

12 Exclusion of Liability

To the extent permitted by law, Modelve will not be liable for any Loss incurred or suffered by the Customer arising from:

- (a) the Customer's inability to use the Services due to any incompatibility or a fault in the Customer's IT Systems;
- (b) a Data Breach caused by the Customer not having appropriate technology and risk controls in place;
- (c) disruption to the Service or loss of Customer Data caused by the failure of a Third Party Service; or
- (d) any Customer Data provided by the Customer to Modelve in connection with the performance of the Services.

13 Indemnity

- 13.1 Each Party ("**Indemnifying Party**") releases and indemnifies the other Party, its directors, officers, servants and agents against all claims (including the cost of defending or settling any claim) arising from:
- (a) a breach by the Indemnifying Party of any of its obligations or warranties under this Agreement; or
 - (b) any wilful misconduct or negligence of the Indemnifying Party, its agents, or employees for whose acts or omissions the Indemnifying Party is vicariously liable;

and the amount of all claims, damages, costs and expenses which may be paid, suffered or incurred in respect of any such loss, damage or injury shall be made good at the Indemnifying Party's expense.

14 Notices

- 14.1 Notices under this Agreement may be delivered by hand, by mail or transmitted by email to the address of the party listed in the Order Form.

14.2 Notice will be deemed given:

- (a) in the case of hand delivery, upon acknowledgment of receipt by an officer or other duly authorized employee, agent or representative of the receiving party;
- (b) in the case of posting, three days after despatch; or
- (c) in the case of email, at the time the email is recorded as sent by the sender's system.

15 Variations

The provisions of this Agreement shall not be varied, except by agreement in writing signed by the Customer and Modelve.

16 Force Majeure

No Party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure is due to any event or circumstance outside a Party's reasonable control including, but not limited to, fire, storm, flood, lightning, earthquake, natural disaster, explosion, war (whether declared or not), terrorism, invasion, rebellion, sabotage, epidemic, pandemic (including Covid-19), blockade, embargo, riot, disturbance, any act, delay or omission by a government agency (including, but not limited to, the creation or amendment of laws and regulations, the grant, delay in granting or refusal to grant any approvals, consents, licences, permits or authorities) or the failure of a supplier, public utility or common carrier ("**Force Majeure**").

17 Survival

This clause 17 and clauses 6, 8, 11, 12 and 13 will survive termination of this Agreement.

18 Governing law

This Agreement is governed by and construed in accordance with:

- (a) the laws of the State of Victoria, Australia, if the Modelve entity entering into this Agreement is Modelve Pty Ltd; or
- (b) the laws of the Province of British Columbia and the federal laws of Canada applicable therein, if the Modelve entity entering into this Agreement is Modelve Canada Ltd;

The Parties will use reasonable efforts to resolve any dispute through good faith negotiations. Failing which, the Parties agree that any mediation or legal proceedings will take place in the jurisdiction whose laws govern this Agreement.