

Modelve Subscription Services Terms and Conditions

1 Interpretation

1.1 Definitions

In this document, unless expressly provided otherwise:

"API" means application programming interface.

"Automatic Payment" means a payment transaction initiated by Modelve through the Secure Payment System to withdraw funds from the Customer's bank account or charge the Customer's credit or debit card, including by way of direct debit, pre-authorized debit, ACH debit, or similar payment method.

"Commencement Date" means:

- (a) the commencement date set out in the Order Form or, if no commencement date is stated, the date that Modelve countersigns the Order Form; or
- (b) the date on which Modelve accepts an Online Order.

"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 applicable consumer protection 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.

"Expiry Date" means the expiry date noted on the Order Form, or 30 days from the supply of a manual quotation. An Online Order expires immediately if an order is not placed.

"Initial Term" means the initial term set out in the Order Form, or, if not stated in the Order Form, means 12 months.

"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.

"Managed Services" means the managed services to be provided by Modelve to the Customer as set out in the Order Form.

"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.

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

"Online Order" means an online order the Customer places from the Modelve website using the Secure Payment System.

"Open Source Materials" means any software for which the source code is made freely available to the public under a licence which may permit users to use, change, and improve the software, and to redistribute it in modified or unmodified form.

"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.

"Renewal Term" means the renewal term set out in the Order Form, whereby the subscription for the Services will automatically renew for each relevant renewal term unless otherwise terminated under clause 11. If the renewal term is not set out in the Order Form, the renewal term is 12 months.

"Reseller Services" means the provision of access to, or use of, the Software or Services by or for the benefit of a third party who is not a Customer, whether for a fee or otherwise, with Modelve's prior written consent.

“**Secure Payment System**” means Stripe (or similarly reputable payment gateway) for managing subscription billing and processing payments via phone, website, or other electronic means.

“**Services**” means the services Modelve is engaged to provide to the Customer, including the Subscription Services, Support Services, Managed Services and if applicable the Reseller Services, as set out in the Order Form and in accordance with these terms and conditions and any other agreement between Modelve and the Customer.

“**Severity 1 issue**” means a critical production issue that severely impacts the Customer’s use of the Subscription Services, including a systems outage.

“**Software**” means the Software Plan specified in the Order Form, together with any additional users, portfolios or add-ons purchased by the Customer for use 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.

“**Software Plan**” means the Modelve software plan selected by the Customer and specified in the Order Form, as described on Modelve’s website (including the functionality for that plan at the time of purchase).

“**Subscription Services**” means the Software incorporating any Customer Data delivered as a service (SaaS).

“**Support Services**” means the support services provided by Modelve in connection with the Subscription Services, including:

- (a) 24/7 access to end use documentation, including the Software knowledge base and API documentation;
- (b) 24/7 access to software support ticketing;
- (c) 24/7 monitoring and resolution of Severity 1 issues (including systems outages); and
- (d) Ticket and email support for all other Software issues, to be provided between 9AM to 5PM AEST from Monday to Friday but excluding Australian public holidays.

“**Third Party Services**” means any hardware, software, services, systems, applications or infrastructure provided by a third party that Modelve uses to provide the Services (or any part thereof).

“**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, or the date on which Modelve accepts an Online Order from the Customer.
- 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.
- 3.4 The Services will be provided on a subscription basis, which will automatically renew at the end of the Initial Term and any Renewal Terms, unless and until this Agreement is terminated in accordance with clause 11.

3.5 Modelve may cancel an order and/or terminate this Agreement if the Customer has not agreed to the Order Form prior to the Expiry Date.

3.6 The Customer may from time to time invite its customers to act as an end user of the Software (**Partner End User**) in accordance with the terms of this Agreement. The Customer must notify Modelve of any proposed Partner End User. Modelve may approve or reject any Partner End User in its absolute discretion, which will be exercised reasonably. Modelve may invoice the Customer an additional Subscription Amount for any approved Reseller Services provided.

3.7 The Partner End User is bound by the terms and conditions of this Agreement as if it were the Customer and, prior to use the Software or the Services, Partner End Users shall first agree to abide by this Agreement. The Customer remains responsible for the Partner End User’s compliance with the terms of this Agreement and the Customer is liable for any breach of this Agreement by a Partner End User.

4 Payment

4.1 The prices for all Services are as set out in the Order Form (**Subscription Amount**). 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 Modelve may increase the Subscription Amount by five percent (5%), or by another amount agreed in the Order Form, every 12 months to account for indexation. Additional users, portfolios or add-ons may be purchased at any time and will be added to the Subscription Amount.

4.3 Modelve may update how its Software Plans are packaged. If a plan change materially alters the Customer’s Subscription Amount or core functionality of the Services purchased under the Order Form, Modelve will give at least 90 days’ written notice before renewal, and the Customer may accept the change, terminate under clause 11 without penalty, or continue the same plan where commercially practical and agreed by both Parties in writing.

4.4 Services will be billed on a recurring, periodic basis, using the Secure Payment System and are to be paid via Automatic Payment, or on receiving a Tax Invoice from Modelve, as set out in the Order Form.

4.5 Where the Order Form states that payment of the Subscription Amount is to be made via Automatic Payment:

- (a) Modelve will automatically bill the Subscription Amount to the Payment Method at the end of the Initial Term and each Renewal Term, until the Customer’s subscription is cancelled or terminated; and
- (b) The Customer permits Modelve to use the Secure Payment System to process these payments, including pre-authorizations or reversals, for all amounts owing under this Agreement as and when due, and agrees to maintain sufficient funds to fulfill these payments without further written notice.
- (c) The Customer may cancel their authority for Automatic Payments and move to payment via Tax Invoice at any time by providing written notice to Modelve.

4.6 Where the Order Form sets out that payment of the Subscription Amount is to be paid on receiving a Tax Invoice from Modelve, Modelve will submit a correctly rendered invoice for the annual Subscription Amount (in advance) 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 Subscription Amount 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.
- 4.7 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, revocable licence to use the Modelve IP and the Software in connection with the Services and solely for the Customer's internal purposes, for the duration of the Term and subject to this Agreement. The Customer's licence to use the Software will commence from the Commencement Date.
- 5.2 In addition to any validly appointed Partner End User, the Customer may permit its employees, agents, third party consultants, systems integrators and/or contractors ("**Users**") to use the Modelve IP and the Software in connection with the Services and solely for the Customer's internal purposes, provided such Users first agree to abide by this Agreement.

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, 6.4 and 6.5, any and all Intellectual Property Rights created, developed or acquired by Modelve in performing the Services in connection with this Agreement, including without limitation providing the Services, will remain the property of Modelve. For clarity, the Software and the underlying source code is and shall be owned by Modelve including all improvements, enhancement, upgrades and derivatives thereto.
- 6.3 If the Customer or its personnel provide Modelve with any suggestions, ideas or other feedback relating to the Modelve IP ("**Feedback**"), Modelve may use the Feedback freely for any purpose, and the Customer grants Modelve a perpetual, irrevocable, worldwide, royalty-free licence to use and commercialise any intellectual property rights in the Feedback. Modelve does not need to attribute the Feedback to the Customer or its personnel. To the extent permitted by law, the Customer consents, and must ensure its personnel consent, to any acts or omissions by Modelve in relation to the Feedback that may otherwise infringe any moral rights of the Customer or its personnel. Without limiting the foregoing, the Customer hereby waives, and must ensure its personnel waive, in favor of Modelve and its successors, assigns, and licensees, any and all moral rights in the Feedback, to the maximum extent permitted by law.
- 6.4 If, in providing any 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 background Modelve IP) or any Intellectual Property Rights of a Third Party.
- 6.5 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.

- 6.6 The Customer agrees not to take any action to jeopardise, limit or interfere with Modelve's IP. Any unauthorized use of Modelve's 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.
- 6.7 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 the Software or the 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.
- 6.8 Modelve has no liability for any claim of intellectual property infringement where:
- (a) the Modelve IP or Software has been modified by parties other than Modelve and the infringement claim would not have occurred in the absence of such modification; or
 - (b) the Customer's use of the Modelve IP or Software 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 or Software outside the permitted scope of this Agreement.
- 6.9 A Party ("**Discloser**") may disclose Confidential Information to the other Party ("**Recipient**") during the term of this Agreement. Subject to clause 6.10, 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.
- 6.10 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.
- 6.11 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.
- 6.12 Both Parties acknowledge and agree that any breach of clauses 6.9 and 6.10 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 6.9 and/or 6.10 by the Recipient.
- 6.13 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.
- 6.14 This clause 6 will survive the termination of this Agreement.

7 Restrictions on use

The Customer acknowledges and agrees that it will not, and must procure that each of its Users and any Partner End User do not:

- (a) access or attempt to access the source code of the Software;
- (b) knowingly transmit to the Software or the Subscription Service any virus, malware or other disabling feature;
- (c) conduct penetration testing, probes or any other security scans without Modelve's prior written consent;
- (d) misuse the API or other systems limits that may compromise the Software;
- (e) operate any Reseller Services, including uploading infrastructure, physical and other asset data into the Software, in relation to a Partner End User or other entity unless approved by Modelve in accordance with this Agreement;
- (f) use the Services for any fraudulent, unlawful, harmful or malicious purpose, or in a way that may cause damage or risk to Modelve, its customers, or any third party; or
- (g) use the Services in breach of any applicable law or regulation.

Modelve may temporarily suspend or restrict access to the Services, without liability, if it reasonably believes that a breach of this clause 7 is caused by or through the Customer's account. Modelve shall use commercially reasonable efforts to provide written or electronic notice of any suspension and to reinstate access once the issue has been resolved.

8 Third Party Software

- 8.1 The Customer acknowledges that the Software may contain 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.
- 8.2 The Customer acknowledges that Open Source Materials may be used and incorporated into the Services under the terms of the applicable open source license agreement.
- 8.3 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.

9 Customer Data

- 9.1 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.
- 9.2 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.
- 9.3 The Customer grants to Modelve an unconditional, world-wide, irrevocable and royalty free licence and right to Modelve to use, display, copy and modify de-identified information obtained from the Customer Data for the purposes of improving the Services and the outcomes derived by the Services.
- 9.4 Modelve will, in providing the Services, comply with its Privacy Policy and all applicable Privacy Laws.

- 9.5 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.
- 9.6 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 any discharge 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.

10 Service Levels

- 10.1 Modelve will use commercially reasonable efforts to ensure that the Software is available for use by the Customer 99.9% of the time in each calendar month during the Term, excluding scheduled maintenance activities, non-production environments, AWS infrastructure outages.
- 10.2 Modelve is not responsible for the Customer's inability to access or use the Software or the Services due to any failure relating to the general infrastructure or connectivity of the Internet, any cabling, networks, systems, software, hardware and other equipment of the Customer or any other issues otherwise caused by the Customer.

11 Term and Termination

- 11.1 This Agreement will commence on the Commencement Date and remain in effect until terminated in accordance with clause 11.2 or 11.3 ("**Term**").
- 11.2 The Customer may terminate this agreement at the end of the Initial Term and each Renewal Term by providing a minimum of 30 days' written notice prior to the end of the Initial Term or relevant Renewal Term.
- 11.3 Either Party may terminate this Agreement if the other Party (**Breaching Party**) breaches any term of this Agreement and within 30 days of providing the Breaching Party with 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.

12 Warranties

- 12.1 The Customer agrees that except as otherwise set out in this Agreement, the Services and Modelve IP are provided on an "**as is**" basis.
- 12.2 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.

13 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 Subscription Amounts paid by the Customer to Modelve during the 12 months prior to the event giving rise to the liability or claim.

14 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 Software or 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 and/or Third Party Software; or
- (d) any Customer Data provided by the Customer to Modelve in connection with the performance of the Services.

15 Indemnity

15.1 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.

16 Notices

16.1 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.

16.2 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.

17 Variations

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

18 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**").

19 Survival

This clause 19 and clauses 6, 9, 13, 14 and 15 will survive termination of this Agreement.

20 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.