

SUBSCRIPTION AGREEMENT

THE TERMS OF THIS SUBSCRIPTION AGREEMENT GOVERN YOUR USE OF THE SERVICES. BY EXECUTING AN ORDER FORM FOR THE SERVICES OR OTHERWISE ACCESSING AND USING THE SERVICES, YOU HEREBY ACCEPT AND AGREE TO COMPLY WITH THE TERMS OF THIS AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY AS IT SETS FORTH EACH PARTY'S RIGHTS, OBLIGATIONS, AND LIABILITIES.

WE RESERVE THE RIGHT TO UPDATE THESE TERMS AT ANY TIME BY POSTING AN UPDATED COPY OF THIS AGREEMENT TO THE MODWELL WEBSITE AND YOU WAIVE THE RIGHT TO NOTICE OF ANY SPECIFIC CHANGES. BY CONTINUING TO ACCESS AND USE THE SERVICES AFTER THE POSTING OF AN UPDATED COPY OF THIS AGREEMENT, YOU AGREE TO THE UPDATED TERMS.

This Subscription Agreement ("**Agreement**") is between Modwell Holdings Inc., located at 6 Pheasant Woods Lane, East Hampton NY 11937 ("**Modwell**") and the individual or legal entity that subscribes to, or otherwise accesses and uses, the services and products defined herein (the "**Customer**"). For purposes of this Agreement, Modwell and Customer may be referred to individually as a "**party**" and collectively as the "**parties**".

WHEREAS, Modwell provides Services designed to assist professionals engaged in real estate transactions, architecture, construction, interior design, and similar services, and which may include the development of three dimensional blueprints, models, layouts, and similar configurations of residential and/or commercial real estate which may be used solely as artistic representations and not as actual architectural drawings or plans ("**3D Modeling**");

WHEREAS, Customer desires to subscribe to the Services subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1 Definitions. As used in this Agreement:

- 1.1 "Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2 "Authorized User"** means Customer and Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
- 1.3 "Confidential Information"** shall be ascribed the meaning set forth in Section 8 of this Agreement.
- 1.4 "Customer Data"** means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any Authorized User through the Services. For the avoidance of doubt, Documentation, Modwell IP and Customer Intellectual Property are not considered Customer Data.
- 1.5 "Documentation"** means the user guides, assistance, instructions, technical or operational notes provided or otherwise made available by Modwell to Customer regarding the access, use, security, performance, or operation of the Services.
- 1.6 "Modwell IP"** means the Services, the Documentation, and all intellectual property rights embedded therein as the same may be made available to Customer and its Authorized Users during the Term. For the avoidance of doubt, Modwell IP specifically includes any and all Output generated by the Services during the Term.
- 1.7 "Order" or "Order Form"** means a signed order form document, or other online subscription process made available on the Site, by which Customer agrees to subscribe to a specifically identified packages or suite of Services.
- 1.8 "Output"** means any video or photographic 3D Modeling or artistic representations created for Customer through use of the Services.
- 1.9 "Services"** means Modwell's online, web-based software applications, tools, and platforms (including 3D Modeling)

available on the Site on a subscription basis via the execution of an Order, including any ancillary products and services such as design or zoning services.

1.10 “**Site**” means <https://www.modwellco.com/> or any successor website and any mobile application thereof.

1.11 “**Subscription Fees**” means the amount Customer pays, or is required to pay, for the Services during the Term.

1.12 “**Subscription Package**” means the specific selection of features and functions of the Services that Customer elects to subscribe to for a twelve (12) month period in the Order. Not all Services available on the Site may be available to Customer depending upon the Subscription Package elected by Customer.

1.13 “**Third-Party Products**” means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services, including any open-source components.

1.14 “**Term**” means that period(s) specified in an Order during which Customer will have a access to and use of the Services (the “**Initial Term**”), as the same may be renewed or extended in accordance with the applicable Order.

2 Services

2.1. Provision of Services. During the Term, and subject to and conditioned upon Customer’s payment of the Subscription Fees and its compliance with the terms and conditions of this Agreement, Modwell agrees to make the Services and Documentation available to Customer on a subscription basis for Customer’s internal business purposes only (e.g., no commercial resale or commercial redistribution of the Services); provided that if included in Customer’s Subscription Package, Customer may distribute the Output generated by Customer to third parties as artistic representations only. Customer may not remove any copyright or proprietary legend from the Output unless specifically included as part of Customer’s Subscription Package or otherwise approved by Modwell in writing. Customer agrees that its subscription to the Services is limited to the features and functions included in Customer’s Subscription Package and is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Modwell with respect to future functionality or features. The Services are available subject to the usage limitations and restrictions set forth in the Order. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services or Modwell intellectual property rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

2.2. Third-Party Products. Customer acknowledges that use of certain Services may require the installation of certain software components owned or licensed by Modwell from a third-party (collectively “**Third Party Software**”) or that are subject to an open source license agreement, including components available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative (“**Open Source Software**”) and collectively with Third Party Software, the “**Third Party Products**”). Any use of Third Party Products by Customer shall be solely governed by the terms and conditions of the applicable Third Party Software license or Open Source Component license and not by the terms of this Agreement. Any such Third Party Products license terms shall be set forth in the readme or about files of the Services or otherwise made available by Modwell. Customer hereby agrees to comply with any additional terms and conditions applicable to the Third Party Products.

2.3. Authorized Users. Customer shall, and shall cause each Authorized User to, abide by the terms of this Agreement. Any action or omission of an Authorized User shall constitute an act or omission of Customer. Modwell may terminate or suspend any User’s access to the Services for any breach without notice.

2.4. Upgrades. Modwell shall provide all necessary bug fixes, patches, corrections or other updates to the Services (“**Updates**”) to keep the Services operating in accordance with the Documentation. Modwell may also provide new releases (“**Upgrades**”) to the Services in its sole discretion. All such Updates or Upgrades shall be considered part of the Services and shall be subject to the terms and conditions of this Agreement. To the extent necessary, Customer shall install, download, run, or otherwise employ all such Updates or Upgrades as soon as practicable upon its receipt or notification of the availability of the Updates or Upgrades for download.

2.5. Support and Maintenance. During the Term, the Services will perform in accordance with the Documentation and any service level representations set forth in the Order. If specified in the Order, Modwell may provide Customer with technical support services related to the Services (“**Support Services**”). In providing the Support Services described herein, Modwell may be required to access, perform operations on and/or in, and transmit information and data to, Customer’s information technology

networks, assets, and environment, and Customer (i) acknowledges and consents to Modwell undertaking, in Modwell's sole and reasonable discretion, all of the foregoing to perform the Support Services, (ii) represents and warrants to Modwell that it has the legal authority to consent with the same, and (iii) Modwell has procured the consent from any other applicable third party to allow Customer to perform the Support Services.

3 Customer Responsibilities and Restrictions

3.1. Customer Responsibilities. Customer is responsible for all activities conducted by itself and its Authorized Users. Except for Modwell's obligations described in Section 8 (Confidentiality), Customer shall have sole responsibility for (i) the accuracy, security quality, and legality of the Customer Data and the means by which Customer acquired the Customer Data and the right to provide the Customer Data for the purposes of this Agreement (including ensuring the receipt of all permissions from individuals and other third parties as may be necessary in order to provide the Customer Data for the purposes contemplated in this Agreement); (ii) the security and confidentiality of Customer's and its Authorized Users' account information; (iii) maintaining a backup of all Customer Data; (iv) the distribution of any Output, including that any sharing of Output to a third party website or service complies with the terms of this Agreement and the terms of such other website or listing service; and (v) preventing unauthorized access to, or use of, the Services. Customer will notify Modwell promptly of any such unauthorized access or use of the Services or its Authorized User's access credentials. Customer further acknowledges and agrees that Modwell is not a data "processor" and does not, and shall not, collect, retain, or otherwise process personal data for, or on the behalf of, Customer.

3.2. Compliance with Laws. Customer shall comply with all applicable federal, state, and local laws, rules, and regulations (collectively and individually, the "laws") in connection with its use of the Services, the collection and other processing of all Customer Data, and performance under this Agreement. Customer acknowledges that Modwell exercises no control over the Customer Data transmitted by Customer or Authorized Users to or through the Services. Modwell may impose limits on the use or access to the Services as required by applicable law or otherwise to protect or improve the functionality, operability, or availability of the Services.

3.3. Restrictions. Customer and its Authorized Users shall not, and shall not permit any third party to do any of the following except to the extent expressly authorized herein: (i) copy or republish the Services; (ii) make the Services available to any person other than Authorized Users; (iii) rent, lend, sell, sublicense, or use the Services to provide service bureau, timesharing or other services to third parties; (iv) send or store in the Services any Sensitive Data, or connect to the Services in any country that has data residency or data transmission restrictions, including, but not limited to, Russia and the People's Republic of China; (v) send or store viruses, spyware, ransomware, timebombs, Trojan horses, or other harmful or malicious code, or files to or in connection with the Services; (vi) send or store infringing, offensive, harassing or otherwise unlawful material in connection with the Services; (vii) modify or create derivative works based upon the Services or Documentation; (viii) remove, modify, or obscure any copyright, trademark, or other proprietary notices contained in the Services or Documentation; (ix) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code used or embodied in the Services, which for the avoidance of doubt includes the related algorithms, methods, and techniques; (x) access or use the Services or Documentation in order to build a similar or competitive product, or (xi) exploit the Services or Documentation in any unauthorized way whatsoever, including by trespassing or burdening network capacity. Customer hereby agrees to only view, access, download, display, or otherwise disclose any 3D Model through the features available in the Services and to not export or disseminate any 3D Model from the Services. If for some reason these restrictions are prohibited by applicable law or by an agreement Modwell has with one of its licensors, then the activities are permitted only to the extent required to comply with such law or agreement.

4 Intellectual Property

4.1. Ownership and Reservation of Rights. Modwell and its Affiliates retain all right, title, and interest in and to the Services and the Modwell IP, including any and all derivative works thereof including the Output. Customer acknowledges and agrees that all Output (including materials and 3D Modeling) generated by Modwell for Customer under this Agreement is and remains the sole and exclusive intellectual property of Modwell and that Customer is granted only a limited, non-exclusive, non-transferable, revocable right to access and use the Services and Output during the Term as set forth herein.

4.2. Rights in Customer Data. As between Modwell and Customer, Customer owns the Customer Data. Customer hereby grants to Modwell and its Affiliates a worldwide, nonexclusive, transferable, sublicensable, royalty-free license to host, copy, transmit, display, and process the Customer Data as reasonably necessary to (i) provide the Services and (ii) monitor, modify, and improve (including develop) the Services. Customer further grants Modwell the right to use anonymized and aggregated Customer Data to improve the Services and to develop new products and services.

4.3. Feedback. To the extent Customer or any of its Authorized Users provides any suggestions for modification or improvement

or other comments, code, information, know-how, or other feedback (whether in oral or written form) relating to the Services or the Modwell (“**Feedback**”), Customer hereby grants to Modwell a perpetual, irrevocable, worldwide, non-exclusive, transferable, sublicensable, royalty-free license to use and commercially exploit the Feedback in any manner Modwell sees fit without accounting or other obligation.

4.4. Statistical Usage Data. Modwell may collect, retain, and use, during and after the Term for purposes of Modwell’s business, usage data that is derived from the operation of the Services, including patterns identified through the use of the Services and algorithms, log data, and data regarding the performance and availability of the Services (“**Usage Data**”). If Modwell provides Usage Data to any third party (for example, a report on the aggregate number of identities governed with Modwell’s Services), such Usage Data shall be aggregated and anonymized so as not to disclose Customer’s or any Authorized Users’ identity.

5 Order and Payment

5.1. Orders. Customer shall procure the Services by executing an Order with Modwell (which Orders may be accepted via an electronic acceptance process via the Site). All Subscription Packages are offered on an annual basis and shall be non-cancelable and non-refundable during the twelve (12) month subscription period (each a “Subscription Term”). All Services are governed exclusively by this Agreement and, subject to Section 12.5 of this Agreement, the applicable Order.

5.2. Subscription Fees; Price Increase; Automatic Annual Renewals. Subscription Fees shall be payable in advance either annually or monthly as elected by Customer in the Order. All Subscription Fees will remain fixed during the Subscription Term, unless Customer upgrades to receive additional or enhanced Services (e.g., upgrades to a different Subscription Package). Modwell may increase the Subscription Fees for Customer’s Subscription Package during a Renewal Term by providing Customer at least thirty (30) days advanced notice. If Customer does not terminate its subscription prior to the start of the next Subscription Term upon its receipt of a price increase notice, Customer’s subscription will automatically renew for an additional twelve (12) month period (“Renewal Term”) at the new subscription price set forth in the price increase notice. Customer’s initial Subscription Term and all Renewal Terms shall be referred to herein as the “Term.”

5.3. Payment. Customer shall pay all Subscription Fees via credit card or such other payment method available on the site such as ACH. Customer hereby authorizes Modwell to charge Customer’s credit card or bank account for all Subscription Fees payable during the Term. Customer further authorizes Modwell to use a third party to process payments, and consents to the disclosure of Customer’s payment information to such third party. Customer will keep Customer’s contact information, billing information and credit card information (where applicable) up to date. Except as otherwise provided herein, Subscription Fees are non-refundable, non-cancellable and not subject to set-off. All Subscription Fees shall be paid by the Customer in U.S. dollars (\$). If any Subscription Fees (except with respect to charges then under reasonable and good faith dispute) remain unpaid by their due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) Modwell reserves the right to suspend the Services upon ten (10) days written notice to Customer until such amounts are paid in full, and (ii) any such unpaid Subscription Fees may accrue, at Modwell’s discretion, interest at the rate of the lesser of one and one-half (1.5%) percent of the outstanding balance per month or the maximum rate permitted by law from the date such Subscription Fees were due until the date paid. Further, Customer shall be responsible for all costs and expenses associated with Modwell’s collection of such Subscription Fees, including reasonable attorneys’ fees Modwell may incur in connection with such collection efforts. Suspension of the Services under this section shall not release Customer of its payment obligations under this Agreement.

5.4. Discounted and Free Trials: From time to time, to the extent legally permitted, Modwell may offer discounted and/or free trials of certain Services or Subscription Packages for specified periods of time without payment or with a discounted subscription price. All discounted or free trial offerings will be subject to the specific terms of trial or discount made available at the time of order. ONCE CUSTOMER’S DISCOUNTED OR FREE TRIAL ENDS, MODWELL (OR ITS THIRD-PARTY PAYMENT PROCESSOR) WILL BEGIN BILLING CUSTOMER’S DESIGNATED PAYMENT METHOD ON A RECURRING BASIS AT THE THEN APPLICABLE PRICE FOR THE SELECTED SERVICES (PLUS ANY APPLICABLE TAXES AND OTHER CHARGES) UNLESS CUSTOMER CANCELS ITS SUBSCRIPTION PRIOR TO THE END OF THE FREE OR DISCOUNTED TRIAL. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT WILL NOT RECEIVE A NOTICE FROM MODWELL THAT ITS DISCOUNTED OR FREE TRIAL HAS ENDED OR THAT THE PAID PORTION OF THE SUBSCRIPTION HAS BEGUN. MODWELL RESERVES THE RIGHT TO MODIFY OR TERMINATE ANY DISCOUNTED AND/OR FREE TRIALS AT ANY TIME, WITHOUT NOTICE AND IN ITS SOLE DISCRETION

5.5 Taxes. Customer is responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to Customer’s purchase and use of the Services, excluding taxes based on Modwell’s net income. If Modwell has a legal obligation to pay or collect taxes for which Customer is responsible under this Agreement, the appropriate amount shall be

computed based on Customer's address listed in the Order and invoiced to and paid by Customer, which amounts are in addition to the Subscription Fees for the Services, unless Customer provides Modwell with a valid tax exemption certificate authorized by the appropriate taxing authority.

6 Term and Termination

6.1. Term. The Term of this Agreement shall begin on the date that Customer enters into an Order (the "Effective Date") and shall continue for so long as Customer subscribes to the Services. All Subscription Packages are offered on an annual basis and will automatically renew for successive, one (1) year Renewal Terms at the then-current Subscription Package price posted on the Site as of the end of the current Subscription Term unless Customer terminates its subscription by furnishing Modwell written notice of its intent to terminate the Agreement at least ten (10) days prior to the automatic renewal date. Customer is not entitled to any refunds of prepaid Subscription Fees or unused portions of the Services upon termination. Termination notices shall be sent to Modwell via email at: info@modwellco.com

6.2. Termination for Material Breach. Either party may terminate this Agreement if the other party fails to cure any material breach within thirty (30) days after receipt of written notice of such breach. Upon any termination of this Agreement by Customer for a material breach by Modwell pursuant to this Section 6.2, Modwell will refund Customer a pro-rata portion of any prepaid Subscription Fees paid by Customer to Modwell that cover the remainder of the Term after the effective date of termination and a pro-rata portion of any prepaid Subscription Fees paid by Customer for the Services that address the Services that have not been delivered as of the effective date of termination.

6.3. Suspension. Modwell reserves the right to suspend delivery of the Services if Modwell reasonably concludes that Customer's or an Authorized User's use of the Services is causing immediate and ongoing harm to Modwell or the security, integrity, or availability of the Services. Modwell will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension. In the extraordinary case that Modwell must suspend delivery of the Services, Modwell shall promptly notify Customer of the suspension and the parties shall diligently attempt to resolve the issue. Modwell shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Services in accordance with this Section 6.3. Nothing in this Section 6.3 will limit Modwell's other rights under this Section 6.

6.4. Effect of Termination. Upon expiration or termination of this Agreement, all licenses and access to the Required Software and the Services granted to Customer under this Agreement and all Orders placed hereunder shall immediately terminate and Customer will cease using the Services and Modwell Confidential Information. Expiration or termination of this Agreement for any reason other than termination by Customer for a material breach by Modwell pursuant to Section 6.2 (Termination for Material Breach) shall not relieve Customer of the obligation to pay all future amounts due under all Orders. Sections 3.3 (Restrictions), 4 (Intellectual Property), 5 (Order and Payment), 6.4 (Effect of Termination), 7 (Representations and Warranties), 8 (Confidentiality), 10 (Indemnification), 11 (Limitations of Liability) and 12 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason.

7 Representations and Warranties

7.1. General. Each party represents and warrants that it has the legal power and authority to enter into and perform under this Agreement and shall comply with all laws applicable to it under this Agreement. Modwell represents that the Services will be performed in a professional manner in accordance with industry standards.

7.2. SERVICES AND SUPPORT SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN SECTION 7.1 OF THIS AGREEMENT, THE SERVICES, MODEWELL IP AND SUPPORT SERVICES ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT (NOT LIMITED TO) ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY DISCLAIMED. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (A) THE OUTPUT AND 3D MODELING IS PROVIDED "AS IS" AS AN ARTISTIC REPRESENTATION ONLY AND MAY NOT BE USED IN ACTUAL ARCHITECTURAL PLANS OR DESIGNS; (B) THE SERVICES, OUTPUT AND SUPPORT SERVICES MAY NOT MEET CUSTOMER'S REQUIREMENTS, MAY NOT BE COMPATIBLE WITH ANY PARTICULAR INFORMATION SYSTEM, AND MAY NOT RESULT IN ANY ACTUAL BUSINESS OPPORTUNITIES, REVENUE OR SAVINGS. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT THE SERVICES AND SUPPORT SERVICES MAY NOT BE CONTINUOUSLY AVAILABLE AND MAY CONTAIN ERRORS, BUGS, AND OTHER GLITCHES THAT MAY NOT BE CORRECTED. THE SERVICES AND SUPPORT SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND MODWELL IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY

FAILURES, VIRUSES, LOSS OR COMPROMISE TO CUSTOMER DATA, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THE ENTIRE RISK AS TO THE USE OF THE SERVICES, OUTPUT AND SUPPORT SERVICES IS ASSUMED BY CUSTOMER.

7.3. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1 OF THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MODWELL MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, ACCURACY OF INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT OR OTHERWISE. MODWELL DOES NOT WARRANT THAT THE SERVICES OR SUPPORT SERVICES WILL BE ERROR FREE OR UNINTERRUPTED.

8 Confidentiality

8.1. **Definitions.** As used in this Agreement, “**Confidential Information**” means all proprietary, non-public information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”), directly or indirectly, which, (i) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (ii) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the Receiving Party to be “confidential” or “proprietary” within thirty (30) days of such disclosure, or (iii) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself, including the terms of this Agreement and each Order, the Services, and Documentation. The term “Confidential Information” does not include information that: (i) is known publicly at the time of the disclosure by the Disclosing Party or becomes known publicly after disclosure through no fault of the Receiving Party; (ii) is known to the Receiving Party at the time of disclosure by the Disclosing Party due to previous receipt from a source that was not bound by confidentiality obligations to the Disclosing Party at that time; or (iii) is independently developed by the Receiving Party without use of or reference to the Confidential Information as demonstrated by the written records of the Receiving Party. For the avoidance of doubt, Modwell IP will be considered Confidential Information of Modwell, regardless of whether or not it is designated as confidential.

8.2. **Obligations of Confidentiality.** The Receiving Party shall not (i) use the Confidential Information of the Disclosing Party except to exercise its rights and perform its obligations under this Agreement or (ii) disclose such Confidential Information to any third party, except those of its employees, service providers, agents, and representatives who are subject to confidentiality obligations at least as stringent as the obligations set forth herein and have a “need to know” in order to carry out the purpose of this Agreement. The Receiving Party shall use at least the same degree of care it uses to protect its own confidential information of like nature, but not less than a reasonable degree of care, to protect the Confidential Information of the Disclosing Party.

8.3. **Permitted Disclosures.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent such disclosure is required by law or order of a court or other governmental authority; provided that the Receiving Party shall use commercially reasonable efforts to promptly notify the Disclosing Party prior to such disclosure to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

9 Information Security and Data Protection

9.1. **Modwell Security Program.** Modwell will implement and maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Customer Data, including measures designed to prevent unauthorized access, use, modification, or disclosure of Customer Data. Modwell will, to the extent required by law, promptly notify Customer in the event it identifies any compromise to the security or confidentiality of Customer Data. For the avoidance of doubt, Customer shall not provide or otherwise input into the Services any personal data, personal information, or similar personally identifiable information that requires, or is otherwise afforded, legal protection pursuant to a data protection law, statute, or regulation, such as social security numbers, driver’s license numbers, or health data, provided however, the foregoing restriction shall not apply to Customer’s obligation to furnish payment information to Modwell or Modwell’s payment processor.

9.2. **Security Controls.** Customer is solely responsible for all actions taken by Authorized Users and for maintaining the security and confidentiality of all usernames, passwords, and access credentials provided to, or generated by, an Authorized User. Customer agrees to notify Modwell immediately of any unauthorized use of any username, password, access credentials, or account related to the Services, or of any other known or suspected breach of security.

10 Indemnification. Customer shall indemnify, defend and hold harmless Modwell and its Affiliates, employees, agents, officers, directors, shareholders, representatives, successors and assigns from and against any loss, liability, cause of action, cost

or expense (including reasonable attorneys' fees) arising from, in connection with, or related to (i) a breach of this Agreement by Customer, or any employee or agent of Customer; (ii) Customer's use or distribution of the Output or the posting of the Output to any third party website, listing service, or use of the Output by any client of Customer; (iii) any and all acts and omissions of Customer and its employees and agents in connection with its use of the Services; (iv) Modwell's processing or storage of the Customer Data, or (v) the violation, infringement or misappropriation by Customer, any employee, agent or Authorized User of Customer, of Modwell IP.

11 Limitations of Liability

11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MODWELL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISION OF THE SERVICES OR OUTPUT, EXCEED THE AMOUNT OF SUBSCRIPTION FEES PAID OR PAYABLE BY CUSTOMER UNDER THE ORDER GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT SHALL EITHER PARTY, OR MODWELL'S LICENSORS OR THIRD PARTY PRODUCT SUPPLIERS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING (BY WAY OF EXAMPLE AND NOT AN EXHAUSTIVE LIST), LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, LOSS OF USE, OR OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO A PARTY'S GROSSLY NEGLIGENT ACTS OR OMISSIONS OR TO THE INFRINGEMENT OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS.

11.2. ACKNOWLEDGMENT OF RISK. THE LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN ARE REFLECTED IN THE PRICING OF THE SERVICES AND AGREED UPON BY CUSTOMER AND ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAINING BETWEEN THE PARTIES.

12 Miscellaneous

12.1. Assignment. Neither party may assign this Agreement or otherwise transfer any right or obligation under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement in its entirety to an acquirer of all or substantially all of the assets or equity of such party to which this Agreement relates, whether by merger, asset sale, or otherwise so long, in the event of an assignment by Customer, as all Fees then due and payable to Modwell have been paid. Any attempt by a party to assign or transfer its rights or obligations under this Agreement other than as permitted by this Section 12.1 shall be void and of no effect. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Modwell may employ subcontractors in performing its duties under this Agreement.

12.2. Notices. Except as otherwise expressly permitted in this Agreement, notices under this Agreement shall be in writing and shall be deemed to have been given (i) five (5) business days after mailing if sent by registered or certified U.S. mail, (ii) when personally delivered, or (iii) one (1) business day after deposit for overnight delivery with a recognized courier for U.S. deliveries (or three (3) business days for international deliveries). Notwithstanding the foregoing, Modwell may provide any and all notice required to Customer under this agreement via electronic communication (e.g., email) and such electronic communication shall be deemed to have been given one (1) minute after being sent from Modwell. Modwell may also provide notice of any updates to the terms of this Agreement or to any Documentation or updated Subscription Package pricing by posting the same to the Site.

12.3. Force Majeure Event. If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented, delayed or restricted by reasons beyond the reasonable control of a party, including acts of God, pandemic, labor disputes or other industrial disturbances, fire, explosion, electrical or power outages, utilities or other telecommunications failures, earthquake, flood, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism (including cyber terrorism), war, computer related attacks or hacking, acts or omissions of Internet traffic carriers, acts or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the provision of the Services) (each, a "**Force Majeure Event**"), the party so affected shall be excused from such performance and liability to the extent of such prevention, delay or restriction.

12.4. Equitable Relief. The parties agree that a material breach by Customer of Section 8 (Confidentiality) or Section 3.3 (Restrictions) would cause irreparable injury to Modwell for which monetary damages alone would not be an adequate remedy, and therefore Modwell shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law, without the requirement of posting bond or proving actual damages.

12.5. Changes to These Terms. Modwell reserves the right to change or modify the terms of this Agreement, in whole or in part, at any time in its sole discretion upon notice to Customer by electronic means, including by the posting of the updated Agreement to the Site. Any changes or modifications to this Agreement will be effective immediately upon the posting of the revisions to the Site and Customer waives any right to receive specific written notice of such changes. Customer's continued use of the Services following the posting of revised terms and conditions constitutes its acceptance of the changes. Notwithstanding the foregoing, Customer may terminate this Agreement by providing written notice to Modwell at any time within 90 days of the effective date of the change if it does not agree with any changes. In such event, Customer will receive a pro rata refund of any unused Subscription Fees for the then-current Term.

12.6. Entire Agreement. This Agreement, together with any documents incorporated herein by reference, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous oral and written communications, representation, understandings, and agreements by the parties concerning the subject matter of this Agreement. No terms, provisions or conditions contained in any purchase order, sales confirmation, or other business form that Customer may use in connection with the transactions contemplated by this Agreement will have any effect on the rights or obligations of the parties or will otherwise modify this Agreement. If there is any conflict between the terms of this Agreement and any Order, the terms of this Agreement shall control, unless Modwell and Customer expressly agree otherwise in the applicable Order or other document signed by both parties by specific reference to this Section and the Section(s) of this Agreement that are modified.

12.7. Publicity. During the term of this Agreement, Modwell may include Customer's name and logo in its customer lists, marketing materials, and Site. To the extent Customer provides standard trademark usage guidelines, Modwell shall use Customer's name and logo in accordance with such guidelines.

12.8. Government End User. If Customer is a U.S. government entity or if this Agreement otherwise becomes subject to the Federal Acquisition Regulations ("FAR"), Customer acknowledges that elements of the Services constitute software and documentation and are provided as "Commercial Items" and are being licensed to U.S. Government End User as "Commercial Computer Software," in each case as defined in 48 C.F.R. 2.101, subject to the restrictions set forth in 48 C.F.R. 12.201, 12.211 and 12.212 and the terms of this Agreement. If licensed to any agency within the Department of Defense ("DOD"), the U.S. Government acquires a license to this Commercial Computer Software and/or Commercial Computer Software Documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3, and the restrictions set forth therein, of the DOD FAR Supplement ("DFARS") and its successors. The use of the Services by the U.S. Government End User constitutes acknowledgement of Modwell's proprietary rights in the Services and the Government End User shall only use the Services as set forth in this Agreement. This Government End User Section 12.7 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

12.9. Domestic Use. Customer agrees to only use, and shall ensure each Authorized User only uses, the Services from within the United States of America.

12.10. Independent Contractors, No Third-Party Beneficiaries. The parties have the status of independent contractors, and nothing in this Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel. This Agreement shall not create any rights or benefits to parties other than Modwell and Customer. No third party shall have the right to rely on the Services or Output.

12.11. Governing Law, Attorneys' Fees, and Severability. This Agreement is governed by the laws of the State of New York, excluding any of its conflict of law principles that would apply laws of another jurisdiction, and the exclusive venue for any dispute relating to this Agreement shall be the courts located in New York, New York. In any court action at law or equity, which is brought by one of the parties to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that party may be entitled. The United Nations Convention on Contracts for the International Sale of Goods does not apply. If any term of this Agreement is held to be invalid or unenforceable, that term shall be reformed.

12.12. Interpretation. For purposes of interpreting this Agreement, (i) unless the context otherwise requires, the singular includes

the plural, and the plural includes the singular; (ii) unless otherwise specifically stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (iii) the words “include” and “including” will not be construed as terms of limitation, and will therefore mean “including but not limited to” and “including without limitation”; (iv) unless otherwise specifically stated, the words “writing” or “written” mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; and (v) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.

Last Revision Date: January 27, 2022

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