

## END-USER LICENSE AGREEMENT FOR MODANO SOFTWARE AND CONTENT LIBRARIES

### 1. PARTIES TO THIS END-USER LICENSE AGREEMENT:

This End-User License Agreement ('EULA') is a legal agreement between:

- a. you (either an individual person or a single legal entity), who will be referred to in this EULA as 'You'; and
- b. Modano Pty Ltd and/or their associated entities, who will be collectively referred to in this EULA as 'Modano Pty Ltd'.

### 2. IMPORTANT - READ CAREFULLY:

This EULA grants You end-user license rights in respect of Modano software (the 'SOFTWARE PRODUCT') and associated content libraries ('CONTENT LIBRARIES'), including Trial Editions of Modano, the Community Edition of Modano, any other editions of Modano released by MODANO PTY LTD, and any other subscription-based or promotional software developed and provided to you by MODANO PTY LTD.

This EULA is valid ONLY if:

- a. the SOFTWARE PRODUCT is a genuine SOFTWARE PRODUCT; and
- b. You have registered the SOFTWARE PRODUCT in accordance with the SOFTWARE PRODUCT registration process by obtaining a License File, either directly or during web-based registration of the SOFTWARE PRODUCT, from MODANO PTY LTD.

By installing, copying, downloading, accessing or otherwise using the SOFTWARE PRODUCT and CONTENT LIBRARIES, You agree to be bound by the terms of this EULA. If You do not agree to the terms of this EULA, MODANO PTY LTD (and its suppliers) are unwilling to license the SOFTWARE PRODUCT and CONTENT LIBRARIES. In such event, You may not use or copy the SOFTWARE PRODUCT or CONTENT LIBRARIES, and You should promptly contact MODANO PTY LTD for instructions on how to return the SOFTWARE PRODUCT and CONTENT LIBRARIES for a refund in accordance with MODANO PTY LTD return policies.

### 3. SOFTWARE PRODUCT LICENSE:

The SOFTWARE PRODUCT is protected by intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold. The term 'COMPUTER' as used herein shall mean the HARDWARE, if the HARDWARE is a single computer system, or shall mean the computer system with which the HARDWARE operates, if the HARDWARE is a computer system component.

- a. Grant of License

This Section of the EULA describes Your general license rights to install and use the SOFTWARE PRODUCT. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Grant to Install and Use

Except as otherwise expressly provided in this EULA, You may only install and use one copy of the SOFTWARE PRODUCT on the COMPUTER. The SOFTWARE PRODUCT may not be installed, accessed, displayed, run, shared or used concurrently on or from different COMPUTERS, including a workstation, terminal or other electronic device ('Device'), without the express written consent of MODANO PTY LTD.

c. Reservation of Rights

MODANO PTY LTD (and its suppliers) reserve all rights not expressly granted to You in this EULA.

#### **4. CONTENT LIBRARIES LICENSE:**

The CONTENT LIBRARIES are protected by intellectual property laws and treaties. The CONTENT LIBRARIES are licensed, not sold. The term 'ADD-ON' as used herein shall mean single or multiple CONTENT LIBRARIES made accessible to you either as part of your Modano subscription or in addition to it.

a. Grant of License

This Section of the EULA describes Your general license rights to download, use, customize and release/unmanage CONTENT LIBRARIES. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. Intellectual Property Ownership

MODANO PTY LTD warrants that all intellectual property rights in the CONTENT LIBRARIES are owned exclusively by MODANO PTY LTD and that MODANO PTY LTD thereby holds all rights regarding the use and licensing of this intellectual property.

c. General License Grant to Download, Use and Customize

Except as otherwise expressly provided in this EULA, You may only download, use and customize CONTENT LIBRARIES made accessible to you via content ADD-ONS included within your Modano subscription.

d. No Removal of Protections

Other than via the approved release/unmanaging of workbooks as per clause 4.(f), You may not remove protections applied to content made available to your via CONTENT LIBRARIES without express written approval from MODANO PTY LTD. These protections include workbook protection, sheet protection, styles protection, VBA project protection, and any other form of protection used by MODANO PTY LTD to prevent, limit or control access to this content.

e. Public Distribution and Sale

You may not distribute or sell content sourced directly or indirectly from CONTENT LIBRARIES in a public forum with express written consent from MODANO PTY LTD, regardless of whether this content has or has not been customized or released/unmanaged and regardless of whether it has been provided to you by a third party. In this regard, a public forum includes, but is not limited to, a website or application used to give away, sell or license content to third parties. Your liability for breach of this clause will be calculated based on the value of the content distributed had it been legally licensed to all parties who access it via the public forum via valid content ADD-ONS.

f. Destruction Following Trial

You must delete all content provided to you as part of a content ADD-ON trial at the expiry of this trial if you do not then purchase a full license to continue using the content ADD-ON, irrespective of whether customizations have been made to this content during your trial.

g. Release/Unmanage Subject to Approval

You may release/unmanage the Excel content within CONTENT LIBRARIES from Modano subject to release/unmanage approval being denied by MODANO PTY LTD as per clause 4.(g).

h. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing of CONTENT LIBRARIES and the releasing/unmanaging of Excel content within these CONTENT LIBRARIES, either of which may be disallowed if Modano believes that doing so is against the interests of MODANO PTY LTD, without any liability resulting from the exercising of this discretion. Modano also reserves all rights regarding requiring payment for the releasing/unmanaging of Excel workbooks from modular workbooks.

i. No Liability

CONTENT LIBRARIES are provided by MODANO PTY LTD on an UNAUDITED, UNVERIFIED, best endeavours basis. MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of CONTENT LIBRARIES, however obtained.

## 5. TRIAL EDITION LICENSE:

You may use the Trial Edition of the SOFTWARE PRODUCT at no cost subject to the following conditions:

a. Grant of License

This Section of the EULA describes Your general license rights to install and use the Trial Edition of the SOFTWARE PRODUCT. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Grant to Install and Use

Except as otherwise expressly provided in this EULA, You may install and use the Trial Edition of the SOFTWARE PRODUCT on the COMPUTER at no cost subject to the Trial Edition Usage Exceptions listed in clause 5.(c) of this EULA.

c. Trial Edition Usage Exceptions

The Trial Edition of the SOFTWARE PRODUCT cannot be used:

- i) To create, edit or use Microsoft Excel workbooks, or content based on these Microsoft Excel workbooks, for distribution to third parties as a part of a commercial relationship without written consent from MODANO PTY LTD. For the sake of clarity, this includes financial models developed using the SOFTWARE PRODUCT by an organization for distribution to clients, banks, advisors and other commercial third parties; or
- ii) If MODANO PTY LTD has refused to grant You a license to use the Trial Edition of the SOFTWARE PRODUCT, or has terminated your license to use the SOFTWARE PRODUCT.

d. No Guaranteed Technical Support

MODANO PTY LTD provides no guarantees regarding the availability and/or timing of technical support provided to Your use of the Trial Edition of the SOFTWARE PRODUCT, which will be provided on a best endeavours basis subject to available resources and after all support requirements of paying users of the SOFTWARE PRODUCT.

e. Truthful Disclosure Agreement

By installing, copying, downloading, accessing or otherwise using the Trial Edition of the SOFTWARE PRODUCT, You agree to thereafter truthfully disclose your use and/or intentions for use of the Trial Edition of the SOFTWARE PRODUCT if contacted by MODANO PTY LTD. Conversely, MODANO PTY LTD reserves the right to contact you seeking confirmation that your use and/or intentions for use of the Trial Edition of the SOFTWARE PRODUCT do not fall within the Trial Edition Usage Exceptions listed in this EULA.

f. Liability for Trial Edition Usage in Breach of this EULA

In the event that You use the Trial Edition of the SOFTWARE PRODUCT in breach of the Trial Edition Usage Exceptions listed in this EULA, You will be liable to pay the accumulated subscription costs which would have been payable if you had purchased a subscription from the date of first installation of Your Trial Edition subscription of the SOFTWARE PRODUCT to the date on which the breach is identified.

g. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing, and withdrawal of licensing, of the Trial Edition of the SOFTWARE PRODUCT. MODANO PTY LTD may, at its absolute discretion, refuse to continue licensing the Trial Edition of the SOFTWARE PRODUCT and/or change the terms upon which the Trial Edition of the SOFTWARE PRODUCT is licensed to You, without any liability resulting from the exercising of this discretion.

h. No Liability

MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of the Trial Edition of the SOFTWARE PRODUCT.

## **6. COMMUNITY EDITION LICENSE:**

You may use the Community Edition of the SOFTWARE PRODUCT at no cost subject to the following conditions:

a. Grant of License

This Section of the EULA describes Your general license rights to install and use the Community Edition of the SOFTWARE PRODUCT. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Grant to Install and Use

Except as otherwise expressly provided in this EULA, You may install and use the Community Edition of the SOFTWARE PRODUCT on the COMPUTER at no cost subject to the Community Edition Usage Exceptions listed in clause 6.(c) of this EULA.

c. Community Edition Usage Exceptions

The Community Edition of the SOFTWARE PRODUCT cannot be used:

- i) To create, edit or use Microsoft Excel workbooks, or content based on these Microsoft Excel workbooks, for distribution to third parties as a part of a commercial relationship. For the sake of clarity, this includes financial models developed using the SOFTWARE PRODUCT by an organization for distribution to clients, banks, advisors and other commercial third parties;
- ii) To create, edit or use Excel workbooks with a file size on disk exceeding that specified in your license file by MODANO PTY LTD; or
- iii) If MODANO PTY LTD has refused to grant You a license to use the Community Edition of the SOFTWARE PRODUCT, or has terminated your license to use the SOFTWARE PRODUCT.

d. Truthful Disclosure Agreement

By installing, copying, downloading, accessing or otherwise using the Community Edition of the SOFTWARE PRODUCT, You agree to thereafter truthfully disclose your use and/or intentions for use of the Community Edition of the SOFTWARE PRODUCT if contacted by MODANO PTY LTD. Conversely, MODANO PTY LTD reserves the right to contact you seeking confirmation that your use and/or intentions for use of the Community Edition of the SOFTWARE PRODUCT do not fall within the Community Edition Usage Exceptions listed in this EULA.

e. Liability for Community Edition Usage in Breach of this EULA

In the event that You use the Community Edition of the SOFTWARE PRODUCT in breach of the Community Edition Usage Exceptions listed in this EULA, You will be liable to pay the accumulated subscription costs which would have been payable if you had purchased a Modano subscription from the date of first installation of Your Community Edition subscription of the SOFTWARE PRODUCT to the date on which the breach is identified.

f. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing, and withdrawal of licensing, of the Community Edition of the SOFTWARE PRODUCT. MODANO PTY LTD may, at its absolute discretion, refuse to continue licensing the Community Edition of the SOFTWARE PRODUCT and/or change the terms upon which the Community Edition of the SOFTWARE PRODUCT is licensed to You, without any liability resulting from the exercising of this discretion.

g. No Liability

MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of the Community Edition of the SOFTWARE PRODUCT.

## **7. PROMOTIONAL EDITION LICENSE:**

MODANO PTY LTD may from time to time choose to grant you use of the SOFTWARE PRODUCT at no cost as a part of a promotion or marketing campaign. You may use Promotional Editions of the SOFTWARE PRODUCT at no cost subject to the following conditions:

a. Grant of License

This Section of the EULA describes Your general license rights to install and use Promotional Editions of the SOFTWARE PRODUCT, including and not limited to the TRAVERSE FORMULA tool. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Grant to Install and Use

Except as otherwise expressly provided in this EULA, You may install and use Promotional Editions of the SOFTWARE PRODUCT on the COMPUTER at no cost subject to the Reservation of Rights in clause 7.(c), including MODANO PTY LTD deciding to terminate the promotional edition or require payment for continued use of Promotional Editions of the SOFTWARE PRODUCT.

c. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing, and withdrawal of licensing, of Promotional Editions of the SOFTWARE PRODUCT, including and not limited to the TRAVERSE FORMULA tool. MODANO PTY LTD may, at its absolute discretion, refuse to continue licensing Promotional Editions of the SOFTWARE PRODUCT and/or change the terms upon which Promotional Editions of the SOFTWARE PRODUCT is licensed to You, without any liability resulting from the exercising of this discretion.

d. No Liability

MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of the Promotional Editions of the SOFTWARE PRODUCT.

## **8. RELEASE/UNMANAGE WORKBOOKS RIGHTS AND LIMITATIONS:**

MODANO PTY LTD reserves all rights regarding allowing or disallowing the releasing/unmanaging of Excel workbooks from modular workbooks, regardless of whether or not the content within them has been developed using content from within the Modano CONTENT LIBRARIES.

The release/unmanage rights of each individual subscription shall be decided at the sole discretion of MODANO PTY LTD, and may require payment to be made on a periodic and/or per-release/unmanage workbook basis, as decided by MODANO PTY LTD. You may seek written confirmation of your release/unmanage rights from MODANO PTY LTD at any time.

## 9. CONNECTIONS LICENSE:

You may use live link CONNECTIONS to accounting packages including, but not limited to, Xero, QuickBooks, MYOB, and Sage subject to the following conditions:

a. Grant of License

This Section of the EULA describes Your general license rights to use CONNECTIONS. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Use

Except as otherwise expressly provided in this EULA, You may only use CONNECTIONS made accessible to you via the account within your Modano subscription.

c. Corporate Subscription Connections Sharing

Subject to the reservation of rights in this EULA, Modano account holders within Modano corporate subscriptions may share access to their CONNECTIONS with other Modano account holders within their corporate subscription but may only share CONNECTIONS with Modano account holders within external advisor subscriptions for the purposes of enabling their advisor to provide them with advisory services relating to their connected organizations. Modano account holders within Modano corporate subscriptions cannot connect to organizations primarily for the purpose of sharing these CONNECTIONS with Modano account holders within external advisor subscriptions where there is no advisory relationship between the corporate subscription account holder and the advisor subscription account holder and the connected organization(s). Modano retains the right to request information supporting the existence of a relevant advisory relationship in these cases, and the right to refuse to allow the sharing of CONNECTIONS if not satisfied that a sufficient relevant advisory relationship exists.

d. Advisor Subscription Connections Sharing

Subject to the reservation of rights in this EULA, Modano account holders within Modano advisor subscriptions may share access to their CONNECTIONS with other Modano account holders.

e. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing of CONNECTIONS and the sharing of CONNECTIONS between Modano account holders, without any liability resulting from the exercising of this discretion. Modano also reserves all rights regarding the determination of pricing for CONNECTIONS, which may differ on a subscription-specific basis.

f. No Liability

CONNECTIONS are provided by MODANO PTY LTD on an UNAUDITED, UNVERIFIED, best endeavours basis. MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of CONNECTIONS, however obtained.

## 10. REGISTERED MODELS LICENSE:

You may use REGISTERED MODELS subject to the following conditions:

a. Grant of License

This Section of the EULA describes Your general license rights to use REGISTERED MODELS. The license rights described in this Section are subject to all other terms and conditions of this EULA.

b. General License Use

Except as otherwise expressly provided in this EULA, You may only use REGISTERED MODELS made accessible to you via the account within your Modano subscription.

c. Pricing Plan Selection

By using REGISTERED MODELS You agree to make all reasonable steps to determine the correct pricing plan when selecting the pricing plan to be applied when registering REGISTERED MODELS and acknowledge that an account of profits may be required if an incorrect pricing plan is found to have been selected either knowingly or as a result of a failure to take reasonable steps to determine the correct pricing plan. This account of profits will be calculated as equal to the difference between the money that You would have paid to Modano under the correct pricing plan and the money that You paid to Modano under the incorrect pricing plan.

d. Pricing Plan Verification Right

Modano reserves the right to make reasonable inquiries to verify that the correct pricing plan has been selected for each of Your REGISTERED MODELS. This process may involve asking general questions about the businesses underlying the REGISTERED MODELS, including but not limited to annual revenue and total assets.

e. Fair Use of Registered Models

By using REGISTERED MODELS You agree to use your REGISTERED MODELS in a fair and reasonable way considering that the goal of the registered models pricing model is to align Your Modano subscription cost with Your use of registered models. The fair use of REGISTERED MODELS includes not taking steps which result in payments made for REGISTERED MODELS not reflecting Your use of REGISTERED MODELS. For example, Modano advisor subscription account holders should always pay for each model for each client, unless otherwise explicitly agreed with Modano.

f. Corporate Subscription Registered Models Sharing

Subject to the reservation of rights in this EULA, Modano account holders within Modano corporate subscriptions may share access to their REGISTERED MODELS via Trusted Users with other holders of Modano corporate subscriptions but may only share REGISTERED MODELS with Modano account holders within advisor subscriptions for the purposes of enabling their advisor to provide them with advisory services relating to their REGISTERED MODELS. Modano account holders within Modano corporate subscriptions cannot register models primarily for the purpose of sharing these REGISTERED MODELS with Modano account holders within advisor subscriptions where there is no advisory relationship between the corporate subscription account holder and the advisor subscription account holder and the REGISTERED MODELS. Modano retains the right to request information supporting the existence of a relevant advisory relationship in these cases, and the right to refuse to allow the sharing of REGISTERED MODELS if not satisfied that a sufficient relevant advisory relationship exists.



g. Advisor Subscription Registered Models Sharing

Subject to the reservation of rights in this EULA, Modano account holders within Modano advisor subscriptions may share access to their REGISTERED MODELS via Trusted Users with other Modano account holders for the purposes of providing advisory services.

h. No Use of Expired or Canceled Registered Models

By agreeing to this EULA You agree to only access and use the Excel files associated with REGISTERED MODELS while their associated REGISTERED MODELS are active, and cease accessing or using these Excel files if their associated REGISTERED MODELS are expired or canceled, with or without the Modano Excel add-in installed. The only exception to this is to access these Excel files for the purpose of re-activating previously registered REGISTERED MODELS or to re-register them. For the sake of clarity, You agree to not access or use the Excel files associated with REGISTERED MODELS following the expiration of their free use period without purchasing, or the cancellation or de-registering of the associated REGISTERED MODELS.

i. Registered Model Re-Activation or Re-Registration Fees

Modano reserves the right to charge fees for the re-activation or re-registration of previously de-activated or canceled REGISTERED MODELS if re-activation or re-registration takes place within 90 days of the last day during which the Registered Model was previously actively registered. In the event that these fees are applicable they will be communicated to You at the time of the de-activation or cancellation of the applicable REGISTERED MODELS for transparency.

j. Reservation of Rights

MODANO PTY LTD reserves all rights regarding the licensing of REGISTERED MODELS and the sharing of REGISTERED MODELS between Modano account holders, without any liability resulting from the exercising of this discretion. Modano also reserves all rights regarding the determination of pricing for REGISTERED MODELS, which may differ on a subscription-specific basis and change over time.

k. No Liability

REGISTERED MODELS are provided by MODANO PTY LTD on an UNAUDITED, UNVERIFIED, best endeavours basis. MODANO PTY LTD takes absolutely no responsibility for any inconvenience, loss or damages caused as a result of Your use of REGISTERED MODELS, however obtained.

## 11. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS:

a. No Transfer of SOFTWARE PRODUCT

Subject to the section of this EULA 'Software Product Transfer' and/or any other inconsistent provisions of this EULA, You may not transfer the SOFTWARE PRODUCT of CONTENT LIBRARIES.

b. Non-MODANO Applications

For non-MODANO applications, You should consult the accompanying license agreement or contact the licensor to determine whether application sharing is permitted by the licensor.

c. Copy Protection

The SOFTWARE PRODUCT and/or CONTENT LIBRARIES may include copy protection technology to prevent the unauthorized copying of the SOFTWARE PRODUCT or CONTENT LIBRARIES or may require original media for use of the SOFTWARE PRODUCT or CONTENT LIBRARIES on the device. It is illegal to make unauthorized copies of the SOFTWARE PRODUCT or CONTENT LIBRARIES or to circumvent any copy protection technology included in the SOFTWARE PRODUCT or CONTENT LIBRARIES. Local law may provide you additional back-up rights.

d. Reverse Engineering or Decompiling

You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

e. No Rental, Leasing or Commercial Hosting

You may not rent, lease, lend or provide commercial hosting services to third parties with the SOFTWARE PRODUCT.

f. Separation of Components

The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.

g. Single COMPUTER Per User

The SOFTWARE PRODUCT may only be used on a single COMPUTER per user at any given point in time, subject to receiving express written consent to the use of the SOFTWARE PRODUCT by users on multiple computers (e.g. in a terminal services environment, for home vs. office use, etc.) from MODANO PTY LTD.

h. Single EULA

The package for the SOFTWARE PRODUCT may contain multiple versions of this EULA, such as multiple translations and/or multiple media versions (e.g., in the user documentation and in the software). In this case, You are only licensed to use one (1) copy of the SOFTWARE PRODUCT.

i. Software Product Transfer

You may permanently transfer all of Your rights under this EULA only as part of a sale or transfer of the SOFTWARE PRODUCT, provided You retain no copies, You transfer all of the SOFTWARE PRODUCT (including all component parts, printed materials, any upgrades and this EULA), and the recipient agrees to the terms of this EULA. If the SOFTWARE PRODUCT is an upgrade, any transfer must include all prior versions of the SOFTWARE PRODUCT. You acknowledge that the recipient of the SOFTWARE PRODUCT may be required to re-activate the SOFTWARE PRODUCT.

j. Termination

Without prejudice to any other rights, MODANO PTY LTD may terminate Your rights under this EULA if You fail to comply with the terms and conditions of this EULA. In such event, You must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

k. Trademarks

This EULA does not grant You any rights in connection with any trademarks or service marks of MODANO PTY LTD or its suppliers.

l. Registration

The SOFTWARE PRODUCT includes registration security technology ('Registration Process') that is intended to prevent use of the SOFTWARE PRODUCT until a valid and MODANO PTY LTD authorised LICENSE FILE has been received. You are not permitted to circumvent, remove or modify any component of the SOFTWARE PRODUCT Registration Process. You acknowledge that you must REGISTER Your SOFTWARE PRODUCT in order to use the SOFTWARE PRODUCT.

m. Re-Registration

You may be required to re-register the SOFTWARE PRODUCT if you upgrade or re-install certain elements of Your Operating System or Microsoft Office Applications or change computers. Please contact MODANO PTY LTD SUPPORT on the contact details provided in the documentation for the SOFTWARE PRODUCT to re-register the SOFTWARE PRODUCT. You acknowledge that MODANO PTY LTD may require certain information about You and/or Your COMPUTER prior to re-registering the SOFTWARE PRODUCT.

n. Security Settings

You acknowledge that when installing the SOFTWARE PRODUCT You may be required to set Your Macro Security Level within Microsoft Excel to 'Medium' or lower. Following the installation of the SOFTWARE PRODUCT you may reinstate any Macro Security Level that You desire. MODANO PTY LTD or its suppliers will not accept, under any circumstances, any liability for any damage that may occur as a result of You changing Your Macro Security Level within Microsoft Excel.

## 12. INTELLECTUAL PROPERTY RIGHTS:

a. General

All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations and text incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT, are owned by MODANO PTY LTD or its suppliers. All title and intellectual property rights in and to the content that is not contained in the SOFTWARE PRODUCT, but may be accessed through use of the SOFTWARE PRODUCT, is the property of the respective content owner, and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants You no rights to use such content. Use of any on-line services which may be accessed through the SOFTWARE PRODUCT may be governed by the respective terms of use relating to such services. If this SOFTWARE PRODUCT contains documentation that is provided only in electronic form, You may print one copy of such electronic documentation. You may not copy the printed materials accompanying the SOFTWARE PRODUCT.

b. Dual-Media Software Product

You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium, You may only use one medium that is appropriate for the COMPUTER. You may not install or use the other medium on another computer. You may not loan, rent, lease, lend or otherwise transfer the other medium to another user, except as part of an authorized permanent transfer of the SOFTWARE PRODUCT as described under the Section 'Software Product Transfer.'

c. Copyright

The SOFTWARE PRODUCT and CONTENT LIBRARIES and any accompanying manuals or written materials are copyrighted by MODANO PTY LTD. You may not delete or modify any copyright notice, trademark or protective notice contained in the SOFTWARE PRODUCT or any accompanying manuals or written materials.

### 13. SOFTWARE PRODUCT SUPPORT:

You may access website technical support from Modano Pty Ltd. You may access 'Modano Help', which is either embedded within the SOFTWARE PRODUCT or provided on the internet via the Modano Pty Ltd website(s). Any such help and support is strictly limited to the SOFTWARE PRODUCT and does not include support for any other applications, software or hardware. For product support, please refer to the MODANO PTY LTD SUPPORT contact details provided in the documentation for the SOFTWARE PRODUCT. Should You have any questions concerning support, or if You desire to contact MODANO PTY LTD for any other reason, please refer to the MODANO PTY LTD SUPPORT contact details provided in the documentation for the SOFTWARE PRODUCT.

### 14. EXPRESS LIMITED WARRANTY:

a. Consumer Rights

You may have the benefit of certain rights or remedies pursuant to the Trade Practices Act and similar state and territory laws in Australia or the Consumer Guarantees Act in New Zealand or any other applicable law, in respect of which certain liability may not be excluded.

b. Limited Express Warranty

MODANO PTY LTD warrants that the SOFTWARE PRODUCT will perform substantially in accordance with the user guide that is either imbedded within the SOFTWARE PRODUCT or provided on the internet via MODANO PTY LTD's website(s).

c. Customer Remedies

To the maximum extent permitted under applicable law, MODANO PTY LTD and its suppliers' entire liability and Your exclusive remedy under the express warranty is, at MODANO PTY LTD's option, either:

- i) return of the price paid for the SOFTWARE PRODUCT; or
- ii) repair or replacement of the SOFTWARE PRODUCT which does not meet the warranty and which is returned to MODANO PTY LTD with a copy of your purchase receipt.

The warranty is void if failure of the SOFTWARE PRODUCT has resulted from accident, abuse or misapplication. Any replacement SOFTWARE PRODUCT will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.

d. Limitation of Liability

To the maximum extent permitted by applicable law, any conditions or warranties imposed or implied by law are hereby excluded. You may nevertheless have the benefit of certain rights or remedies pursuant to the Trade Practices Act and similar state and territory laws in Australia or the Consumer Guarantees Act in New Zealand or any other applicable law, in respect of which liability may not be excluded. Insofar as such liability may not be excluded, then to the maximum extent permitted by law, such liability is limited, at the exclusive option of MODANO PTY LTD, to either:

- i) replacement of the SOFTWARE PRODUCT; or
- ii) correction of defects in the SOFTWARE PRODUCT; or
- iii) payment of the cost of having defects in the SOFTWARE PRODUCT corrected.

e. Exclusion of Liability/Damages

The following is without prejudice to any rights you may have at law which cannot legally be excluded or restricted. You acknowledge that no promise, representation, warranty or undertaking has been made or given by MODANO PTY LTD or its suppliers to any person or company on its behalf in relation to the profitability of or any other consequences or benefits to be obtained from the delivery or use of the SOFTWARE PRODUCT or CONTENT LIBRARIES and any accompanying software, manuals or written materials. You have relied upon your own skill and judgement in deciding to acquire the SOFTWARE PRODUCT and CONTENT LIBRARIES and any accompanying manuals and written materials for use by you. Except as and to the extent provided in this EULA, neither MODANO PTY LTD or its suppliers will in any circumstances be liable for any other damages whatsoever (including, without limitation, damages for loss of business, business interruption, loss of business information or other indirect or consequential loss) arising out of the use or inability to use or supply or non-supply of the SOFTWARE PRODUCT or CONTENT LIBRARIES or any accompanying written materials. MODANO PTY LTD and its suppliers' total liability under any provision of this EULA is in any case limited to the amount actually paid by You for the SOFTWARE PRODUCT and/or CONTENT LIBRARIES.

f. No Liability for Consequential Damages

To the maximum extent permitted by applicable law, in no event shall MODANO PTY LTD or its suppliers be liable for any damages whatsoever (including without limitation, direct or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if MODANO PTY LTD or its suppliers has been advised of the possibility of such damages. In any case, MODANO PTY LTD and its suppliers' entire liability under any provision of this EULA shall be limited to the amount actually paid by You for the SOFTWARE PRODUCT and/or CONTENT LIBRARIES. Because some states or jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to You.

g. Consequential Damages Includes Damages From Downloaded Content

For the purpose of clause 14.(f) CONSEQUENTIAL DAMAGES includes damages arising from the use of content downloaded from MODANO PTY LTD website, including example models, module suites, projects, modules, module areas libraries and module links libraries. MODANO PTY LTD provides no guarantees regarding the correctness of the logic or other content contained with content it makes available for download from the MODANO PTY LTD website.

#### h. No Liability for Assumptions Transferral

In no event shall MODANO PTY be liable any damages arising from the use of tools within the SOFTWARE PRODUCT which attempt to transfer, retain, or copy assumptions. These tools are provided on a best endeavors basis and you assume full responsibility for reviewing the correctness of all assumptions entered by these tools on this basis.

### 15. PAYMENT TERMS

The payment terms applicable when purchasing this SOFTWARE PRODUCT and/or CONTENT LIBRARIES are determined by the terms and conditions of the subscription and ADD-ONS selected from the MODANO PTY LTD website or negotiated with MODANO PTY LTD independently of the MODANO PTY LTD website (e.g. for site license packages). In the event that payment is not received in accordance with the agreed terms and conditions, no licence is granted to You until such payment is received by MODANO PTY LTD and, in the event that a licence has been granted to You during this period, this licence may be terminated as a result of non-payment.

### 16. PRIVACY:

MODANO PTY LTD maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that policy at [Privacy Policy](#) and You will be taken to have accepted that policy when You accept the terms of this EULA.

### 17. ADDITIONAL PROVISIONS:

#### a. Representations

You acknowledge that MODANO PTY LTD and its suppliers have not made any representations beyond those contained in this EULA as to the fitness of the SOFTWARE PRODUCT and/or CONTENT LIBRARIES for Your purposes. MODANO PTY LTD and its suppliers do not provide any warranties or guarantees that any advertising materials, website information, website downloads or any other information that may be provided by MODANO PTY LTD or its suppliers to You prior to Your acquiring the SOFTWARE PRODUCT and/or CONTENT LIBRARIES are correct or accurate, and You may not rely on any such information for any purposes, except to the extent permitted by local laws, in relation to the SOFTWARE PRODUCT and/or CONTENT LIBRARIES.

#### b. Microsoft Excel

MODANO PTY LTD and its suppliers do not provide any warranties or guarantees in relation to performance of Microsoft Excel, or any other Microsoft product. MODANO PTY LTD and its suppliers will have no liability in relation to any Microsoft Product. Please consult the appropriate Microsoft End-User License Agreement for information about Your rights in relation to Microsoft Excel.

#### c. Severability

If any section or component of this EULA is found to be void or invalid, all other sections or components of this EULA shall remain valid.

d. Printed EULA Supersedes

Subject to written consent from MODANO PTY LTD, the SOFTWARE PRODUCT may not set up on your computer, and/or CONTENT LIBRARIES accessed, unless or until you accept the terms of the applicable EULA. Subject to a written statement from MODANO PTY LTD indicating otherwise, the terms of a printed, paper EULA, which may accompany the product, supersede the terms of any on-screen EULA found within the product.

e. Audit Rights

MODANO PTY LTD shall have the right to conduct an audit, during normal business hours, of Your premises, system, records or other data that may contain information regarding Your compliance with the terms of this EULA. MODANO PTY LTD shall keep in confidence all information that is gained as a result of an audit. MODANO PTY LTD shall only use such information as is necessary to enforce its rights under this EULA. Any audit undertaken pursuant to this EULA shall be conducted at MODANO PTY LTD's expense.

## **18. APPLICABLE LAWS:**

This EULA is governed by the laws of Victoria, Australia or, where supplies are made outside of Australia, by the laws of jurisdiction in which the supplies are made.