# End User License Agreement for Analytica Software from Lumina Decisions Systems, Inc.

**IMPORTANT**: This software end user license agreement ("License") is a legal agreement between the licensee of the software (You) and Lumina Decision Systems, Inc. (Us). Please read it carefully before installing or using the software. It provides You a license to use the software subject to restrictions, warranty information, and liability disclaimers. By installing and using the software, You confirm your acceptance of the terms of this agreement. If You do not agree to be bound by these terms, select the "**cancel**" button, do not install the software, and apply to the seller for a full refund for any purchase price.

#### 1. Definitions

- (a) "You" and "Your" refer to the person and their organization named in a purchase or license agreement that is the licensee who will use the Software.
- (b) "Lumina", "We", and "Us" mean Lumina Decision Systems, Inc. its and licensors, and successors and assigns, if any.
- (c) "The Software" means the Analytica®, Analytica Decision Engine (ADE), or Analytica Cloud Player (ACP) software programs, including printed or digital documentation, and any sample models or libraries supplied in conjunction with the software.
- (d) "Education Version" means a version of the Software identified and licensed for use only by students and faculty of an accredited educational institutions, and only for educational purposes.
- (e) "Product License" means a description contained in a "License File" (normally having the file name extension \*.lic), required by the Software to provide the specified functionality.
- (f) "License Manager" refers to a software program or service, such as Reprise License Manager, installed on a centralized server computer that manages and controls the access and usage of one or more Product Licenses in your organization.
- (g) "Activation Key" means a unique code We provide to You so that You can activate the Product License, enabling the Software to provide the specified functionality.
- (h) "Activation" is a process by which a Product License is generated for a particular user, computer and/or Centralized License Manager, causing the required License File to be downloaded and installed on the target computer. You may activate the Software either automatically, by entering the Activation Key into the Software or into the Centralized License Manager's administration console, or manually, by providing Us the information and

parameters required to generate the license specific to You and Your computer, and manually copying a License File containing that license onto your computer.

- (i) "Individual License" means a Product License that is activated on an individual computer for use by only a single user.
- (j) "Floating License" means a Product License allowing the use of the Software by any number of people in your organization, provided that only one person per Floating License Seat is using the software at any given time. A Floating License is activated on and managed by a License Manager.
- (k) "Named-User License" means a Product License assigned to a single named user, which is activated on and managed by a License Manager.
- (I) An "Application" of the Software is computer software that uses the Software as a component and is designed for use by End Users only via an Application-specific user interface.
- (m)An "End User" is a user of an Application created using the Software who does not have access to capabilities to create or modify Applications of the Software.
- (n) A "Development User" of the Software is a licensee who can use the Software to create or modify an Application of the Software.
- (o) "Feedback" means any information You may provide Us about the Software, including comments, reports of defects, or suggestions, specifications, or designs for improvements.

#### 2. License

Your license entitles You to use the Software within the restrictions set forth in this agreement according to the type of license and for the period of time of the Subscription that you have obtained or purchased:

- (a) An "individual license" or "Named-User License" entitles You to install and use the Software on one or two computers— e.g., a desktop computer at work and a portable or home computer— provided that You are the only person that uses the Software on those computers. Alternatively, You may install and store the Software on a storage device, such as a network server, used only to install the Software on Your other computers over an internal network, provided that each person that uses the Software has a separate license for the Software. You may not use the Software concurrently on different computers. In all cases, You are only entitled to activate the license for a single account on said computer.
- (b) A "Named-User License" entitles You to install and use the Software on any computer, but only one computer at a time, managed by the Reprise License Manager.

- (c) A "floating license" entitles You to install the license on a centralized License Server accessible to others within your organization. You and any member of your immediate organization are then entitled to use Analytica using the floating license provided that only one person per floating license is using the software at any given time. An N-seat floating license entitles up to, but no more than, N persons within your organization to use the Software concurrently. You or another member of your organization are allowed to "roam" a license for up to 14 days on a computer removed from your office, provided that no-one else may use that license while it is roamed. The floating license does not entitle you to make the license available for use by people outside your Organization. You are required to institute reasonable safeguards to ensure that unauthorized use of your License Manager-hosted licenses does not occur by anyone outside your organization.
- (d) You may use an "Analytica Free 101 license" at no cost to view and run existing models, or to develop models with up to 101 user objects. No activation key is required to use Analytica Free 101.
- (e) If the Product License is for "Educational Use" as indicated in the information accompanying the Activation Key or by the Software, or has been purchased under an Educational Pricing discount, You may use the Software only as a student, teacher, or faculty member at an accredited educational institution for educational or research purposes at that institution. You may not use, nor allow the Software to be used or distributed for use for consulting or other commercial use.
- (f) If you have a valid individual license for the Analytica Decision Engine (ADE), You may:
  - i. Install the software on a single "production" server computer that may be used by an unlimited number of End Users, simultaneously or sequentially, to run one or more Applications of ADE running on that server. End Users may access the Applications remotely from their own computers or directly on the same server.
  - ii. Install the software on a single "development" server computer that may be used by one or more Development Users, simultaneously or sequentially, on that server, provided each Development User has a valid license to use the Analytica Enterprise or Optimizer edition.

#### 3. License Restrictions

- (g) Other than as set forth in Section 2, You may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.
- (h) You may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.
- (i) You may not rent, lease, sublicense, resell, or obtain other compensation for the Software license or subscription for Analytica, including Analytica Decision Engine (ADE) or Analytica Cloud Player (ACP), but you may obtain compensation from End Users in return for their access to and use of Applications that use ADE or

ACP.

- (j) Users of the Educational Version of the Software may not use the Software for any commercial use, including paid consulting and funded research. Software licensed for educational use may not be used by End Users in return for payment to licensee.
- (k) You may not transfer your rights under this EULA outside Your organization, except to a successor company that merges with or purchases your company or substantially all its assets. You may transfer it to another person or people within the licensee organization, provided You retain no copies, You transfer all of the Software (including all component parts, the media and printed materials, any upgrades, this EULA, and the License Code), and the recipient agrees to the terms of this EULA. If the Software is an upgrade, all prior editions or releases of the Software must be deleted from all computers and destroyed.
- (I) You may not modify the Software or create derivative works based upon the Software. A derivative work is defined as a translation or other form in which the Software may be recast, transformed or adapted.
- (m)You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder.
- (n) In the event that You fail to comply with this EULA, Lumina may terminate the license, in which case You must delete the Software from all computers or digital media controlled by Your organization.

## 4. Upgrades

If this copy of the Software is an upgrade from an earlier release or lesser edition of the Software, it is provided to You on a license-exchange basis. That means that You agree by your installation and use of this copy of the Software to terminate your earlier license, that You will not continue to use the earlier version of the Software nor transfer it to another person or entity, and you will uninstall and delete the previous versions of the Software.

#### 5. Ownership

This license gives You limited license to use the Software during the period for which you have a valid Subscription. We retain all right, title and interest, including all copyrights, in and to the Software and all copies thereof. All rights not specifically granted in this EULA, including Federal and International Copyrights, are reserved by Lumina and its suppliers.

### 6. Customer Information

(a) We shall keep private and confidential any information that You may provide us, for example when providing technical support, except for the information in (b) and (c) below, or if the information is already in the public domain. We will treat such information with the same care with which We treat Our own confidential information. We will not publish or share with any third party such information in any individually identifiable form, except if compelled to do so by law.

- (b) We have the full right to use, publish, and retain all intellectual property rights to any Feedback about the Software that you may provide Us.
- (c) You agree that Lumina may list You as a customer and reproduce Your logo or registered trademark online or in printed materials solely to indicate that You are a licensee or user of the Software, unless and until You provide Us written notice not to do so. Likewise, We agree that You may list Lumina and use the Lumina and Analytica logos and registered trademarks online or in print solely to indicate that You have licensed Analytica from Us.

### 7. Support and Maintenance

For as long as You have a valid Subscription to the Software, You are entitled to active support benefits, maintenance, and services offered by Lumina. Maintenance includes your right to download and install any patches, minor, or major releases of the licensed edition of the software released by Lumina during that period. Active support is current for twelve months following the paid purchase of as Subscription.

#### 8. LIMITED WARRANTY AND DISCLAIMERS

- (a) LIMITED WARRANTY: Lumina warrants that, for a period of ninety (90) days from the date of delivery (as evidenced by a copy of your receipt): (i) when used with a recommended hardware configuration, the Software will perform in substantial conformance with the documentation supplied with the Software; and (ii) any physical media on which the Software is furnished will be free from defects in materials and workmanship under normal use.
- (b) NO OTHER WARRANTY: EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, LUMINA AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, OR OTHERWISE INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NONINFRINGEMENT, TITLE OR QUIET ENJOYMENT. IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LUMINA, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.
- (c) (USA ONLY) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(d) HIGH RISK ACTIVITIES: The Software is not fault-tolerant and is not designed, manufactured, or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life-support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Accordingly, Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

#### 9. Exclusive Remedies

In the event that the Software does not perform in conformance with the documentation or under Section 6(a), you must provide Us a copy of Your receipt and a description of the problem. Your exclusive remedy and Our entire liability is to make commercially reasonable efforts to provide You with a replacement copy of the Software that substantially conforms to the documentation or to refund to You the purchase price for the Software license at Our option. Lumina shall have no responsibility if the Software has been altered in any way, or if the failure arises out of use of the Software with other than a recommended hardware configuration.

#### 10. LIMITATION OF LIABILITY

- (a) NEITHER LUMINA NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS, INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF LUMINA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- (b) LUMINA'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$100 US DOLLARS OR THE AMOUNT PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.
- (c) (USA ONLY) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

## 11. Basis of Bargain

The Limited Warranty, Exclusive Remedies and Limited Liability set forth above are

fundamental elements of the basis of the agreement between Lumina and You. Lumina would not be able to provide the Software on an economic basis without such limitations.

### 12. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This Software and the documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this EULA and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. Manufacturer: Lumina, Inc., 26010 Highland Way, Los Gatos, CA 95033.

## 13. (Outside of the USA) Consumer End Users Only

The limitations or exclusions of warranties and liability contained in this EULA do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business.

#### 14. General Provisions

This License shall be governed by the internal laws of the US State of California, without giving effect to principles of conflict of laws. This License contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. If any provision of this agreement is held to be invalid, no other provision shall be affected. You agree that any breach or attempted breach of this License will cause irreparable damage and that, in the event of such breach or attempted breach, in addition to any other remedies, We shall have the right to equitable relief, including an injunction, in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief. All questions concerning this License shall be directed to: Lumina Decision Systems, Inc., 26010 Highland Way, Los Gatos, CA 95033, Attention: General Counsel.

## 15. Third Party Software

- (a) Microsoft, Windows NT, Windows XP are registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.
- (b) Portions of the Software are copyright Carnegie Mellon University, 1992.
- (c) This product may include the Analytic Solver SDK licensed from Frontline Systems, Inc.
- (d) This product may include Reprise License Manager libraries licensed from Reprise Software, Inc.

(e) This product may incorporate the PCRE library, copyright 1997-2008, University of Cambridge.

Copyright © 2017 by Lumina, Inc. and its Licensors. All Rights Reserved. "Lumina Decision Systems", "Analytica", and "Intelligent Arrays" are trademarks or registered trademarks of Lumina Decision Systems, Inc. in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners.