End User License Agreement for Analytica Software from Lumina Decision 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 completing installation or using the software. It provides You a license to use the software with 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 return the software to the place of purchase for a full refund.

1. Definitions

(a) "Lumina", “We”, and “Us” mean Lumina Decision Systems, Inc. and its suppliers and licensors, and successors and assigns, if any.
(b) “You” and “Your” refer to the person or organization named in a purchase or license agreement that is the licensee who will use the Software.
(c) "Software" means the Analytica® software program We supply herewith, which may also include documentation, associated media, printed materials, and online and electronic documentation. The term "Software" also includes any sample models and libraries We supply in conjunction with the Analytica software program.
(d) "Product License" means a description contained in a "License File" (normally having the extension *.lic), required by the Software to provide the specified functionality.
(e) "License Manager" (or Reprise License Manager) refers to a software program or service installed on a centralized server computer that manages the access and usage of one or more Product Licenses in your organization.
(f) "Activation Key" means a unique code We provide so that You can activate the Product License, enabling the Software to provide the specified functionality.
(g) "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.
(h) "Individual License" means a Product License that is activated on an individual computer for use by only a single user.
(i) "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.

(j) "Named-User License" means a Product License assigned to a single named user, which is activated on and managed by a License Manager.

(k) “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

(a) Your license entitles You to use the Software within the restrictions set forth in this agreement according to the type of license that you have obtained or purchased. (See Section 3 below for the rights granted by each type of license.)

(b) Your use of the Reprise License Manager software (required for floating or named-user licenses) is subject to the "Reprise End-User License Agreement for RLM End-User Bundle" published at http://www.reprisesoftware.com/enduser_downloads.htm. That agreement represents a contract between You and Reprise Software, Inc., not involving Lumina.

(c) You may make one copy of the Software in machine-readable form solely for backup purposes. You must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software.

(d) We permit (and encourage) You to share copies of the Software as included in the Analytica installer with other people provided that (i) You do not provide or reveal Your (or any) Activation Key or Product License to such people and (ii) You do not obtain monetary or other material compensation for providing a copy of the Software. Such people may use the free Analytica Player license, or obtain a free Trial license from Lumina to try out the Software. If You do reveal Your Activation Key or Product License to a third party, Your license to use the Software shall terminate immediately.

3. Software Usage

(a) An "individual 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 the Software concurrently on different computers. You may install the software on a shared network computer, virtual computer, cloud, or other remote computer system, only when you can guarantee that You are the only user of the license. In all cases listed here, You are only entitled to activate the license for a single account on said computer.

(b) A "floating license" entitles You to install the license on a centralized Reprise 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 Reprise License Manager-hosted licenses does not occur by anyone outside your organization.

(c) You, or anyone, may use an "Analytica Player license" (also known as Analytica Free Player) at no cost to view and run existing models. No activation key or user registration is required to use Analytica Player.

(d) The "Analytica CD Player" may be distributed along with your own model on a CD-ROM. Distribution on a CD-ROM requires reproduction of all copyright notices and proprietary legends to be printed on the disk, and this EULA must be included as license.rtf and license.txt on the disk. The Analytica CD Player requires no installation and makes no changes (nor allows changes) to the end-user's file system or Windows registry. The Analytica CD Player may be safely distributed and used with organizations with strict policies forbidding the installation of unapproved software.

(e) An "Analytica Trial license" permits You to test drive Analytica once for a limited time period (usually 14 days). You may not repeat a test drive of Analytica Trial on any computer or under a different assumed identity unless (i) We have explicitly granted you a Trial extension, or (ii) a period of one year has elapsed since your previous test drive and a new major or minor release of Analytica has become available since your previous test drive. You are welcome to continue the use of Analytica Player to review and run models after your Analytica Trial has expired.

(f) An "Analytica In The Classroom" license may be used only by students enrolled in an approved academic course in an accredited college, university or school, and only for coursework or course projects assigned in the course. You may not use an "Analytica In The Classroom" license for commercial or academic research projects outside of the class, even if you are concurrently enrolled in a relevant course.

(g) 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.

4. License Restrictions
(a) Other than as set forth in Sections 2 and 3, You may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.
(b) You may not decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.
(c) You may not rent, lease, resell, or sublicense the Software.
(d) You may not allow people outside your organization to use floating licenses issued to your organization. You must make a reasonable effort to ensure that such unauthorized use of Your floating licenses does not or cannot occur without your knowledge.
(e) You may permanently transfer all of Your rights under this License to another Licensee provided that: (i) You retain no copies and remove the license files containing activated licenses from your computers; (ii) You transfer all of the Software (including all component parts, the media and printed materials, any upgrades, and this License); (iii) You notify Us in writing as to the identity of the recipient, and (iv) the recipient agrees to the terms of this License. You may not transfer any license that has been traded-in or upgraded, nor any Software purchased under a volume discount or Educational price. For an individual license, We shall issue a new Activation Key for use by the new end-user, which the new user must use for activation. For a named-user license, You may perform the license transfer via the License Manager administration console, and shall notify Lumina of the transfer.
(f) A Trade-in of Software license for an upgrade to a different edition or difference license type is provided to you on a license exchange basis. You may not transfer the old traded-in license. You must discontinue use of the traded-in Software and license and remove all previous licenses for the Software from all computers.
(g) If the License Code is for a "Trial Edition" as indicated in the information accompanying the License Code or by the Software, You may use the Software only for evaluation during the specified limited period.
(h) 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.
(i) You may not export the Software or information generated by use of the Software into any country where such export violates any U.S. export control laws or regulations or any other applicable laws and regulations.
(j) In the event that You fail to comply with this License, Lumina may terminate this License without prior notice to You and You must destroy all copies of the Software.
(k) You may not use, or attempt to use, the Software except as specifically permitted by this License, nor may You use this Software in connection with any High Risk Activity (as defined in Section 6(d) below).

5. Ownership
This License gives You limited rights to use the Software. Lumina and its suppliers 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 License, including Federal and International Copyrights, are reserved by Lumina and its suppliers.

6. Customer Information
(a) We will keep private and confidential any information not already in the public domain that You provide us, except for the information in (b) and (c) below. 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 will 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 and 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

You are entitled to active support benefits, maintenance, and services offered by Lumina when You have identified yourself as the end-user for a single-user license, or as an end-user of a floating license and when active support is current for that license. Active support is current for twelve months following the paid purchase of the Software. You may continue active support by purchase of extended support for subsequent years.

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) the physical media on which the Software is furnished, if any, 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.
HIGH RISK ACTIVITIES: The Software is not fault-tolerant and is not designed, manufactured, nor intended or permitted 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").

9. Exclusive Remedy

Your exclusive remedy and Our entire liability for performance-related claims or under Section 8(a) is to return the Software to the place You acquired it, with a copy of Your receipt and a description of the problem. Lumina will use reasonable commercial efforts to supply You with a replacement copy of the Software that substantially conforms to the documentation, provide a replacement for defective media, or refund to You Your purchase price for the Software, at its option. Lumina shall have no responsibility if the Software has been altered in any way, if the media has been damaged by accident, abuse or misapplication, 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 OR THIS LICENSE 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 License 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 Decision Systems, 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 License 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.


This License shall be governed by the internal laws of the 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, Vista, Windows 7, and Windows Server are registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.
(b) Apple Computer, Macintosh, and Mac OS are registered trademarks or trademarks of Apple Computer in the United States and/or other countries.

(c) Portions of the product are copyright Carnegie Mellon University, 1992.

(d) This product may include Mac2Win software licensed from Altura Software.

(e) This product may include MacApp software licensed from Apple Computer.

(f) This product may include the Premium Solver licensed from Frontline Systems, Inc.

(g) This product may include Reprise License Manager libraries licensed from Reprise Software, Inc.

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

Copyright © 2009 by Lumina Decision Systems, Inc. and its Licensors. All Rights Reserved. Analytica is a registered trademark, and Lumina and Intelligent Arrays are 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.