

# End User Licence Agreement

## Terms and Conditions

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THIS AGREEMENT (THIS “**AGREEMENT**”) IS BY AND BETWEEN DECISION SCENARIOS PTY LTD (“**PROVIDER/WE/US**”) AND THE COMPANY OR ENTITY ON WHOSE BEHALF YOU ARE EXECUTING THIS AGREEMENT (“**COMPANY/YOU**”).

YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND COMPANY TO THE TERMS OF THIS AGREEMENT. BY AGREEING TO THE TERMS OF THIS AGREEMENT OR BY ACCESSING, USING OR INSTALLING ANY PART OF THE SOFTWARE, THE COMPANY EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

IF THE COMPANY DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, THE COMPANY IS PROHIBITED FROM DOWNLOADING, INSTALLING, ACTIVATING OR USING THE SOFTWARE.

THE COMMENCEMENT DATE OF THIS AGREEMENT IS THE DATE ON WHICH THE COMPANY ACCEPTS THESE TERMS BY CLICKING “ACCEPT” OR THE SIMILARLY LABELED BUTTON INDICATING ASSENT (THE “COMMENCEMENT DATE”). COLLECTIVELY, PROVIDER AND THE COMPANY MAY BE REFERRED TO AS THE “PARTIES” OR IN THE SINGULAR AS “PARTY”.

1           DEFINITIONS AND INTERPRETATION

1.1        The following words have these meanings in this agreement:

**“Confidential Information”** means all processes, techniques, programming, research, computer program material, database schematics (including without limitation database entity diagrams), drawings, blueprints, access details (including without limitation access keys), notebooks, documentation and reports, know-how, financial, technical and business information and other commercially valuable or sensitive information in whatever form, including inventions (whether or not reduced to practice), trade secrets, formulae, graphs, drawings, samples, devices, models, plans, strategies, accounts, pricing and any other materials or information of whatever description which a party regards as confidential, proprietary or of a commercially sensitive nature that may be in the possession of a party and includes the terms of this Agreement. The following are exceptions to such information:

- (a) information which a party can establish was lawfully in the public domain prior to its disclosure to a party by another party;
- (b) information which enters the public domain otherwise than as a result of an unauthorised disclosure by a party;
- (c) information which is or becomes lawfully available to the recipient party from a third party who has the lawful power to disclose such information to the recipient party on a non-confidential basis;
- (d) information which can be shown to be rightfully known (as shown by its written record) by the recipient party prior to the date of disclosure; and
- (e) information which is independently developed by employees or contractors of the recipient party (as shown by its written records) who have not had access to the information disclosed by the other party,
- (f) but information is not to be considered to be in the public domain for the purposes of this Agreement unless it is lawfully available to the general public without restriction on its use or disclosure and can be identified without use of the Confidential Information to guide a search of publications or other publicly available material.

**“Customer Data”** means the data inputted, installed or uploaded on Your Designated Systems or into the Software, for the purpose of using the Software.

**“Designated System”** means the personal computer owned or otherwise controlled by You, corresponding to a User, on which Licensed Software is installed.

**“Improvement”** means any development, modification, adaptation, enhancement or improvement of the Software.

**“Intellectual Property”** means copyright, trade mark, design, patent, semiconductor or circuit layout rights; and

- (a) original source code and object code in any software (or part thereof) that is not licensed from a third party; and
- (b) trade or other proprietary rights; and
- (c) the rights to the registration of any such rights;

whether created before, on or after the Commencement Date of this Agreement,

**“Licence Fee”** means the licence fee as set out in the Schedule and unless specified otherwise, excludes GST.

**“Licence Term”** means a term of one year starting from the day the Licence Fee is paid for that User Licence.

**“Software”** means the software known as Lugano, which we own or exclusively licence, and all associated Intellectual Property.

**“Update”** means a revision to the Software or patch that improves the functionality of the Software, and may contain new features or enhancements, which is not an Upgrade.

**“Upgrade”** means a subsequent version of the Software that We designate as a new release and makes generally commercially available or a different flavour of the Software that We make generally commercially available, but does not include a new and separate branch or fork of the Software regardless of whether such branch or fork is based on the Software.

**“User”** means an individual who is authorised by You to use the Software, for whom a subscription to the Software has been purchased, and who have been supplied user identifications and passwords by You (or by Us at your request).

**“User Licence”** means the licence granted to each User who has paid a Licence Fee under this Agreement.

**“Website”** means Decision Scenarios Pty Ltd’s reseller website from which You acquired the Software.

## 1.2 Interpretation

In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or any other document includes any variation or replacement of it;
- (b) a reference in this agreement to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (d) singular includes the plural number and vice versa;
- (e) a reference to any one gender includes each other gender (as the case may require);
- (f) the word “person” includes a firm, corporation, body corporate, unincorporated association or any governmental authority;
- (g) a reference to a person includes a reference to the person’s executors, administrators, legal personal representatives, successors and permitted assigns;
- (h) an agreement on the part of, or in favour of, two or more persons (including where two or more persons are included in the same defined term) binds or is for the

benefit of them or any one or more of them jointly and severally;

- (i) a reference to a party means a person who is named as a party to this, and is bound to observe the provisions of this agreement;
- (j) the reference to “dollars” or “\$” is a reference to the Currency as specified in the Schedule;
- (k) a reference to “includes” or “including” means includes, without limitation and including, without limitation, respectively;
- (l) a word or expression defined in the *Corporations Act*, *Copyright Act*, or the *Patents Act* has the meaning given to it in the *Corporations Act*, *Copyright Act* or the *Patents Act* as the case may be;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 All headings in this agreement have been inserted for ease of reference only. They do not affect the meaning or interpretation of it.

1.4 Any Schedule attached to this agreement forms part of it.

## 2 GRANT AND RESTRICTIONS

2.1 Subject to the terms and conditions of this Agreement, in consideration for the payment of the Licence Fee, We grant to You a non-exclusive, non-transferable, non-sublicensable licence for the Term of this Agreement to use the Software solely for Your own Designated Systems, in accordance with the Software’s technical documentation.

2.2 The Software may be used during the trial period for the purposes of assessment of the Software only.

2.3 The Software may be installed on only the number of Designated Systems corresponding to the number of User Licences purchased and accessed by no more than the specified number of Users who have purchased a subscription. The Software may be transferred to other Users but it must be uninstalled from the Designated System corresponding to the User who is transferring the User Licence.

2.4 The licence in clause 2.1 extends to any Upgrades or Updates to the Software from time to time where such Upgrades or Updates are provided to You by us or our authorised representative.

2.5 If You fail to pay the Licence Fee in accordance with this Agreement, We reserve the right to suspend the provision of any support to You or access to the Software until such time that Your failure to pay the Licence Fee has been remedied to Our reasonable satisfaction.

### 3 TECHNICAL SUPPORT AND UPGRADES AND UPDATES

3.1 We have no obligation to provide You with any support, Updates or Upgrades.

3.2 You agree and acknowledge that Updates, Upgrades and maintenance services may require the Software or the Designated Systems to become temporarily unavailable. We will take reasonable steps to minimise any such disruption. You agree and acknowledge that We will not be responsible for the consequences of such temporary unavailability and that You will provide all necessary assistance to Us in the Update, Upgrade or maintenance process.

### 4 REMOTE ACCESS

4.1 You acknowledge that We may access the Software on Your Designated System for the purposes of verifying compliance with this Agreement. Accordingly, you will provide Us with remote access to the Designated System for those purposes.

4.2 In the event that the access cannot be conducted electronically, you must permit us (or our nominated auditor) to access your Designated System at any time, on at least 5 days written notice, for the purpose of verifying compliance with this Agreement.

4.3 If We have reasonable grounds to suspect that the Software is being used in a manner that is likely to constitute a breach of this Agreement, we may access Your Designated System under clause 4.1 or 4.2 for the purposes of suspending Your access to all or some of the functionality of the Software until such time that we are satisfied that the Software is no longer, and will not be in the future, used in such a manner. We are not liable for any loss, damage, claims or any other liability whatsoever arising out of the exercise of our rights under this sub-clause.

### 5 INTELLECTUAL PROPERTY

5.1 You acknowledge that We are, or our licensor is, the owner of the Software and any Improvements thereto regardless of whether You suggested, contributed to or otherwise brought the Improvement into existence.

5.2 The parties agree that any Improvements to the Software owned by You despite the operation of clause 5.1 shall, immediately upon creation, be assigned absolutely to Us or our nominee. You must promptly take all action necessary to give effect to this clause upon Our request at no cost to Us. For the sake of clarity, Improvements to the Software do not include any suggestions, improvements or changes made by You to Your Designated Systems.

5.3 Subject to clause 5.2 above, nothing in this Agreement shall constitute an assignment of Intellectual Property by one party to the other and each party shall retain all Intellectual Property that it owned prior to entering into this Agreement.

## 6 YOUR OBLIGATIONS

6.1 It is a condition of this agreement that You will:

- (a) subject to the trial period, ensure that, at any one time, the Software is only accessible, and is only accessed, by the number of Users corresponding to the number of Users purchased;
- (b) ensure that, at any one time, the Software is only installed on the number of Designated Systems corresponding to the number of Users purchased;
- (c) be responsible for ensuring You (and Your employees, agents and contractors as though they were named herein) fully comply with this Agreement;
- (d) ensure that the Designated System and any computer on which the Software is to be installed is in good, up to date working order and operating condition at all times with a permanent connection to an adequate internet service (broadband or faster equivalent) for the purposes of remote access.
- (e) use commercially reasonable efforts to prevent unauthorised access to or use of the Software, and notify Us promptly of any such unauthorised access or use;
- (f) only use the Software in accordance with applicable laws and government regulations and in accordance with this Agreement;
- (g) be solely responsible for the accuracy, quality, integrity, and proper operation of Your Designated System including having adequate and functional risk management systems and disaster recovery procedures;
- (h) notify us immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software;
- (i) comply with all reasonable directions given to You by Us or our authorised representative in relation to the Software;
- (j) provide Us or our authorised representative with all assistance, access to Your systems and information (including Confidential Information) requested by the Provider that is necessary for Us or our nominee to meet Our obligations under this Agreement;

6.2 It is a condition of this agreement that You will not:

- (a) subject to the trial period, make the Software available to more Users than the number of Users purchased under this Agreement;
- (b) install the Software on more Designated Systems than the number of Users purchased;
- (c) resell, sell, rent or lease the Software or any functionality of the Software;
- (d) sub-license the Software (or any part thereof) to a third party without Our prior written consent, which may be withheld for any reason;
- (e) use the Software to store or transmit infringing, defamatory or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- (f) interfere with or disrupt the integrity or performance of the Software;
- (g) attempt to gain unauthorised access to the Software;
- (h) use the Software for any purpose or in any manner other than in accordance with this Agreement;
- (i) reproduce, make error corrections to or otherwise modify or adapt the Software or create any derivative works based on the Software, or permit any third party to do so;
- (j) de-compile, disassemble or otherwise reverse engineer the Software or permit any third party to do so;
- (k) modify, remove or circumvent any copyright or proprietary notices on, or security measures protecting, the Software, or permit any third party to do so;
- (l) register, attempt to register or attempt to claim ownership to any rights in connection with the Software anywhere in the world;
- (m) allow any third party to access the Software except as otherwise permitted under this Agreement; or
- (n) aid, abet or encourage any third party to do any act that would otherwise be in breach of the terms of this Agreement.

6.3 Immediately upon termination of this Agreement, You must uninstall or otherwise destroy all copies of the Software and deliver all physical copies of the Software (authorised or otherwise) to Us at no cost to Us.

6.4 Clause 6.3 survives termination of this Agreement.

## 7 TRIAL PERIOD AND PAYMENT

- 7.1 A trial period with a fixed duration in days is available to the Company to evaluate the Software. The duration of the trial period is at Our discretion. Thereafter the trial period will naturally expire unless a Licence Fee is purchased for the Software. If a Licence Fee is not purchased then the Software will become inoperable and You must uninstall or otherwise destroy all copies of the Software.
- 7.2 At the expiry of each Licence Term additional licences may be purchased according to any end user licence agreement as updated from time to time by the Provider.
- 7.3 Only one user may access the Software during the trial period. The number of trial periods available per Company is at Our discretion.

## 8 FURTHER OBLIGATIONS, WARRANTIES AND LIABILITIES

- 8.1 You acknowledge that the Software is licensed by You for internal business use and it is not ordinarily acquired for personal, domestic or household use or consumption.
- 8.2 Given the nature of software in general, to the extent permitted by law, We do not guarantee:
- (a) that the Software will be free of defects, run without interruption, meet Your expectations, function in combination with the hardware or software products of third parties, or that all program errors will be corrected;
  - (b) that the Software will be suitable for purposes which are not agreed in writing between the Parties; or
  - (c) that the Software will integrate satisfactorily with the Designated Systems.
- 8.3 Subject to clause 8.1, Our liability arising out of the Software or the services provided in respect of the Software shall at all times be limited to, at Our option:
- (a) the replacement or repair of the Software or the supplying again of services in respect of the Software; or
  - (b) the payment of the costs of replacing the Software or of supplying again the services in respect of the Software.
- 8.4 In order for any defect in the Software to be sufficiently material so as to violate this Agreement or the Australian Consumer Law (to the extent that law may apply) the defect must cause the Software, while being used in the manner permitted in this Agreement, to function in a way so divergent from its advertised functionality that it is unsuitable for the purpose agreed between the Parties.
- 8.5 The Parties agree that if the required functionality can be achieved indirectly (through a “work-around”), then the defect will not give rise to our obligations under clause 8.3 or the Australian Consumer Law (to the extent that law may apply). If the required functionality cannot be achieved through a work-around then we will use

commercially reasonable endeavours to investigate the problem and at our discretion:

- (a)** replace the Licensed Software, so it materially conforms with the Specifications (including, without limitation, replacement with a more recent version or equivalent software); or
- (b)** repair the Licensed Software by providing, correction codes and/or updates, including updated documentation and other documents.

8.6 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or liability implied in this Agreement or protected by law to the extent that such exclusion, restriction or modification would render this Agreement or any provision of this Agreement void, illegal or unenforceable. Subject to that, any condition, warranty, right or liability which would otherwise be implied in this Agreement or protected by law is excluded.

8.7 To the extent permitted by law, Our total aggregate liability for all claims relating to this Agreement is, at Our discretion, either:

- (a)** replacement of the Software or the supply of equivalent Licensed Software;
- (b)** repair of the Software;
- (c)** negotiation of reduced Licence Fee; or
- (d)** to terminate this Agreement and, following the uninstallation of the Software in accordance with Clause 13.3 below, provide You with a refund for all or part of the license fees received by Us from You during the License Term.

8.8 Except where limitation is prohibited by law, We disclaim all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and any warranty against infringement, other than those expressly set out in this Agreement.

8.9 You acknowledge that our authorised representatives or resellers are not allowed to provide any warranty, guarantee or assurance with regard to the use, suitability, or results of use of the Software, or with regard to the precision, accuracy or reliability thereof, and any such warranty, guarantee or assurance is of no effect.

8.10 To the extent permitted by law:

- (a)** it is Your responsibility to select the Software that fulfils Your requirements;
- (b)** You bear the full risk for the performance of and results achieved by the Software and for its suitability for the purpose;

- (c) We exclude all liability in respect of loss of, corruption of or access to data, interruption of business, any lost profits, or revenues or for any indirect, special, incidental, or consequential damages however caused, whether in contract, tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages.
- 8.11 We are not liable under this Agreement for circumstances for which We are not responsible, including, without limitation:

  - (a) non-compliance with the conditions of use and operation contained in the Software description;
  - (b) non-compliance with the provisions of this Agreement;
  - (c) unauthorized modifications to or interference with the Software by You or third parties;
  - (d) errors in the operation of the Software by You or third parties; or
  - (e) influences from systems or programs that have not been supplied by Us;
  - (f) influences from systems or programs that We do not own.
- 8.12 You indemnify Us, on a continuing basis and on a full indemnity basis, from and against any liability, claim, loss, expense or demand for or arising from:

  - (a) any improper use or mismanagement of the Software by You or Users;
  - (b) any use of the Software in a manner not reasonably contemplated by Us;
  - (c) any modification of the Software;
  - (d) any use of the Software in a manner contrary to law;
  - (e) Your failure to comply with any terms of this Agreement; and
  - (f) Your failure or refusal to adopt any of Our recommendations in relation to the Software.
- 8.13 Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- 8.14 Each party warrants to the other that it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it.
- 8.15 In the event that We incur additional expenditure as a result of Your failure to comply fully with Your obligations under this Agreement,

We have the right to charge You for the costs that We incur in respect of that failure.

- 8.16 This indemnity survives termination of this Agreement by either party for any reason.

9 CUSTOMER DATA

- 9.1 Each User must backup its Designated System and Customer Data prior to the installation of the Software.
- 9.2 Nothing in this Agreement should be construed as a transfer of ownership of the Customer's Data. The Customer owns all rights, title and interest in and to all of the Customer Data and has the sole responsibility for the legality, reliability, integrity, input, accuracy and quality of the Customer Data.
- 9.3 You acknowledge and accept that a function of the Software may overwrite Customer Data.
- 9.4 You agree that you have sole responsibility for the accuracy, quality, integrity, legal compliance, input, reliability, appropriateness and rights ownership in all Customer Data.

10 CONFIDENTIALITY

- 10.1 The parties acknowledge that each other's Confidential Information constitute special, valuable and unique assets.
- 10.2 Each party's confidentiality obligations with regards to Confidential Information in this Agreement shall also apply to the terms of this Agreement. The parties agree that We may publicise the fact that the Software and/or services are being used by You and You may publicise the fact You are using the Software and/or services.
- 10.3 For itself and on behalf of its officers, directors, agents, and employees, each party agrees to the following:
- (a) it will not disclose the other party's Confidential Information to any third party or disclose it to an employee or contractor unless:
    - (i) such employee or contractor has a need to know the Confidential Information; and
    - (ii) it has first obtained a validly executed agreement, undertaking or other document from the employee or contractor that includes an obligation for that employee or contractor to maintain confidentiality of the Confidential Information to at least the same extent as is required under this Agreement;
  - (b) it will use the Confidential Information only for the proper operation of this Agreement and will not otherwise use it for its own benefit;
- 10.4 In no event shall a party use less than the same degree of care to protect the other party's Confidential Information as it would employ

with respect to its own information of like importance which it does not desire to have published or disseminated.

10.5 A party may request in writing that the other party return or destroy its Confidential Information (at the first party's option) upon:

- (a) termination of this Agreement, if no other separate commercial arrangements are entered into between the parties in relation to the implementation of the Software into the Company's systems; or
- (b) breach by that other party of its confidentiality obligations under this Agreement.

10.6 This clause survives termination of this Agreement.

## 11 NOTICE OF INFRINGEMENT AND UNAUTHORISED USE

11.1 Each party must notify the other of any actual or suspected infringement of that other party's Intellectual Property or unauthorised use or disclosure of its Confidential Information of which the first party becomes aware.

## 12 MODIFICATIONS

12.1 You must not modify the whole or any part of the Software or combine or incorporate the whole or any part of the Software in any other program or system without Our prior consent in writing.

12.2 If the Software is modified, the modifications shall, unless We direct otherwise, be made in accordance with a written proposal submitted by You to Us.

12.3 You shall fully indemnify Us and hold Us harmless against any liability incurred if the said modifications infringe the intellectual property rights of a third person.

12.4 The Software as modified remains our property, or the property of Our licensor, as the case may be.

12.5 This Agreement shall continue to apply to the Software as modified.

## 13 TERMINATION

13.1 This Agreement continues for the Term unless terminated in accordance with this Agreement.

13.2 In addition to and without limiting any other available rights or remedies a party may terminate this Agreement by notice in writing to the other party if:

- (a) the other party breaches any provision under this Agreement and such breach continues for a period of fourteen (14) days after notice in writing to that party specifying the breach;
- (b) the other party ceases to (or is unable to) pay its creditors in the ordinary course of business, has a receiver, receiver and manager, administrator, liquidator or similar officer

appointed either generally or in relation to any of its assets, enters into or resolves to enter into a scheme of arrangement, compromise or composition with its creditors or any class thereof, resolves to or is wound up or placed under official management or administration, or if anything having a substantially similar effect to any of these events happens under the law of any applicable jurisdiction.

- 13.3 If this agreement is terminated or expires for any reason,
- (a) You must immediately uninstall, delete and cease all use of the Software, or if Our assistance is required in this process, allow Us to access Your premises and/or systems to give effect to this clause; and
  - (b) the parties must immediately cease all use of each other's Confidential Information.
- 13.4 The termination or expiry of this Agreement will not affect any right of action which may have accrued to either party in respect of anything done or not done prior to such termination or expiration.

#### 14 MISCELLANEOUS

- 14.1 Each party must not assign or seek to assign the benefit of this Agreement without the consent in writing of the other party, whose consent may be granted or withheld in its absolute discretion.
- 14.2 This Agreement is governed by the law of the State of Queensland, Australia and the parties submit to the jurisdiction of the Courts of that State.
- 14.3 This Agreement may not be varied except in writing signed by both of the parties.
- 14.4 If any provision of this Agreement is found to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it must be severed so that the validity and enforceability of the remaining provisions are not affected.
- 14.5 This Agreement contains the entire Agreement between the parties as to the implementation and use of the Software in the Company's systems for the Purpose and supersedes all previous negotiations. In entering into this Agreement no party has relied upon any statement or representation which does not appear in this Agreement.
- 14.6 All stamp duty and government charges arising out of or incidental to this Agreement are the responsibility of and are payable by the Company.
- 14.7 No failure on the part of a party to exercise, or delay on its part in exercising, any of the rights or remedies provided by this Agreement or by law operates as a waiver of them. Any single or partial exercise of any of the rights or remedies does not preclude any further or other exercise of such right or remedy or the exercise of any other of the rights or remedies.

- 14.8 The rights and remedies contained in this Agreement are cumulative and are not exclusive of any rights and remedies provided by law.
- 14.9 Each party must do and perform all such other acts, matters and things as may be necessary or convenient to implement the provisions of this Agreement so as to give effect to the intentions of the parties expressed in this Agreement.
- 14.10 Any notice or other communication given or made under this Agreement:
- (a)** by Us or our authorised representatives or resellers may be:
    - (i)** posted to you;
    - (ii)** emailed to You at any email address provided by You;
    - (iii)** included on any invoice (which may be emailed or Posted to You); or
    - (iv)** posted on the Website. You must review the Website regularly for notices.
  - (b)** by You must be posted to Us at the address stated on the latest invoice.
  - (c)** All notices:
    - (i)** must be in writing;
    - (ii)** must be signed by the party giving or making it (or signed on behalf of such party by its duly authorised representative).