

# Lumnion Services Subscription Agreement

**THIS AGREEMENT CONSTITUTES A BINDING CONTRACT ON YOU AND GOVERNS THE USE OF AND ACCESS TO THE SERVICES BY YOU, AGENTS, AND END-USERS WHETHER IN CONNECTION WITH A PAID OR FREE VERSION SUBSCRIPTION TO THE LUMNION SERVICES.**

*By accepting this Agreement, either by accessing or using a Service or authorizing or permitting any agent or End-User to access or use a Service, you agree to be bound by this agreement as of the date of such access or use of the Service.*

*If You are entering into this agreement on behalf of a company, organization or another legal entity, You are agreeing to this Agreement for that Entity and representing to Lumnion that you have the authority to bind such entity and its Affiliates to this Agreement, in which case the terms "Subscriber," "You," "Your" or a related capitalized term herein shall refer to such Entity and its Affiliates.*

***If You do not have such authority, or if You do not agree with this Agreement, you must not use or authorize any use of the Services.***

## 1. INTERPRETATION AND DEFINITION

**Lumnion** Refers to Lumnion GmbH (HRB 269131)

**The Agreement** Lumnion Subscription Agreement

**Start Date** is the date the date of such access or use of Lumnion Services

**A Competitor** is a Software Competitor or any entity that provides actuarial consulting services and/or risk advisory services and/or investment advisory services and/or brokerage services and/or financial modeling services (or is under the Control of, or is under the joint Control of, the Controlling Party or indirect Controlling Party, or is directly or indirectly Controlled by, or is under common Control with, a legal entity).

**Confidential Information** is information or data, tangible or intangible, in any form of tangible or intangible form, owned by the Discloser and in any form of controlled or storage medium, which has been disclosed to the Recipient by or on behalf of the Discloser, directly or indirectly, by written, oral, visual means, before or after the date of this Agreement, or which the Recipient's development, observation, analysis, investigation or other search for such information, data or belief is now or at any time after the date of this Agreement. Confidential Information includes, but is not limited to, the following: Trade secrets, discoveries, \*know-how, designs, specifications, drawings, current or future products or services and markets, innovations, prototypes, algorithms, software of any kind or nature, including, but not limited to, object or machine codes, source codes (whether revealed in the Software or otherwise disclosed), computer models and applications, enhancements, processes, formulas, technology, engineering, architectural, hardware configuration information, diagrams, data, computer programs, business activities and operations, customer lists, reports, studies and other technical and business information and any other information or data, including, for the avoidance of doubt, confidential information relating to

the Parties' customers, which is confidential by its nature or inherently or by reason of its content and disclosure.

**Control means** the possession by one entity, directly or indirectly, of the power to direct or cause the direction of the management or policy of another entity, whether through ownership of voting securities, by contract or otherwise, and **Controlling** and **Controlled** are interpreted accordingly.

**License Keys**, however defined, include the rights provided by the Software (rights to install, run, use and backup the Software on the Company's computers). Software keys or other hardware, software or coding or any service or process that gives Licensee activation or visibility control.

**Discloser** means the party that discloses Confidential Information to the Recipient, which may be Licensee and its Licensed Affiliates, if Licensee, or Lumnion and Lumnion Affiliates, if Lumnion, whichever is applicable.

**Embedded Components** are any program, software or hardware licensed to Lumnion by a third party and included in the Software.

**Environment** means one or more development, test, production or disaster management environments on Licensee's systems.

**Intellectual Property Rights** are (i) copyright, patents, database rights and rights in trademarks, designs, rights in *know-how* and confidential information (whether registered or unregistered); (ii) registry applications and the right to apply for registration, any of these rights; (iii) all other intellectual property rights and equivalent or similar forms of protection available anywhere in the world; and (iv) trade secrets.

**Intermediate Source Code** is any source code or template used in, generated from, or derived from the Software through its use. For the avoidance of doubt, Intermediate Source Code does not include Software that has been disassembled as part of the Software in any object code form or in a form compatible with just-in-time compilers or as a common intermediate language.

**The License is the** license to the Software Materials granted by Lumnion to Licensee in clause 2 of this Agreement.

**A Licensed Affiliate** is an entity defined in the Software Terms as a direct or indirect Controlling Party, a direct or indirect Controlled Person, or a Licensee under common Control and meeting the Non-Competitor requirement.

**The Party** is a party to this Agreement.

**Recipient** means the party receiving Confidential Information through Disclosure, which may be Licensee and its Licensed Affiliates, if Licensee, or Lumnion and Lumnion Affiliates, if Lumnion, whichever is relevant.

**The Software** is software as defined in the Software Terms and all libraries and associated software formulated therein, together with the License Keys, Embedded Components and all Upgrades. The Software is in the form of any object code or in a form compatible with just-in-time compilers or a common intermediate language and includes any Intermediate Source Code and

any object code resulting from the Intermediate Source Code, except as otherwise provided in the Software Terms.

**A Software Competitor** is a legal entity that provides sales, development, licensing, marketing or actuarial consulting and/or risk consulting and/or investment consulting and/or brokerage services and/or financial modeling services. Controlling or indirectly Controlling is a Competitor or any legal entity that is directly or indirectly under the joint Control of the Controlled, directly or indirectly Controlled, or a legal entity engaged in these businesses (Software Competitor).

**Software Materials** are the License Keys, any manuals, any documentation and any media on which the Software is recorded as provided by Lumnion to Licensee.

**Third Party Components** are any programs or software (other than this Software), personal computers and hardware that Lumnion may from time to time assign as a requirement of use in connection with or in support of the Software.

**Lumnion Affiliates means** directly or indirectly Controlling, directly or indirectly Controlled by, or under common Control with, Lumnion.

**Lumnion Group** means Lumnion and each Lumnion Affiliate.

**Year** means the twelve-month period following the Commencement Date and each subsequent twelve-month period means a period commencing on any anniversary of the Commencement Date.

1.1 In this Agreement:

- (a) References to an organization include a legal entity, a natural person and an unincorporated ordinary partnership of such persons.
- (b) Subject to clause 16 (Assignment and Sublicensing), this Agreement includes references to a Party's successor or assignee (whether immediate or otherwise) to this Agreement and the Software Terms, and

(c) Singular words include the plural meaning and vice versa where the context accepts it.

1.2 The meanings defined in subparagraphs 1.1. and 1.2. above shall apply unless otherwise intended.

1.3 The headings in this Agreement shall have no effect on the interpretation of this Agreement.

1.4 References to clauses and sub-clauses in this Agreement shall be construed as references to clauses and sub-clauses in this Agreement unless expressly stated otherwise.

## **2. LICENSE**

2.1 Subject to payment of the Fees and the terms and conditions in this Agreement, Lumnion grants Licensee a revocable but non-transferable license to use the Software for its normal internal business purposes.

2.2 Except as otherwise expressly provided in the Agreement, Licensee may not:

- (a) Use the Software for the provision of consulting services, clerical services or any other services to any third party;
- (b) rent, lease, lend, sublicense, assign, renew, transfer or otherwise make available the Software or any rights under this Agreement to any third party.

2.3 **Lumnion may authorize Authorized Third-Party use of the Software.** To become an Authorized Third-Party User, an organization or individual must be approved in writing by Lumnion. Organizations and individuals that are not Software Competitors may be approved as Authorized Third Party Users in Lumnion's sole and absolute discretion. Organizations and individuals that are or will become Software Competitors are not permitted to be Authorized Third Party Users. Whenever Lumnion approves an organization or individual as an Authorized Third Party User, Lumnion reserves the right to charge a Licensee prior to Lumnion granting Authorized Third Party User permission to use the Software.

An Authorized Third Party User must use the Software on the following terms:

- (a) For the sole benefit of Licensee and its Licensed Affiliates (if any);
- (b) Only on computer systems owned or controlled by Licensee or its Licensed Affiliates (if any) and on lines at Licensee's User Location
- (c) If prior to the use of the Software, it has entered into an Authorized Third-Party User agreement with Lumnion for the first time with terms acceptable to Lumnion.
- (d) The Authorized Third-Party User understands that it will lose the right to use the Software when the legal conditions under this subparagraph 2.3;
  - (i) If the Authorized Third Party User breaches any provision of the Agreement or its Authorized Third Party User agreement with Lumnion made in accordance with clause 2.3(c);
  - (ii) Licensee or its Licensed Affiliates lose the right to use the Software under this Agreement; or
  - (iii) If Lumnion determines that an Authorized Third-Party User is a Software Competitor.

2.4 Licensee warrants that all Licensed Affiliates and Authorized Third Party Users comply with this Agreement. Licensee is responsible for all acts and omissions of any Licensed Affiliates and Authorized Third Party Users, and any failure of a Licensed Affiliate or Authorized Third Party User to comply with the legal terms of this Agreement shall be deemed a breach of this Agreement by Licensee.

## 2.5 Multi-Tenant Usage

The license is granted for the purpose of using the software in a multi-tenant architecture. In this context:

- a. Isolation:** The software may be used to serve multiple customers (tenants), and the data of each customer must be isolated.
- b. Authorization:** Each customer shall have access only to their own data and shall not have access to the data of other customers.

**c. Security:** Security measures must be implemented to protect the data of each customer in a multi-tenant environment. Lumnion shall take necessary technical and organizational measures to ensure the security of customers' data.

**d. Upgrades:** Lumnion reserves the right to perform necessary upgrades and updates to ensure the performance and security of the software in a multi-tenant usage scenario.

**e. Support:** Lumnion shall provide support services for technical issues and performance problems related to the multi-tenant architecture. Support services shall be provided in accordance with the terms of this Agreement.

**f. Compliance:** Licensee must comply with all applicable laws, regulations, and the terms of this Agreement while using the software in a multi-tenant environment.

**g. Data Processing:** Licensee commits to comply with all legal obligations regarding data privacy and security during the processing of customers' data.

1.1 Lumnion will provide Licensee with a copy of the Software and any valid License Key required for use of the Software. Licensee warrants that it will not attempt to bypass or defeat or otherwise attempt to or attempt to take out of service, interfere with or disrupt the regular operation, copy, duplicate or remove any Copy Protection Key or any other management technology rights or software employed by Lumnion.

2.5 Licensee may not make copies of the Software.

2.6 Licensee shall take and maintain reasonable security measures to protect the Software Materials and all copies in Licensee's possession or control from access and use by any unauthorized person.

2.7 License Area:

(a) change or modify all or any part of the Software.

(b) You may not reverse engineer, disassemble or disassemble the source code, or reverse engineer the Software, and may not reference your own software and systems.

(c) During the use of the Software, the Intermediate Source Code may only be used in accordance with the terms of this Agreement and for no other purpose.

2.8 The Licensee is responsible for assigning qualified personnel to use the Software and for reviewing and assessing the validity of the accounts generated.

### **3. GUARANTEES**

3.1 Each Party warrants to the other that it has full right, title and authority to enter into this Agreement and to accept and perform the obligations arising hereunder.

3.2 **Lumnion** assumes no responsibility for the manner in which Licensee uses the Software and Output and for any results obtained or decisions made by Licensee in connection with its use, and

Licensee acknowledges that the Software and Output do not constitute a recommendation from Lumnion.

#### **4. BILLING, SERVICE MODIFICATION AND PAYMENT**

**4.1** Payment and Billing. All Subscription Charges are due in full upon commencement of Your subscription Term, or with respect to a Deployed Associated Service, at the time such Deployed Associated Service is purchased, subscribed to or otherwise deployed, unless otherwise expressly set forth in this Agreement, an Order Form, a Statement of Work, or in Supplemental Terms, or as otherwise agreed for Usage Charges. You are responsible for providing valid and current payment information and You agree to promptly update your Account information, including payment information, with any changes that may occur (for example, a change in Your billing address or credit card expiration date). If You fail to pay Your Subscription Charges or any other charges indicated on any Order Form or Statement of Work, or in any Supplemental Terms, within five (5) business days of Our notice to You that payment is delinquent, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend or terminate access to and use of the Services by You, Agents and End-Users.

**4.2** Upgrades. If You choose to upgrade Your Service Plan Your Subscription Term, any incremental Subscription Charges associated with such an upgrade will be charged in accordance with the remaining Subscription Term. In any future Subscription Term, Your Subscription Charges will reflect any such upgrades.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

Licensee acknowledges and agrees that Lumnion shall retain all right, title and interest, including all Intellectual Property Rights, in and to the Software and all forms, copies and modifications thereof and derivative works thereof and all related features, techniques, \*know-how, methods and algorithms and Intermediate Source Code in and to the Software. By virtue of this Agreement or the exercise of any right hereunder, Licensee does not acquire any right, title or interest in or to the Software not expressly set forth in this Agreement and the applicable Software Terms.

#### **6. LUMNION WARRANTS THAT ALL INTELLECTUAL AND PROPRIETARY RIGHTS IN THE SOFTWARE ARE HELD IN CONFIDENCE BY LUMNION**

**6.1** Recipient shall protect all Confidential Information (whether orally, in writing or otherwise) provided to it by Discloser using the same standards that Recipient applies to its own similar Confidential Information, but in no event less than reasonable precautions. The recipient may use Confidential Information for the purpose of this Agreement or the applicable Software Terms. Recipient may provide its directors or employees or Licensed

Affiliates (or, in the case of Lumnion, Lumnion Affiliates and contractors) (all "Permitted Users") access to Confidential Information only on a need-to-know basis. The recipient shall ensure that each of its Permitted Users shall be obligated to keep all Confidential Information confidential to the standards required under this Agreement and the applicable Software Provisions.

- 6.2 Recipient's confidentiality obligations do not apply to information: (i) already known at the time of disclosure, (ii) in the public domain or publicly available, (iii) provided by a third party not under such an obligation of confidentiality, or (iv) independently developed by it. The recipient may disclose Confidential Information to its legal counsel to protect its legitimate interests or to fulfill any legal or regulatory requirements. If any court, regulatory authority, or legal process requires the Recipient to disclose information covered by a confidentiality obligation, then the Recipient may make such disclosure if permitted by law, provided that it promptly notifies the Discloser of such requirement and cooperates at the Discloser's expense in responding to it.
- 6.3 Licensee does not prevent Lumnion from disclosing the existence of this Agreement and any Software Terms but may not disclose the contents of this Agreement and any Software Terms for its own marketing purposes.
- 6.4 The Parties agree that there is no need or requirement for Licensee (or its Licensed Affiliates) to submit or transfer any form of personal data to Lumnion or to share any personal data with Lumnion for Lumnion to perform its obligations under this Agreement.
- 6.5 This clause 7 shall remain in full force and effect notwithstanding any termination of this Agreement or any Software Terms.

## **7. SYSTEM REQUIREMENTS**

For the Software to function correctly, it must be used in conjunction with Third Party Components (if any). Licensee is responsible for obtaining any necessary Third-Party Components for the operation of the Software. Lumnion does not provide, support, or make any representation or warranty with respect to, or establish any responsibility or liability for, any Third-Party Component, and Licensee is responsible for accepting and observing the terms of any end-user license applicable thereto.

## **8. TERM AND TERMINATION**

- 8.1 Lumnion shall have the right to terminate this Agreement immediately if Control of Licensee or Control of an entity that directly or indirectly Controls Licensee passes to a Competitor.
- 8.2 Any termination or expiration of this Agreement shall not affect the accrued obligations of the licensee and shall not affect the effectiveness or continued effectiveness of any statutory provision of this Agreement or any related provision of this Agreement that is expressly or by implication intended to take effect or remain in effect on or after the date of termination or expiration.
- 8.3 Upon termination or expiration of this Agreement, Licensee shall immediately cease use of the relevant Software Materials and shall either: (i) immediately return to Lumnion all Software Materials in Licensee's possession or control; and/or (ii) immediately delete all and each and every copy of the Software from its IT system; or (iii) implement reasonable technical, physical and confidentiality measures to deactivate the Software so that it is no longer accessible and

confirm in writing to Lumnion that either (i), (ii) or (iii) has been implemented and that there is no further use.

## **9. OBLIGATION**

- 9.1 In no event shall Lumnion and/or any Related Person be liable under any circumstances arising out of or in connection with this Agreement, the Software Materials or Deliverables or under applicable law for: (a) loss of revenue, (b) loss of actual or anticipated profits, (c) loss of business, (d) loss of earnings or use of money, (e) loss of contract, (f) loss of anticipated savings, (g) loss or corruption of data, (h) any non-direct or indirect loss. The exclusion of liability for losses applies if any of these, including direct, indirect, consequential or otherwise, were foreseeable, known, anticipated or otherwise contemplated.
- 9.2 Licensee acknowledges and agrees that Lumnion and/or its Related Persons shall have no liability whatsoever in respect of any representations made by or on behalf of Lumnion to Licensee or any Licensed Affiliate not covered by this Agreement and that it has not relied on any representations made by Lumnion in entering into this Agreement which are not set out in this Agreement.
- 9.3 Any legal action against Licensee, Lumnion or their Related Persons relating to this Agreement, or the Software Materials or Deliverables may be commenced one (1) year after the earlier of: (i) an investigation of the circumstances giving rise to such claim, (ii) the date of termination of this Agreement, or (iii) the date of termination of the Contractual provisions to which the action relates.
- 9.4 Licensee shall have no right of action for specific performance by Lumnion for breach of any provision of this Agreement.

## **10. FORCE MAJEURE**

Neither Party shall be liable to the other Party to the extent of any delay or failure to perform any obligation under this Agreement or the applicable Software Provisions to the extent such delay or failure to perform is caused by

- (a) Natural disaster, state intervention, war, fire, flood, explosion, civil commotion, armed hostilities, terrorist acts or revolution
- (b) Siege, embargo, strike, lockout, sit-in, industrial or commercial dispute.
- (c) Bad weather or epidemics declared by the World Health Organization
- (d) Action or intervention by a competent judicial or regulatory authority
- (e) The failure, disruption or disconnection of any telecommunications, internet or other electronic communications system; or
- (f) Any event that is beyond reasonable control and could not reasonably have been planned or avoided (including, without limitation, the act or omission of any third party)

## **11. NOTICES**



- 11.1 Any notice or formal communication given under this Agreement must be in writing and must be delivered, mailed or couriered to the Party's address specified in the Agreement for the relevant Software or such other address as may notify the other Party. A record of delivery of any notice or other paperwork sent is required. Notices to Lumnion must be sent to Krohstraße 2 (5.OG. wohnung-Nr:1018), Bayenthal, 50968 Cologne Germany
- 11.2 Any notice or other communication delivered in accordance with clause 10.1 shall be deemed to have been given at the recorded time of delivery.

## 12. TRANSFER AND SUB-LICENSING

Licensee may not assign, transfer, impose an additional duty, or eliminate any of its obligations under this Agreement or any Software Terms, or subcontract, transfer, or otherwise dispose of any of its rights, without Lumnion's prior written consent. Licensee shall not sublicense or take any action that constitutes sublicensing of any Software Materials.

## 13. GENERAL

- 13.1 **Not being a partnership or agency:** Nothing in this Agreement shall constitute a partnership between the Parties, nor shall it confer upon one Party the role of agent or representative of the other Party for any purpose.
- 13.2 **Amendments:** We may amend this Agreement from time to time, in which case the new Agreement will supersede prior versions. We will notify You prior to the effective date of any such amendment and your continued use of the Services following the effective date of any such amendment may be relied upon by Lumnion as Your consent to any such amendment. Our failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of this Agreement.
- 13.3 **Third Party Rights:** Subject to the express rights granted to third parties under the terms of this Agreement, an entity or person that is not a Party to this Agreement may not enforce the terms or performance of this Agreement.
- 13.4 **Acceptance of Damages:** Including, but not limited to, any unlicensed use or release of the Software in any jurisdiction, regardless of whether Lumnion is commercially exploiting the Software in the jurisdiction at the time of such unauthorized use or release, Licensee agrees that the Software is an asset belonging to Lumnion and agrees to suffer loss of or damage to it.
- 13.5 **Entire Agreement:** This Agreement supersedes all prior or contemporaneous proposals, agreements, understandings, contracts and representations, whether written or oral, between Licensee and Lumnion and constitutes the complete and exclusive terms of the agreement. If any provision of this Agreement is declared invalid, illegal or otherwise unenforceable, the remainder shall continue unaffected.

## 14. APPLICABLE LAW AND ARBITRATION

- 14.1 All legal relations in connection with the present contract shall be governed exclusively by the laws of the Federal Republic of Germany, and the contract shall be interpreted in accordance with these laws.

- 14.2 The Parties shall use their best efforts in good faith to resolve all disputes and claims that may arise out of or in connection with this Agreement or the interpretation of this Agreement, or in connection with the rights or obligations of the Parties and their respective successors and permitted assigns under this Agreement ("**Dispute**"), first by settlement.
- 14.3 Article 13.2 above, if the Party concerned fails to send to the Party sending the notice its response to the matters set out in the notice within fifteen (15) days at the latest following the date of the first notice sent to it regarding the Dispute and/or the Dispute, If the Dispute cannot be resolved amicably within thirty (30) days following the date of the first notice sent regarding the Dispute, upon application by either Party, the Dispute shall be finally settled by arbitration in accordance with the Arbitration Rules of the German Arbitration Center ("**Rules**"). The number of arbitrators shall be odd and shall be selected in accordance with the Rules.
- 14.4 The seat of arbitration shall be Germany. The language of the arbitration shall be German.
- 14.5 The arbitrator shall have the power to make any award, including interim and/or final injunctions or performance in kind. Any order of the Arbitrator shall be enforceable and/or executory by any court of competent jurisdiction. Each Party reserves the right to apply to any court of competent jurisdiction for injunctive or interim relief, including injunctive relief and pre-arbitral attachment or injunctive relief, and any such application shall not be deemed inconsistent with the agreement to submit to arbitration or a waiver of the right to submit to arbitration.
- 14.6 All arbitral awards shall be final and binding on the Parties. An arbitral award may be enforced and/or executed by any court of competent jurisdiction within or outside Germany.
- 14.7 Nothing in this Agreement shall prevent Lumnion from seeking injunctive and declaratory relief in any proceeding against Licensee or its Licensed Affiliates.