



Version March 2020

TERMS OF USE

These Terms of Use (hereafter “**Terms**”) govern the access to, use, and right to grant access to and use of the Services and Application provided to Customer pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an “**Order**”).

By accessing and using the Services, the Customer confirms having read, accepted and will comply with all the terms and conditions of these Terms.

1 Definitions and Interpretation

In these Terms, the following words have the following meanings:

“**Application**” means the online software application for which the Customer has purchased a Subscription, and as such application is set out further on the ‘Product’ page at www.LumApps.com (as may be updated by LumApps from time to time).

“**Authorized User**” means an employee, agent, independent contractor or consultant to the Customer whom Customer authorizes to use the Application.

“**Customer**” means any legal entity that has acquired the right to access to the Documentation and to use the Application by paying a Subscription Fee to LumApps or a reseller for its Authorized Users.

“**Customer Data**” means the data or materials entered into the Application from time to time by the Customer, or by Authorized Users or LumApps on the Customer's behalf, for the purpose of using the Application or facilitating the Customer's use of the Application.

“**Documentation**” means the operating manuals, user and technical documentation and/or other related materials (in any form) relating to the Application made available by LumApps from time to time.

“**Intellectual Property**” means copyright, rights in software, trademarks, design rights, patents, know-how, confidential information, rights in inventions, processes and formulae, and all and any other intellectual property rights subsisting anywhere in the world, including all applications for the same.

“**LumApps**” means LumApps, Inc. if Customer resides in or obtains the Application from the United States, LumApps K.K. if Customer resides in or obtains the Application from Asia and LumApps SAS if Customer resides in or obtains the Application outside of the aforementioned territories, and who created the Application and who owns the entire intellectual property.

“**Reseller**” means third party that sells and sublicences the Application to Customer under the terms of an agreement between Customer and the Reseller.

“**Subscription**” means the annual subscription indicated in the Order, for which Customer is liable for the use of the Application and for the number of Authorized Users mentioned on the Order.

“**Subscription Fee**”: The annual subscription fee set out in the Order payable by the Customer in respect of the Application, to access and use the Application for the number of Authorized Users set out in the Order.

“**Terms**” means term of the Customer's Subscription to access and use the Application as indicated in the Order.

“**Third-Party Software**” means any software proprietary to a third party which is integrated or interfaces

with the Application.

2 Services - Updates

- 2.1 Services. During the Term and subject to these Terms, Customer will have a right to access to and use of the Application and Documentation (the “**Services**”) solely for its internal business purposes.
- 2.2 Updates. The Application may be updated and/or changed from time to time for the purposes of error correction, enhancement to functionality or otherwise.

3 Access to Application

- 3.1 Subject to and in consideration of the full compliance with the Terms, Customer shall have a non-transferable and non-exclusive right to use and to access the Application during the period stated in the applicable Order.
- 3.2 Customer shall, and shall ensure that all Authorized Users:
- (a) comply with all applicable laws and regulations use the Services only in accordance with these Terms;
 - (b) are not using the Services to export, re-export, sell, lease or otherwise transfer to restricted end-users (including persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons) and/or are not using the Services into territories subject to an export embargo (currently North Korea, Iran, Mali, South Sudan, Central African Republic, Yemen, Guinea-Bissau, Libya, Eritrea, Lebanon, ISIL (Da'esh), Al-Qaida and the Taliban, Democratic Republic of the Congo, Sudan, Somalia, Iraq);
 - (c) obtain and maintain all necessary licenses, consents and permissions for LumApps, its contractors and agents to perform their obligations under the Terms or for the Customer and the Authorized Users to use any Third-Party Software;
 - (d) obtain and maintain internet and network communications, computer equipment and a suitable web browser required to access and use the Application and complies with all other technical requirements notified to it from time to time; and
 - (e) use all reasonable efforts to prevent any unauthorized access to, or use of, the Services and, if any such unauthorized access or use occurs, will promptly notify LumApps or its Reseller (if any) and give LumApps all assistance it reasonably requires to prevent such unauthorized access.
- 3.3 The Customer will not, and will not allow any Authorized User to:
- (a) use the Services in any way that (i) breaches any local, national or international law, regulation or code of practice; (ii) is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect; or (iii) infringes any Intellectual Property right or right to privacy of any third party;
 - (b) use the Services to send, or arrange for sending, any unsolicited or unauthorized advertising or promotional material or any other form of similar solicitation to any person;
 - (c) access, store, distribute or transmit any viruses, or any material during its use of the Services or Application that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, abusive, harassing or racially or ethnically offensive or discriminatory;

- (ii) facilitates or promotes illegal activity; or
- (iii) causes damage or injury to any person or property;
- (d) attack the Application via a denial-of-service attack, distributed denial-of-service attack or other method;
- (e) attempt to access without authority, interfere with, damage or disrupt any part of the Application or LumApps' IT systems;
- (f) except as permitted by these Terms or as required by law, attempt to decompile, disassemble or reverse engineer any part of the Application, or copy, modify, create derivative works from, transmit, or distribute all or any part of the Application and/or Documentation in any form or media;
- (g) access all or any part of the Services to build a product or service which competes with the Services; and
- (h) license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party.

Access to the Services may be suspended and/or terminated if Customer or any Authorized User breaches this Section 3. In such event, Customer will be notified about the reason for the suspension or termination.

Customer is always fully responsible and liable for all acts and omissions by Authorized User to whom Customer has granted access to the Service and Customer agrees to indemnify LumApps or its Reseller (if any) for all claims and losses related to any such acts and/or omissions.

4 Data

4.1 In accordance with the Regulation 5419/16 of the European Parliament "General Data Protection Regulation" ("GDPR") and the California Data Privacy Law ("CCPA"), Customer is the data controller ("Data Controller") and LumApps is the data processor ("Data Processor"), of personal data entered into the Application by the Customer, its Authorized Users or LumApps on the Customer's behalf ("Personal Data").

4.2 Data Controller warrants that it is entitled to transfer the Personal Data to the Data Processor and/or the Sub-processor(s) in full compliance with applicable data protection laws. Data Controller will remain solely responsible for (i) determining the purposes and the means of LumApps's processing the Personal Data, and (ii) the accuracy and adequacy of the aforementioned instructions.

4.3 Data Processor has implemented appropriate technical and organizational measures taking into account the nature of the data processing. Data Processor will (i) process the Personal Data only on documented instructions from the Data Controller; (ii) ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; (iii) reasonably assist the Data Controller for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights; (iv) delete Personal Data within three (3) months after the termination or the expiry of these Terms, and delete existing copies unless the law requires storage of the Personal Data. The costs shall be borne by the Data Controller; (v) upon Data Controller request, reasonably provide information necessary to demonstrate compliance with the obligations laid down in this; (vi) notify Data Controller without undue delay after becoming aware of a personal data processing breach.

4.4 LumApps shall not retain, use or otherwise disclose any Personal Data for any purpose other than to provide the Services specified in these Terms. LumApps shall not sell any Personal Data.

4.5 Data Controller agrees that the Data Processor may sub-process the Personal Data to a third party Sub-processors (the "Sub-processors"). Sub-processors may be located inside or outside of the European Economic Area (the "EEA") as necessary for the performance of the Services for all sub-processing activities ("General Consent"). Processor will inform the Controller of any intended change regarding the addition or replacement of a Sub-processor. When Personal Data is sub-processed to External Sub-processors located outside of the EEA, the Data Controller hereby agrees to the signature by the Data Processor on its behalf of the standard contractual clauses for the transfer of Personal Data to Sub-processors established in third countries under Commission Decision 2010/87/EU or equivalent standard data protection clauses under EU Law.

4.6 The Data Processor shall allow the Data Controller (at its own cost) to conduct an audit subject to a fifteen (15) business days prior notice and within the limit of one audit per year. The Data Controller shall have no right to view or access any systems, data, records or other information relating or pertaining to the Data Processor's other customers.

5 Third-Party Services

5.1 The Application may enable or assist it to access the services or website content of third parties via third party websites or Third-Party Software, and that the Customer accesses such services and content solely at its own risk. Customer shall obtain and maintain the relevant rights and licenses to use the Third-Party Software.

5.2 No representations or commitments are made in relation to any such third-party services or content, or for any transactions completed by the Customer with any such third party or for any Third-Party Software integrated, or which interfaces, with, or which can be accessed via, the Application.

5.3 No responsibility can be assumed by LumApps and Reseller (if any) for hosting any Third-Party Software and for any unavailability of or faults in any Third-Party Software.

6 Intellectual Property

The Application and Documentation (and any modifications and updates to the Application and Documentation) and all Intellectual Property rights are, and will remain, the exclusive property of LumApps. Those works are protected by copyright laws and treaties around the world. Except as expressly stated herein, the Terms do not grant the Customer any rights to or in any such Intellectual Property rights, or any other rights regarding the Application and/or Services.

7 Indemnity

Customer shall indemnify, defend and hold harmless LumApps, its affiliates, officers, directors, employees, consultants, agents, and suppliers from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys fees as and when incurred) arising from Customer or Authorized Users use of the Services, violation of these Terms, the infringement or violation by Customer or Authorized Users, of any intellectual property relating to the Services or other right of any person or

entity.

8 Liability

- 8.1 LumApps shall ensure the availability and continuity of the Application. However, LumApps shall not in any way be held responsible for any malfunction of the Application due to maintenance, technical problems, network congestion or failure of any other remote transmission system, which could prevent the application from functioning.
- 8.2 LumApps does not guarantee the continuity and quality of the communication links with the Customer. Thus, access to the Application may be interrupted without notice for a reasonable period of time, in particular for maintenance reasons or for any other reason than a fault of LumApps.
- 8.3 LumApps shall not be held liable in the event of a bad execution of the Services caused by incorrect information or information that would have not been updated by the Customer.
- 8.4 In no event shall LumApps be liable for any consequential, incidental, indirect, special, punitive, or other loss or damage whatsoever (including but not limited to loss of data, loss of business profits, business interruption, computer failure, loss of business information), arising out of or caused by Customer's or Authorized Users' use of or inability to use the Service.
- 8.5 The sole and exclusive remedy for any dispute with LumApps related to any of the Service shall be termination of such Service. In no event shall LumApps's entire liability in respect of any Service exceed an amount which cannot be higher of six (6) months of amount paid by Customer for the Service that is subject to the subject.

9 Term and Termination

- 9.1 Term. These Terms will commence on the date on which the Customer starts using the Services and will automatically terminate at the end of the Subscription period unless Customer renews its rights. LumApps or Reseller (if any) may terminate these Terms of Customer or Authorized Users commits a material breach of these Terms and fails to cure such breach within thirty (30) days following receipt of notice of the breach. this right to terminate applies accordingly if LumApps or the Reseller (if any) from Customer made Order does not receive timely payment for the Services.
- 9.2 Effect of Termination. Upon expiration or termination of these conditions:
- (a) all rights granted automatically terminate and Customer shall cease immediately to use the Application and Documentation;
 - (b) the Customer shall return or destroy all copies of the Application and, Documentation and other items (and any copies thereof). Except as otherwise agreed, Customer will not get a refund if these Terms are terminated.

10 Export Restrictions

Services, or portion thereof may be subject to the export control laws of the United States. Customer shall not export, re-export, divert, transfer or disclose any portion of the Service or any related technical information or materials, directly or indirectly, in violation of any applicable export laws or regulations.

11 Publicity

Customer authorizes LumApps to refer to it as a reference in its events, presentations and / or commercial proposals or to refer to those Terms. Customer agrees that LumApps may use the Customer's name and logo in marketing and promotional materials regarding the Services and/or the Application.

12 Force Majeure

LumApps will have no liability to the Customer if it is prevented from or delayed in performing its obligations under these conditions by acts, events or omissions beyond its reasonable control, including strikes or other industrial disputes, failure of a utility service or transport network, any failure or interruption of any telecommunications network, distributed denial-of-service attacks or any other malicious attacks, act of God, war, riot, malicious damage, compliance with any law, order, rule or regulation, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. LumApps will notify the Customer of such an event and its expected duration.

13 Governing Law and Jurisdiction.

These Terms and any disputes or claims relating to or in connection with these Terms (including non-contractual disputes or claims) are governed by the:

- 13.1 laws of New York and state and federal courts sitting in the State of New York will have exclusive jurisdiction if Customer resides (or obtains the Application) in the US.
- 13.2 laws of Singapore and state and federal courts sitting in the State of Singapore will have exclusive jurisdiction if Customer resides (or obtains the Application) in Asia;
- 13.3 laws of France and courts sitting in Lyon will have exclusive jurisdiction if Customer resides (or obtains the Application) in other territories.