

Software Licensing Agreement for AnyLogic 8.x.x

Document number 20180614

THIS SOFTWARE LICENSING AGREEMENT (THE “AGREEMENT”) IS A LEGALLY BINDING AGREEMENT BETWEEN ANYLOGIC NORTH AMERICA, LLC, (“AnyLogic”) AND YOU AND/OR THE ENTITY YOU REPRESENT (“you” or “Licensee”). ANYLOGIC IS WILLING TO PROVIDE YOU A LICENSE TO CERTAIN SOFTWARE AND MODELS (EACH DEFINED BELOW) ONLY ON THE CONDITION THAT YOU ACCEPT AND AGREE TO COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

BY COPYING, INSTALLING, OR OTHERWISE USING THE SOFTWARE AND/OR MODELS, YOU REPRESENT THAT YOU ARE DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT USE THE SOFTWARE.

Any agreement that specifically refers by name to this Agreement and states that such agreement overrides this Agreement shall control. For all other agreements, (i) in the event you have previously entered into a separate written agreement with AnyLogic, this Agreement shall control to the extent that there are conflicting terms, or (ii) In the event you enter into a separate written agreement with AnyLogic subsequent to entering this Agreement, then to the extent the terms of the separate agreement conflict with the terms of this Agreement, then the separate agreement shall control.

1. Definitions

- a. **Software.** “Software” shall mean all materials and information with which this license is provided including, but not limited to, executables, dynamic-link libraries, static libraries, object code, byte code, source code, code, files, scripts, sample models, model source files, libraries, Documentation, upgrades, updates and additions to such information and/or materials, and Activation Key.
- b. **Model(s).** The “Model” or “Models” means a simulation model created through the use of the Software.
- c. **Model Output.** “Model Output” means the output and data that is derived from running a Model.
- d. **Licensee.** “Licensee” is the individual or entity entering into this Agreement with AnyLogic for the right and license to use the Software limited to the Permitted Number (as defined below). In case of the Personal Learning Edition of the Software, the Licensee is the individual who installs the Software.
- e. **Countries of Use.** “Countries of Use” refer to the list of countries specified in the applicable invoice or another official document approved by AnyLogic.
- f. **Authorized Licensee User(s).** An “Authorized Licensee User” is any individual employed by Licensee within a business unit, internal division or group specified in the applicable invoice or purchase order and primarily located in one of the Countries of Use that is authorized to access, use, or otherwise exploit the Software pursuant to the terms of this Agreement. For the avoidance of doubt, an employee of the same company as Licensee but of a different business unit or primarily located in a country not included in the Countries of Use is not an

Authorized Licensee User. In case of the Personal Learning Edition of the Software, the Authorized Licensee User is the same individual as the Licensee.

- g. **End User.** An “End User” is any individual or entity that receives the Models from Licensee pursuant to a valid End User Agreement (as defined below). For the avoidance of doubt, an End User of the Model may be the same as an Authorized Licensee User of the Software. Acceptable and Unacceptable uses of a Model by an End User (the “Acceptable Uses”) are included in the End User Agreement (defined below). The Acceptable Uses are incorporated herein by reference.
- h. **End User Agreement.** The “End User Agreement” refers to the AnyLogic Model End User Agreement, which governs the usage of Models by End Users. The End User Agreement is attached as Addendum A to this Agreement.
- i. **Permitted Number.** “Permitted Number” refers to the permitted number of computers to which the Licensed Rights (or licenses granted hereunder) to the Software apply.
- j. **Activation Key.** The “Activation Key” means the security solution used to activate the Software via a hardware key or electronic code delivered for temporary activation or perpetual use.
- k. **Documentation.** “Documentation” shall mean program documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the Software.
- l. **AnyLogic Materials.** “AnyLogic Materials” means any software, programs, tools, systems, data, or other materials made available by AnyLogic to Licensee in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to AnyLogic relating to the Software and Documentation.
- m. **Trademarks.** “Trademarks” means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of AnyLogic.
- n. **Intellectual Property Rights.** “Intellectual Property Rights” means patents of any type, design rights, utility models or other similar invention rights, copyrights and any and all derivatives, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

2. Grant of Software License to Licensee

- a. **Grant.** As long as Licensee obtained the Software from AnyLogic or one of its authorized Resellers or Distributors, and as long as Licensee complies with the terms of this Agreement, AnyLogic grants Licensee a limited, non-exclusive, non-transferable, royalty free, revocable license to:
 - i. install the Software on any number of computers;

- ii. grant Authorized Licensee Users the right to use the Software to develop Models, provided that the number of computers where the Software is used concurrently does not exceed the Permitted Number; and
- iii. provide, and grant Authorized Licensee Users the right to provide, Models created by the Software to End Users when the transfer is consistent with the Acceptable Uses defined in Addendum A hereinafter, subject to the availability of the appropriate function in the Software.

The Licensed Rights for the Software shall apply to each release of the Software that AnyLogic provides to Licensee pursuant to the Agreement. The Software may not be used or shared with any individual or entity that is not an Authorized Licensee User without AnyLogic's prior written consent or pursuant to a separate agreement with AnyLogic. AnyLogic reserves all rights with respect to the Software not otherwise expressly granted to Licensee pursuant to this Agreement, including without limitation Intellectual Property Rights thereto.

- b. **Restrictions.** Except as otherwise set forth herein, Licensee shall not directly or indirectly:
 - i. modify the Software or create any derivative works thereof;
 - ii. sell, license, transfer, distribute, assign, pledge or otherwise dispose of or encumber the Software without AnyLogic's express written permission and subject to the terms of any applicable sublicensing agreement;
 - iii. grant any sublicense or other rights to the Software, or permit access to the same, by any user other than Authorized Licensee Users;
 - iv. reverse engineer, disassemble, de-compile, re-compile, reconfigure, reinstall, or update all or any part of the Software or merge them into any other software, except as expressly authorized by this Agreement;
 - v. remove, obscure, or alter any legend on or in the Software;
 - vi. copy or provide the Software or any copy, adaptation, transcription, or merged portion of it, except as expressly authorized by this Agreement to any third party; or
 - vii. otherwise use, copy or provide the Software to any third party for any purposes or in any manner except as expressly permitted under this Agreement.
- c. **Personal Learning Edition – License and Restrictions.** If Licensee was provided with the Personal Learning Edition of the Software, AnyLogic grants the Licensee, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable limited license for teaching or self-education purposes only. The right to use the Software, Model(s) or Model Output for any other purposes, including commercial purposes or research, is strictly prohibited. The number of computers where the Personal Learning Edition of the Software may be installed and used is not limited. With respect to the Personal Learning Edition of the Software, the following Sections of this Agreement do not apply: 6, 7, 9, and 22(h).
- d. **University Edition – License and Restrictions.** If Licensee was provided with the University Edition of the Software, AnyLogic grants the Licensee a non-exclusive, non-transferable limited license to install and use the Software, Model(s) or Model Output solely in support of research performed within educational institutions, the results of which are publicly available.

The use of the Software, Model(s) or Model Output for any other purposes, including commercial purposes, is strictly prohibited.

3. Licensee Responsibilities and End User Restrictions

Subject to the terms and conditions of this Agreement, Licensee shall have the following rights and responsibilities with respect to the Models created by the Software:

- a. **Delivery of Models.** Licensee must provide the End User Agreement to all End Users as either an exported text file that is provided with the Model or in any other form that ensures that End User can read and accept the terms, and each End User must accept the terms of the End User Agreement, prior to using the Model.
- b. **End User as Authorized Licensee User.** If the End User is also an Authorized Licensee User, the Authorized Licensee User shall be subject to the same restrictions set forth in the End User Agreement.
- c. **Enforcement.** Licensee is required to present the End User Agreement to each End User it provides a Model to. In the event Licensee becomes aware that an End User is violating the limitations imposed on them according to the End User Agreement, Licensee shall promptly notify AnyLogic of such.
- d. **Marketing.** Licensee shall make no representations or warranties on behalf of AnyLogic except as AnyLogic may itself provide or approve in writing.

4. Intellectual Property Rights

- a. **AnyLogic IP.** AnyLogic and its suppliers retain the ownership of all right, title and interest in and to the Software, Documentation, Trademarks, AnyLogic Materials, and all Intellectual Property Rights embodied in the foregoing, including rights to any and all developments of and enhancements to the Software. AnyLogic specifically retains ownership of the Software as embodied within any Models. Licensee agrees that it will not claim or assert title to the Software or attempt to transfer any title to End Users or any third parties, nor will Licensee grant access to the Software to any individual or group other than Authorized Licensee Users. Licensee shall take no action, which may adversely affect or impair AnyLogic's ownership of such materials and rights. All rights in and to the Software and AnyLogic Materials not expressly granted in this Agreement are reserved by AnyLogic.
- b. **AnyLogic's Trademarks.** In connection with Licensee's activities authorized pursuant to this Agreement, Licensee is granted a non-transferable, non-exclusive right to use the Trademarks solely to identify the Software and associated services of AnyLogic rendered under this Agreement or otherwise in accordance with instructions given from time to time by AnyLogic. Licensee shall not attach any additional trademarks, service marks, or trade names to the Software and shall not use AnyLogic's trademarks as part of Licensee's trademarks, service marks or trade names or in any other manner that would tend to imply that Licensee has an affiliation with AnyLogic other than as set forth in this Agreement.

5. Injunctive Relief

Licensee agrees that money damages will not be an adequate remedy if Licensee breaches Sections 2, 3 and 4 of this Agreement. Therefore, AnyLogic will be entitled to an injunction or similar equitable relief. This Section 5 in no way limits AnyLogic's ability to pursue any other legal or equitable remedies.

6. Licensing Fee

In consideration for the License granted hereunder, Licensee shall pay to AnyLogic or an authorized distributor, as applicable, the fee indicated in the applicable invoice or purchase order (the "Licensing Fee"), pursuant to the terms of said invoice or purchase order.

7. Maintenance and Support

- a. **Overview.** During the Initial Support Term and any Extended Support Term (as defined below), AnyLogic shall provide all software and customer support related to the Software to the Licensee (as described further in this Section 7(a), the "Maintenance & Support"). With Maintenance & Support, in order to report a problem or request support for any errors Licensee experiences with the Software, Licensee may access the "Get Support" button available on the toolbar within the Software. At AnyLogic's discretion, error corrections may take the form of a short-term work-around, Documentation update, maintenance on the Software, or a longer-term software correction provided in an upgraded release of the Software (by AnyLogic to Licensee), depending upon AnyLogic's determination of the severity of the problem and/or the complexity of the solution. All items delivered by AnyLogic in providing such support and Software updates shall be deemed part of the applicable Software and shall be subject to all terms and conditions of this Agreement.
- b. **Maintenance Term.** Licensee's initial purchase of the Software license provided hereunder includes one (1) year of maintenance and support (the "Initial Support Term"). Following expiration of the Initial Support Term, Licensee may purchase continued Maintenance & Support in additional one (1) year terms (each, an "Extended Support Term"). Licensee and its Authorized Licensee Users may also continue using the Software pursuant to this Agreement without purchasing an Extended Support Term; however, Licensee will not receive support or upgrades to the Software without purchasing an Extended Support Term. AnyLogic's fees for Maintenance & Support during an Extended Support Term are available upon request.
- c. **No Extended Support.** AnyLogic does not require Licensee to purchase consecutive Extended Support Terms. However, in the event Licensee goes two (2) full years without purchasing an Extended Support Term, then Licensee will be required to pay the full license price for the Software in order to receive renewed access to AnyLogic's Maintenance & Support.
- d. **Discontinuing Maintenance & Support.** AnyLogic reserves the right to discontinue Maintenance & Support services for older versions of the Software at any time, even if Licensee has an active Maintenance & Support contract.

8. Modifications of Software

AnyLogic expressly reserves the right to make additions, deletions, and/or revisions ("Updates") to the Software and change the terms of this licensing agreement accordingly. Except as otherwise specified by AnyLogic, AnyLogic will make any Updates to the Software available to Licensees who have active

Maintenance & Support services (as described in Section 7) when they become commercially available and subject to any new licensing terms. For the avoidance of doubt, Licensee's and AnyLogic's rights and obligations under this Agreement will be governed by this Agreement unless a new licensing agreement accompanies any Updates. AnyLogic further reserves the right to modify or vary particular aspects of the Software in the future due to changing conditions and circumstances in markets, economies, demographics, competition, and governing laws. Licensee agrees that AnyLogic shall not be liable to you or to any third party for any modification or discontinuance of any portion of the Software.

9. Evaluation License

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10. Term and Termination.

- a. **Term.** This Agreement shall be effective upon Licensee's purchase and activation of the Software, and shall continue until terminated as provided herein (the "Term").
- b. **Evaluation License.** If Licensee was provided a copy of the Software for evaluation purposes, unless otherwise agreed to in writing by AnyLogic, the Evaluation License term shall be for a period of thirty (30) days, commencing upon the date of requesting evaluation unlock key for the Software, to evaluate the Software. The Software automatically disables itself upon expiration of the Evaluation License.
- c. **Termination.** Licensee may terminate this Agreement at any time by ceasing to use the Software and complying with requirements set forth in Section 10 hereof. AnyLogic may terminate this Agreement immediately without notice if Licensee fails to comply with any provision of this Agreement. Unless terminated by either party, this Agreement shall remain in effect.

11. Effect of Termination

Upon termination of this Agreement for any reason:

- a. **Software Usage.** Upon termination of this Agreement for any reason, Licensee shall immediately cease using the Software;
- b. **AnyLogic Property.** Upon termination of this Agreement or an Evaluation License for any reason, Licensee shall remove the Software from all computers and return or destroy all copies of the Software (including the original) to AnyLogic, and Licensee shall return or destroy the Activation Key(s), if any.
- c. **Limitation of Liability Upon Termination.** Except as expressly set forth herein, AnyLogic shall not incur any liability whatsoever for any damage, loss, or expenses of any kind suffered or incurred by Licensee arising from or incident to any termination or cancellation of this

Agreement by either party which complies with the terms of this Agreement, whether or not Licensee is aware of any such damage, loss, or expenses.

- d. **Survival.** Sections of this Agreement which shall survive the termination or expiration of this Agreement include, but are not limited to Sections 2, 3, 4, 5, 6, 9, 10, 11 and 13 – 22.

12. Licensee's Business Practices

Licensee shall (a) comply with all applicable laws and regulations, including the United States Foreign Corrupt Practices Act, (b) avoid deceptive, misleading or unethical practices, and (c) conduct business in a manner that reflects favorably at all times on the Software and AnyLogic's goodwill and reputation.

13. Indemnification

Licensee agrees to defend, indemnify, and hold harmless AnyLogic and any parent, subsidiary, affiliate, director, officer, employee, licensor, distributor, supplier, agent, reseller, owner, or operator of AnyLogic from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Licensee's use of the Software or AnyLogic Materials; (ii) Licensee's violation of any term of this Agreement; (iii) Licensee's violation of any third party right; (iv) any claims brought by Licensee's End Users (whether or not such End Users had the appropriate authority to use the Models; or (v) any claim that Licensee's use of the Software, Models, or AnyLogic Materials caused damage to a third party.

14. Confidential Information.

- a. **Definition and Non-Disclosure.** All information, knowledge or know-how concerning any of the unique features or characteristics of the Software, the methods of operation of the licensed technology hereunder, implementation of the Software, AnyLogic's pricing terms, or any other confidential information disclosed to Licensee by AnyLogic (collectively, AnyLogic's "Confidential Information") is valuable, proprietary information of AnyLogic and an integral part of the AnyLogic Materials, and must be kept strictly confidential to the fullest extent possible, both during and after the term of this Agreement. Licensee therefore understands and agrees that it shall not, during the term of this Agreement or thereafter without AnyLogic's prior written consent, communicate, divulge or use for the benefit of any other person, persons, partnership, association, corporation or other entity any Confidential Information of AnyLogic which may be communicated to Licensee, or of which Licensee may be apprised, by virtue of Licensee's operations under the terms of this Agreement. In furtherance of these obligations, Licensee shall maintain all Confidential Information in a secure location accessible only to those having a legitimate need for access and who have signed a separate confidentiality agreement in a form reasonably acceptable to both Licensee and AnyLogic. Licensee further warrants, covenants, and agrees that it will use the Confidential Information for the benefit of Licensee and in connection with the operation of the Software, and shall protect such Confidential Information and trade secrets from unauthorized disclosure. Licensee shall bear the responsibility for any breaches of confidentiality by its employees or consultants.
- b. **Return.** Upon the termination of this Agreement, Licensee shall return to AnyLogic all confidential manuals, supplements, and updates thereto and any other material furnished to

Licensee under and pursuant to this Agreement, and shall permanently and completely discontinue all use of AnyLogic's Confidential Information.

- c. **Survival.** The parties acknowledge and agree that the foregoing obligations shall survive any termination or expiration of this Agreement.

15. Representations and Warranties

The parties hereby represent and warrant that: (i) each party has the legal right and authority to enter into this agreement; (ii) each party's performance and the rights granted to the other party hereunder shall not conflict with or violate any commitment or agreement that a party has to any other person or entity; (iii) each party shall perform its duties fully and to the best of its abilities; and (iv) the materials provided by one party to the other party shall not violate any law nor infringe upon nor violate any rights of any person, firm, corporation or entity including, but not limited to, the right of privacy, right of publicity, or the right against libel or slander.

16. Limited Software Warranty

AnyLogic only warrants that the Software will perform substantially as set forth in the Documentation within 90 days from the date on which Licensee is granted a license so long as no modifications have been made to the Software. If the Software fails to substantially perform within the first 90 days, Licensee will be entitled to a replacement or a refund. AnyLogic makes no other warranties with respect to the Software.

17. Disclaimer

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18. Limitation of Liability

LICENSEE AGREES THAT ANYLOGIC SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, ECONOMIC, EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS OR PERSONAL PROFITS OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF BUSINESS OR INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE USE

OF OR INABILITY TO USE THE SOFTWARE OR MODELS, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF ANYLOGIC ARISING OUT OF THIS AGREEMENT EXCEED THE LICENSING FEE PAID TO ANYLOGIC BY LICENSEE FOR THE LICENSE GRANTED UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT.

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential, or certain other types of damages, so the exclusions set forth above may not apply to the parties hereunder.

19. Export Control

You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and you are not listed on any U.S. Government list of prohibited or restricted parties.

20. Changes

AnyLogic reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions to any use of the Software. Such modifications and additional terms and conditions will be effective immediately and incorporated into this Agreement. Licensee’s continued use of the Software will be deemed acceptance thereof.

21. Publicity

Licensee agrees that AnyLogic may use Licensee’s name, logo and other identifying marks (whether or not Licensee makes them available to AnyLogic) for the purpose of identifying Licensee as an existing or past user of the Software in its promotional and marketing materials, including on the AnyLogic website.

22. Miscellaneous

- a. **Relationship of the Parties.** Licensee acknowledges that its business is separate and apart from the AnyLogic's business. Nothing contained in this Agreement may be deemed to create the relationships of employer and employee, master and servant, franchisor and franchisee, partnership or joint venture between the parties.
- b. **Further Assurances.** Each party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be necessary for the implementation or continuing performance of this Agreement.
- c. **Notices.** All Notices and other communications hereunder will be in writing and will be deemed given when received if (i) hand delivered; (ii) transmitted by facsimile or email; or (iii) mailed by certified or registered mail, return receipt requested, or dispatched by expedited delivery service to the respective addresses as either Party may designate.
- d. **Jurisdiction; Choice of Law.** This Agreement will be governed by and construed under the laws of the United States of America and, to the extent not inconsistent therewith, the laws of the State of Illinois without regard to conflicts-of-laws principles that would require the application of any other law. Any proceeding arising out of or relating to this Agreement must

be brought in the courts of Cook County, Illinois and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding will be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court. The parties agree that either or both of them may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. In any action at law or in equity to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements incurred both before and after judgment in addition to any other relief to which such party may be entitled.

- e. **Waiver; Remedies Cumulative.** Except as otherwise provided herein, the rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law: (i) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by a party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by such party; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.
- f. **Entire Agreement and Modification.** This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may be amended, supplemented, or otherwise modified by AnyLogic for any future releases of the Software.
- g. **Assignments, Successors, and No Third-Party Rights.** Licensee may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AnyLogic. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as will inure to a successor or permitted assignee pursuant to this Section.
- h. **Costs, Expenses and Attorneys' Fees.** Licensee shall reimburse AnyLogic for all reasonable costs (including attorneys' fees) incurred by AnyLogic in collecting late payments from Licensee. If AnyLogic commences any action or proceeding against Licensee to enforce or interpret this Agreement, and AnyLogic prevails, then AnyLogic shall be entitled to recover

from Licensee (in addition to any other damages) the actual costs, expenses and attorneys' fees (including all related costs and expenses), incurred by AnyLogic in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

- i. **Separability.** No part of the Agreement shall be construed as to create a partnership or joint venture between the parties hereto.
- j. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- k. **Construction.** The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. Unless expressly indicated otherwise, all references to "Sections" refer to the corresponding Sections of this Agreement.
- l. **Acknowledgement.** Licensee acknowledges that: (a) Licensee has read and understands this Agreement; (b) Licensee had an opportunity to have its legal counsel review this Agreement; (c) that this Agreement has the same force and effect as a signed agreement; and (d) you as the individual accepting this Agreement, on behalf of a corporation or other legal entity do personally represent that you are duly authorized to accept this Agreement on behalf of such entity and that this Agreement is binding upon such entity.

Addendum A. AnyLogic Model End User Agreement

Document number 20180614

THE MODEL PROVIDED TO YOU HEREUNDER WAS DEVELOPED THROUGH THE USE OF ANYLOGIC NORTH AMERICA, LLC's ("AnyLogic") PROPRIETARY SOFTWARE. IN ORDER FOR YOU TO USE THE MODEL(S), YOU, THE END USER, AGREE TO ABIDE BY THE TERMS AND CONDITIONS HEREIN WHEN UTILIZING THE MODELS DESCRIBED BELOW.

BY RECEIVING, TRANSFERRING, OR OTHERWISE USING THE MODELS PURSUANT TO THE TERMS OF THIS AGREEMENT, YOU REPRESENT THAT YOU ARE DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT WITH ANYLOGIC AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE THE MODEL.

1. Definitions

- a. **AnyLogic Software.** The "AnyLogic Software" shall mean the software owned by AnyLogic that is used to create the Models (defined below) pursuant to the terms of the Software Licensing Agreement for AnyLogic 8.x.x.
- b. **AnyLogic Cloud.** The "AnyLogic Cloud" means the specific edition of AnyLogic software, platform, or other services developed, operated, and maintained by AnyLogic, that are accessible via AnyLogic's cloud-based web service at <https://cloud.anylogic.com> or another designated website or IP address, or ancillary online or offline products and services provided by AnyLogic.
- c. **AnyLogic Private Cloud.** The "AnyLogic Private Cloud" means the software developed and owned by AnyLogic that is installed and operates on a Licensee's private network pursuant to the Software Licensing Agreement for AnyLogic Private Cloud and provides functionality similar to AnyLogic Cloud.
- d. **Model(s).** The "Model" or "Models" means a simulation model created through the use of the AnyLogic Software and provided to End User hereunder.
- e. **Model Output.** "Model Output" means the output and data that is derived from running a Model.
- f. **Licensee.** "Licensee" is the individual or entity that entered into an agreement with AnyLogic for the right and license to use the Software.
- g. **Authorized Licensee User(s).** An "Authorized Licensee User" is any individual employed by Licensee within the same business unit, internal division or group that was authorized to access, use, or otherwise exploit the Software. For the avoidance of doubt, an employee of the same company as Licensee but of a different business unit is not an Authorized Licensee User.
- h. **End User.** An "End User" is you, an individual or entity, which receives the Models from Licensee or Authorized Licensee User pursuant to this End User Agreement to use in the regular course of your affairs, but not for resale, modification, distribution or exploitation by third parties without AnyLogic's prior written consent.

- i. **Intellectual Property Rights.** “Intellectual Property Rights” means patents of any type, design rights, utility models or other similar invention rights, copyrights and any and all derivatives, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

2. Restrictions on Use and Distribution of Models

Subject to the terms and conditions of this Agreement, End User shall have the following rights and responsibilities with respect to the Models:

- a. The End User has a limited right to use, reproduce, transfer, or otherwise exploit the Models only in accordance with the permitted uses set forth in the attached Exhibit A (the “Acceptable Uses”).
- b. If the End User is not sure whether its desired use of the Models is permitted under the Acceptable Uses, then End User should consider the desired use to be prohibited, and End User must obtain AnyLogic’s prior written consent, which may be withheld in AnyLogic’s sole discretion, before engaging in the desired use.
- c. This End User Agreement must accompany any dissemination, sale, or other transfer of the Model to a third party by End User.

3. Indemnification

End User agrees to defend, indemnify, and hold harmless AnyLogic and any parent, subsidiary, affiliate, director, officer, employee, licensor, distributor, supplier, agent, reseller, owner, or operator of AnyLogic from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney’s fees) arising from End Users use of the Models.

4. Injunctive Relief

End User agrees that money damages will not be an adequate remedy if End User breaches Sections 2 of this Agreement. Therefore, AnyLogic will be entitled to an injunction or similar equitable relief. This Section 4 in no way limits AnyLogic’s ability to pursue any other legal or equitable remedies against End User.

5. Intellectual Property Ownership

AnyLogic (and its licensors, where applicable) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the AnyLogic Software and the AnyLogic Software as embodied within any Models. This Agreement is not a sale and does not convey to End User any rights of ownership in or related to the AnyLogic Software or the Intellectual Property Rights owned by AnyLogic. AnyLogic’s name, logo, and the product names associated with the AnyLogic Software are trademarks of AnyLogic or third parties, and no right or license is granted to use them.

6. Disclaimer

THE MODEL(S) SUBJECT TO THIS AGREEMENT ARE PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED OR STATUTORY; INCLUDING, WITHOUT

LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANYLOGIC DOES NOT WARRANT THAT THE MODELS WILL MEET END USER'S NEEDS OR REQUIREMENTS, OR THAT THE OPERATION OF THE MODEL WILL BE ERROR FREE. ANY WARRANTIES IMPLIED BY LAW, BY THE COURSE OF DEALING BETWEEN THE PARTIES, OR OTHERWISE, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. ANYLOGIC DOES NOT WARRANT THAT THE USES OF THE MODEL ALLOWED HEREUNDER SHALL RESULT IN ANY PARTICULAR LEVEL OR TYPE OF FINANCIAL RESULTS FOR END USER. MOREOVER, ANYLOGIC SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO YOUR USE OF THE MODELS OR RELIANCE ON ANY MODEL OUTPUT. YOU ARE SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USING OR PROVIDING THE MODELS TO THIRD PARTIES AND ASSUME ANY RISKS ASSOCIATED WITH YOUR EXERCISE OF PERMISSIONS UNDER THIS AGREEMENT.

7. Limitation of Liability

END USER AGREES THAT ANYLOGIC SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, ECONOMIC, EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS OR PERSONAL PROFITS OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF BUSINESS OR INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE MODELS, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF ANYLOGIC ARISING OUT OF THIS AGREEMENT EXCEED \$100. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT.

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential, or certain other types of damages, so the exclusions set forth above may not apply to the parties hereunder.

8. Choice of Law

This Agreement will be governed by and construed under the laws of the United States of America and, to the extent not inconsistent therewith, the laws of the State of Illinois without regard to conflicts-of-laws principles that would require the application of any other law. The parties agree that exclusive venue for any legal action relating hereto shall be in Cook County, Illinois, United States, and jurisdiction shall be vested in the Circuit Court of the First Judicial Circuit in and for Cook County, Illinois, or the United States District Court for the Northern District of Illinois, as the case may be. The parties agree not to contest the venue set forth herein and to submit to, and not contest, the exercise of personal jurisdiction over them by any of the foregoing courts. The parties hereby waive all rights concerning the exercise of personal jurisdiction of them by the foregoing courts and all claims of or concerning forum non-convenience in the foregoing forums.

9. Acknowledgement

End User acknowledges that: (a) End User has read and understands this Agreement; (b) End User had an opportunity to have its legal counsel review this Agreement; (c) that this Agreement has the same force and effect as a signed agreement; and (d) you as the individual accepting this Agreement, on

behalf of a corporation or other legal entity do personally represent that you are duly authorized to accept this Agreement on behalf of such entity and that this Agreement is binding upon such entity.

Exhibit A. Acceptable and Unacceptable Uses

Your use of the AnyLogic Software and Models (as defined in the AnyLogic End User Agreement) is limited. This document presents acceptable and unacceptable uses of the AnyLogic Software. If you are not sure whether your use or desired exploitation of the Models is allowed by AnyLogic, you should assume the use or exploitation is unacceptable. In such circumstances, please contact AnyLogic directly.

1. Acceptable Uses

- a. An Authorized Licensee User runs and uses the Model through the AnyLogic Software (i.e. on a computer where the AnyLogic Software is installed) manually, not via any kind of remote interface. This is an acceptable use regardless whether the Model was developed using the same installation of the AnyLogic Software or not, by the same Authorized Licensee User or not, or by the same Licensee or not. In this case, the Authorized Licensee User is also the End User.
- b. An Authorized Licensee User exports the Model by function “Export to standalone Java application” of the AnyLogic Software and provides the exported Model to another employee of the same Licensee (“Colleague”) for his or her use. In this case, the Colleague is the End User.
- c. An Authorized Licensee User exports the Model by function “Export to standalone Java application” of the AnyLogic Software and provides it to a person or entity other than the Licensee, such as a client of the Licensee (“Client”), provided that the Model is tailored for this particular Client and not provided to multiple parties. In this case, the Client is the End User.
- d. An End User provides the Model to another employee of the same division, business unit or group that the End User belongs to. In this case, the second employee becomes an End User.
- e. An Authorized Licensee User exports the Model by function “Export to AnyLogic Cloud” of the AnyLogic Software and uses the model through the AnyLogic Cloud or AnyLogic Private Cloud. In this case, the Authorized Licensee User is also the End User.
- f. An Authorized Licensee User exports the Model by function “Export to AnyLogic Cloud” of the AnyLogic Software and provides it to any person or entity other than the Licensee, such as a client of the Licensee (“Client”), through the AnyLogic Cloud or AnyLogic Private Cloud. In this case, the Client is the End User.

2. Unacceptable Uses

- a. The AnyLogic Software is installed on a server, including but not limited to a web server or a computer acting as a server, and the AnyLogic Software is remotely invoked to generate and/or execute a Model.
- b. A Model is executed on a server, including but not limited to a web server or a computer acting as a server, and specifically excluding the AnyLogic Cloud servers and AnyLogic Private Cloud servers, and the Model is remotely invoked either as a standalone application or as a part of another application.

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- c. A Model is a product or a part of a product (software delivered/made available to multiple parties, where a party can be a different business unit of the same company where Licensee belongs to), provided free of charge or commercially, in the course of providing services to the receiving party or not.

If you desire to use the AnyLogic Software and/or Models in a way that is listed among the Unacceptable Uses and/or not listed among the Acceptable Uses, it does not mean your intended use is fully prohibited. Rather, you are required to notify AnyLogic about your desired use or provision and obtain AnyLogic's prior written consent. Additional consents may incur a certain one-time fee and/or applicable royalties.