

# Software Licensing and End User Agreement for AnyLogic Private Cloud

Document number 20231102

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## 1. Definitions

- a. **Software.** “Software” shall mean AnyLogic’s Private Cloud software, and 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, user interfaces, upgrades, and updates and additions to such information and/or materials.
- b. **Model(s).** “Model” or “Models” means a simulation model, developed with AnyLogic’s Simulation Software and uploaded to AnyLogic’s Private Cloud Software, and any data or information related to the simulation model including, but not limited to input data, parameters, spreadsheets, database tables, software components, dashboards, experiments, descriptions, images, and animation designs.
- c. **Model Output.** “Model Output” means any data or information obtained through running or performing any experiments with the Model including but not limited to model outputs, charts, plots, statistics, logs, reports, animations, pictures.
- d. **Licensee Data.** “Licensee Data” means any data, information, or materials provided or submitted by Licensee or an End User through the use of the Software, as well as any documents and associated intellectual property generated or created through the use of the Software, including but not limited to Model Outputs and other data or information, all of which is stored on Licensee’s Private Network.
- e. **Computer(s).** “Computer(s)” means any (i) Licensee-owned computer (whether desktop or lap top), (ii) any computer leased by Licensee from a third-party cloud service provider (such as Amazon or Microsoft), or (iii) any stand-alone computers leased by Licensee for exclusive use by Licensee.

- f. **Licensee.** “Licensee” is the individual or entity entering into this Agreement with AnyLogic for the right and license to use the Software.
- g. **End User(s).** An “End User” is any individual who has been authorized to access and use the Software pursuant to the terms of this Agreement by the System Administrator or other authorized Licensee personnel and has created an account with Licensee for such use of the Software. Subject to the restrictions set forth herein, an “End User” may include, but is not limited to, Licensee’s employees (including the System Administrator), agents, consultants, clients, or other third parties.
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- i. **AnyLogic Materials.** “AnyLogic Materials” means any software, programs, tools, systems, data, or other materials made available by AnyLogic to Licensees or End Users 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.
- j. **Trademarks.** “Trademarks” means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of AnyLogic.
- k. **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.
- l. **System Administrator.** “System Administrator” means Licensee’s designated administrator-level user authorized to manage the Software usage by other End Users of the Software.
- m. **Private Network.** “Private Network” means Licensee’s private company-wide intranet and/or cloud-based system and platform on which the Software may be deployed and used pursuant to the license and rights granted herein.
- n. **Simulation Software.** “Simulation Software” means AnyLogic’s separate simulation modeling software, version 8.x.x. or later, available for purchase or license at [www.anylogic.com](http://www.anylogic.com).

## 2. Grant of Software License to Licensee and End Users

- a. **Grant of Rights to Licensee.** 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 on Licensee’s Private Network;
  - ii. designate a System Administrator to manage and control Licensee’s, and authorized End Users’ use of the Software; and

- iii. use, and grant End Users the right to use the Software (and any ancillary services made available hereunder) on Licensee's Private Network solely for (a) uploading, storing and executing Models, (b) designing and performing experiments with the Models, such as simulation, scenario comparison, optimization, parameter variation, or sensitivity analysis, (c) obtaining and exporting Model Outputs and inputs, (d) viewing and interacting with Model animations, (e) customizing experiment dashboards, (f) embedding animations of Models hosted on the Software within third party sites, (g) controlling access to the Models, (h) invoking execution of Models uploaded to the Private Network by using the Software's API, (i) including execution of Models hosted on the Private Network into custom data workflows using the Software's API, and (j) accessing arbitrary external resources from the Models (collectively, the "**Licensed Rights**"), subject to the terms and conditions of this Agreement and any associated Documentation (including any restrictions set forth on [www.anylogic.com](http://www.anylogic.com)).
- b. **Grant of Rights to End Users.** As long as End User obtained access to the Software from Licensee pursuant to Section 1g of this Agreement, and as long as End User complies with the terms of this Agreement, AnyLogic grants End User a limited, non-exclusive, non-transferable, royalty free, revocable license to exercise the same Licensed Rights to use the Software that are granted to Licensees in Section 2.b.iii of this Agreement.
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  - iii. sell, license, sublicense, transfer, distribute, assign, pledge or otherwise commercially exploit or make available to any third party the Software without AnyLogic's express written permission and subject to the terms of any applicable sublicensing agreement;
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  - vii. 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
  - viii. 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.
- d. **No Commercialization.** Without limiting any of the above restrictions and limitations, for the avoidance of doubt, Licensee and/or End Users shall not, directly or indirectly, charge a fee or fees to any other End User for access to or use of the Software or any Models made available therein without AnyLogic's prior written consent. By way of example only and without limiting such prohibitions, Licensee may not develop a product or services that uses the

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### 3. Intellectual Property Rights

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- c. **Licensee Data.** Licensee shall own all right, title, and interest in and to the Licensee Data. Licensee shall be responsible for storing and/or exporting any Licensee Data. Licensee is responsible for exporting and saving any Licensee Data. In the event Licensee deletes a Model from their Private Network, all related Model Outputs and Licensee Data is deleted as well. Upon termination of this Agreement for any reason and Licensee's deletion of the Software from the Private Network (and all associated Computers), all Licensee Data, including Model Outputs, stored in Licensee's Private Network shall be deleted without liability to AnyLogic.

### 4. Injunctive Relief

Licensee and/or End User agree that money damages will not be an adequate remedy if Licensee and/or End User breaches Sections 2 or 3 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.

## 5. 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.

## 6. 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 6(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” menu item available in the web interface of 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 End 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.
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## 9. Term and Termination.

- a. **Term.** This Agreement shall be effective upon Licensee's purchase and activation of the Software (or End User's authorized use 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 and/or End User 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 or its End Users fail to comply with any provision of this Agreement. Unless terminated by either party, this Agreement shall remain in effect.

## 10. Effect of Termination

Upon termination of this Agreement for any reason:

- a. **Software Usage.** Upon termination of this Agreement for any reason, Licensee and all End Users shall immediately cease using the Software.
- b. **Deletion of Software and Associated Accounts.** Upon termination of this Agreement or an Evaluation License for any reason, Licensee shall immediately delete and remove the Software from its Private Network and all Computers, return or destroy all copies of the Software (including the original) to AnyLogic, and 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 or its End Users 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 or End User 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, and 13 – 22.

## 11. Equipment

Licensee shall be solely responsible for providing, maintaining, and ensuring compatibility with the Software, all hardware, software, electrical and other physical requirements for its and its End Users' use of the Software including, without limitation, telecommunications and Internet connection(s) (i.e. Private Network), ISP, web browsers and/or other equipment, programs and services required to access and use the Software.

## 12. Licensee's Business Practices

Licensee and End Users 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.

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- b. **Return.** Upon the termination of this Agreement, Licensee and/or End User 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.

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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:

- a. You are not located in a country that is subject to a U.S. Government trade embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country;
- b. You are not included on any U.S. Government list of prohibited or restricted parties (e.g., the U.S. Commerce Department’s Entities List or the U.S. Treasury Department’s Office of Foreign Assets Control’s Specially Designated Nationals List);
- c. [FOR EXPORTS OUT OF THE UNITED STATES:] The Software will not in any way be used in the design, development, production, operation, maintenance or repair of any nuclear explosive device, missile, or chemical or biological weapon;
- d. [FOR EXPORTS or RE-EXPORTS TO BELARUS, BURMA, CAMBODIA, THE PRC, RUSSIA or VENEZUELA:] This software will not be sold, transferred, or retransferred to any military end user (including national police and intelligence organizations), or to any party whose actions or functions are intended to support “military end uses.” You acknowledge that “military end uses” include any activity that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of any military item or system.

## 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 and/or End User’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 and End Users acknowledge that their 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. **Applicability of Terms to End Users.** This Agreement generally applies to both Licensee and to End Users. However, while all terms apply to Licensee (except where specifically noted), not all terms are applicable to End Users. For the avoidance of doubt, the following terms of this Agreement do not apply to End Users: Sections 2.a, 5, 6, and 21.
- c. **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.
- d. **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.
- e. **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.
- f. **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.

- g. **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.
- h. **Assignments, Successors, and No Third-Party Rights.** Licensee and/or End User 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.
- i. **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 and/or End User to enforce or interpret this Agreement, and AnyLogic prevails, then AnyLogic shall be entitled to recover from Licensee and/or End User (in addition to any other damages), as appropriate, 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.
- j. **Separability.** No part of the Agreement shall be construed as to create a partnership or joint venture between the parties hereto.
- k. **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.
- l. **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.
- m. **Acknowledgement.** Licensee and/or End User acknowledges that: (a) it has read and understands this Agreement; (b) it had an opportunity to have its legal counsel review this

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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.