

**LYTICA INC.**

**TERMS AND CONDITIONS OF USE OF LYTICA'S COMPONENT COST ESTIMATOR (CCE) PAY PER USE SERVICE**

**PLEASE READ THE TERMS AND CONDITIONS BELOW**

**BEFORE ACCEPTING THE LICENSE**

**Use the scroll bar or page down key to advance through this document.**

BY CLICKING THE "ACCEPT TERMS AND CONDITIONS" CHECKBOX, CUSTOMER INDICATES CUSTOMER HAS READ AND AGREED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT (THE "AGREEMENT") GOVERNING CUSTOMER'S USE OF THE LYTICA COMPONENT COST ESTIMATOR (CCE) PAY PER USE SERVICE (THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY AND IN WHICH CASE "CUSTOMER" REFERS TO THE ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT CLICK THE "ACCEPT TERMS AND CONDITIONS" CHECKBOX AND NO AGREEMENT WILL BE CONCLUDED.

1. License Grant and Restrictions

LYTICA INC. ("LYTICA") hereby grants Customer a non-exclusive, non-transferable, right to use the Service, solely for Customer's own purposes, subject to the terms and conditions of this Agreement. Customer shall not

- (a) license, sublicense, sell, transfer, assign, or distribute the Service; or
- (b) translate, reverse engineer, decompile or disassemble any software applicable to the Service, or otherwise attempt to derive the source code of such software.

2. e-Contract Terms Consenting to Electronic Documents.

Customer hereby consents to the exchange of information between Customer and LYTICA electronically over the Internet or by e-mail and that this Agreement in electronic form shall be the equivalent of an original written paper agreement between Customer and LYTICA.

3. Lawful Use

Customer shall abide by all applicable federal, state or provincial, and local laws and regulations in connection with Customer's use of the Service.

#### 4. Intellectual Property Rights

LYTICA and its licensors own all right, title and interest to the Service. The Customer's use of the Service is a license, not a sale, and does not convey to Customer any rights of ownership to the Service. Customer does own the report produced for it through use of the Service and may reproduce it for internal distribution and distribution to affiliates of Customer, but not to other third parties. The LYTICA name, and product names and logos are trademarks of LYTICA, and no right or license is granted to CUSTOMER to use them.

#### 5. Representations and Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. LYTICA represents and warrants that it will provide the Service according to industry standards and that it exercises reasonable commercial due diligence in the collection of data and operation of the Service and the production of reports pursuant thereto. However, Customer expressly acknowledges that LYTICA collects data from a number of sources and that Lytica has no means and cannot warrant the validity or genuineness of all the data so collected and makes no representation as to the accuracy of the data or report produced by the Service.

#### 6. Indemnity

CUSTOMER AGREES TO INDEMNIFY AND HOLD LYTICA AND ITS LICENSORS HARMLESS FROM AND AGAINST ANY LOSS, LIABILITY, COST, EXPENSE OR DAMAGE (INCLUDING REASONABLE LEGAL FEES) ARISING DIRECTLY OR INDIRECTLY OUT OF ANY CLAIM, SUIT ACTION OR JUDGMENT BROUGHT AGAINST LYTICA AND ITS LICENSORS ON ACCOUNT OF ANY ACT OR OMISSION BY CUSTOMER.

#### 7. Disclaimer of Warranties

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LYTICA AND ITS LICENSORS MAKE NO REPRESENTATION OR WARRANTY, AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR ACCURACY OF THE SERVICE. LYTICA AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS (B) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (C) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (D) ERRORS OR DEFECTS WILL BE CORRECTED, OR (E) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY LYTICA AND ITS LICENSORS.

8. Internet Delays

LYTICA'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. LYTICA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9. Limitation of Liability

IN NO EVENT WILL LYTICA BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED, INCLUDING BUT NOT LIMITED TO, ANY LOST PROFITS, LOST SAVINGS, LOSS OF USE OR LACK OF AVAILABILITY OF FACILITIES INCLUDING COMPUTER RESOURCES, ROUTERS AND STORED DATA, PUNITIVE, EXEMPLARY, AGGRAVATED OR ECONOMIC DAMAGES, ARISING OUT OF THE PRODUCTS OR SERVICES PROVIDED BY LYTICA OR OTHERWISE RELATED TO THIS AGREEMENT, EVEN IF LYTICA OR ANY OF ITS LAWFUL AGENTS, CONTRACTORS, OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM OR SUCH DAMAGES WERE REASONABLY FORESEEABLE. IN NO CASE WILL LYTICA'S TOTAL LIABILITY ARISING UNDER ANY CAUSE OR LEGAL THEORY WHATSOEVER (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE, OR OTHERWISE) BE FOR MORE THAN ONE DOLLAR IN UNITED STATES CURRENCY.

FOR THE PURPOSES OF THIS SECTION, "LYTICA" SHALL INCLUDE LYTICA'S AFFILIATES AND LYTICA'S AND ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS.

10. EXCLUSIONS NOT PERMITTED

SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES. THEREFORE, SOME OF THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER AND CUSTOMER MAY HAVE SPECIFIC LEGAL RIGHTS THAT VARY AMONG JURISDICTIONS.

11. Modification to Terms

LYTICA reserves the right to modify from time to time the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on its website. Continued use of the Service by Customer after any such changes shall constitute Customer's consent to such changes.

## 12. Miscellaneous

- (a) **Survival.** Provisions of this Agreement that by their nature must survive shall continue in force after expiration or termination of this Agreement.
- (b) **Governing Law and Dispute Resolution.** LYTICA is physically located within the Province of Ontario, Canada. This Agreement will be governed by the laws of the Province of Ontario and the federal laws of Canada and shall be treated in all respects as an Ontario contract, without reference to the principles of conflicts of law. Any disagreement or dispute relating to this Agreement, or the breach thereof shall be settled by final and binding arbitration to be conducted by a single arbitrator in Ottawa, Ontario, Canada in accordance with the Arbitration Act, 1991 of Ontario.
- (c) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings and agreements between the parties with respect thereto.
- (d) **Notice.** LYTICA may give notice to Customer by means of a general notice on the Service. Either party may give notice to the other party by electronic mail or by written communication sent by pre-paid first class mail in the case of Customer to Customer's address on record in LYTICA's account information and in the case of LYTICA, to 308 Legget Drive, Suite 200, Kanata Ontario, K2K 1Y6 to the attention of the Vice President, Sales or email: sales@lytica.com.
- (e) **Customer understands that the Service and the report produced thereby are subject to the export control laws and regulations of any country where the LYTICA server is located, and Customer agrees to fully comply with all export control laws and regulations of such country.**
- (f) **Language of Agreement.** The parties to this Agreement acknowledge having required that this Agreement be drafted in English. Les parties aux présentes reconnaissent avoir exigé que ce contract soient rédigé en anglais.