

GENERAL TERMS AND CONDITIONS FOR LYNQ CLOUD SERVICES (MES)**1. DEFINITIONS**

Capitalised terms used in this document are defined in the Glossary at the end of this document.

2. USAGE RIGHTS AND RESTRICTIONS**2.1 Grant of Rights**

LYNQ grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

2.2 Authorised Users

Customer may permit Authorised Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorised Users.

2.3 Acceptable Use Policy

With respect to the Cloud Service, Customer will not:

- (a) except to the extent such rights cannot be validly waived by law, disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

2.4 Verification of Use

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. LYNQ may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.5 Suspension of Cloud Service

LYNQ may suspend or limit use of the Cloud Service if continued use may result in material harm to the Cloud Service or its users. LYNQ will promptly notify Customer of the suspension or limitation. LYNQ will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.6 Third Party Web Services

The Cloud Service may include integrations with web services made available by third parties (other than LYNQ) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them.

2.7 Mobile Access to Cloud Service.

Authorised Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement. Mobile access to Cloud Services outside the Customer network locations is prohibited.

2.8 On-Premise Components

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. In addition to the support policy referenced in the Order Form, specific LYNQ support and maintenance policies apply to the On-Premise Components and can be found in the applicable Support Agreement.

3. LYNQ RESPONSIBILITIES

3.1 Provisioning

LYNQ provides access to the Cloud Service as described in the Agreement.

3.2 Support

LYNQ provides support for the Cloud Service as referenced in the Order Form.

3.3 Security

LYNQ will implement and maintain appropriate technical and organisational measures to protect the personal data processed by LYNQ as part of the Cloud Service as described in the Data Processing Agreement for LYNQ Cloud Services incorporated into the Order Form in compliance with applicable data protection law.

3.4 Modifications

- (a) LYNQ may alter, improve, or otherwise modify the Cloud Services provided that any such change will not significantly alter the provision of the Cloud Services or result in the removal of any features or services that form part of the Cloud Service package. The customer will be notified no later than fifteen (15) business days in advance of any planned changes and will receive full documentation of any modification completed or actions required by the customer. No alterations under this clause shall affect the fees payable by the Customer.
- (b) Customer may terminate its subscription if LYNQ are in breach of its obligations under clause 3.4 (a) by providing written notice to LYNQ within thirty (30) days of such modifications being made.

3.5 Analyses

LYNQ may create analyses utilising, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("Analyses"). Analyses will anonymise and aggregate information and will be treated as Cloud Materials. Unless otherwise agreed, personal data contained in Customer Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:

- a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new LYNQ products and services,
- b) improving resource allocation and support,
- c) internal demand planning,
- d) training and developing machine learning algorithms,
- e) improving product performance,
- f) verification of security and data integrity,

g) identification of industry trends and developments, creation of indices and anonymous benchmarking.

4. CUSTOMER AND PERSONAL DATA

4.1 Customer Data

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to LYNQ a nonexclusive right to process Customer Data solely to provide and support the Cloud Service.

4.2 Personal Data

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.3 Security

Customer will maintain reasonable security standards for its Authorised Users' use of the Cloud Service.

4.4 Access to Customer Data

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case LYNQ and Customer will find a reasonable method to allow Customer access to Customer Data.
- (b) At the end of the Agreement, LYNQ will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (c) In the event of third party legal proceedings relating to the Customer Data, LYNQ will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES

5.1 Fees and Payment

Customer will pay fees as stated in the Order Form. After prior written notice, LYNQ may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

5.2 Taxes

Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than LYNQ's income and payroll taxes. Customer must provide to LYNQ any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If LYNQ is required to pay taxes (other than its income and payroll taxes), Customer will reimburse LYNQ for those amounts and indemnify LYNQ for any taxes and related costs paid or payable by LYNQ attributable to those taxes.

6. TERM AND TERMINATION

6.1 Term

The Subscription Term is as stated in the Order Form.

6.2 Termination

A party may terminate the Agreement:

- (a) at the end of the subscription term with ninety (90) days written notice
- (b) upon thirty (30) days written notice of the other party's material breach unless the breach is cured during that thirty day period,
- (c) as permitted under Sections 3.4(b), 7.3(b), 7.4(b), or 8.1(c) (with termination effective thirty (30) days after receipt of notice in each of these cases), or
- (d) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.

6.3 Refund and Payments

For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4 Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Cloud Service and all LYNQ Confidential Information will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5 Survival

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

7. WARRANTIES

7.1 Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of LYNQ, the operation of LYNQ's business as it relates to the Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

7.2 Good Industry Practices

LYNQ warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and

- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

7.3 Remedy

Customer's sole and exclusive remedies and LYNQ's entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient Cloud Service, and
- (b) if LYNQ fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of LYNQ's failure to re-perform.

7.4 System Availability

- (a) LYNQ warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the Service Agreement (Cloud Services).
- (b) In the event LYNQ fails to meet system availability levels (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level of at least 95% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing LYNQ with written notice within thirty days after the failure.

7.5 Warranty Exclusions

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Cloud Service is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by LYNQ, or
- (c) the Cloud Service was provided for no fee.

7.6 Disclaimer

Except as expressly provided in the Agreement, neither LYNQ nor its subcontractors make any representation or warranties, and LYNQ and its subcontractors disclaim all representations, warranties, terms, conditions or statements, which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded to the fullest extent permitted by law including the implied conditions, warranties or other terms as to merchantability, suitability, originality, or fitness for a particular use or purpose. Further, except as expressly provided in this Agreement, neither LYNQ nor its subcontractors make any representations, warranties, terms, conditions or statements of non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of LYNQ or product roadmaps in obtaining subscriptions for any Cloud Service.

8. THIRD PARTY CLAIMS

8.1 Claims Brought Against Customer

- (a) LYNQ will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right belonging to such third party. LYNQ will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement LYNQ enters into) with respect to these claims.

- (b) LYNQ's obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Cloud Service in conjunction with any product or service not provided by LYNQ, or (iii) use of the Cloud Service provided for no fee.
- (c) In the event a claim is made or likely to be made, LYNQ may (i) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, LYNQ or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

8.2 Claims Brought Against LYNQ

- (a) Customer will defend LYNQ against claims brought against LYNQ and subcontractors by any third party related to Customer Data.
- (b) Customer will indemnify LYNQ against all damages finally awarded against LYNQ and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3 Third Party Claim Procedure

- (a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defence and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defence.
- (b) The party that is obligated to defend a claim will have the right to fully control the defence.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

8.4 Exclusive Remedy

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

9. LIMITATION OF LIABILITY

9.1 Unlimited Liability

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorised use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorised use or disclosure of personal data,
- (d) breach of the obligations imposed by s.12, Sales of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982,
- (e) fraud or fraudulent misrepresentation,
- (f) death or bodily injury arising from either party's negligence or wilful misconduct,
- (g) any failure by Customer to pay any fees due under the Agreement, or

(h) any liability that cannot be excluded or limited by applicable law.

9.2 Liability Cap

Subject to Sections 9.1 and 9.3, and regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), the maximum aggregate liability of either party (or its respective Affiliates or LYNQ's subcontractors) arising out of this Agreement to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve month period. Any "twelve month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3 Exclusion of Damages

Subject to Section 9.1:

(a) Regardless of the basis of liability (whether arising out of liability under breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty, breach of warranty, claims by third parties arising from any breach of this Agreement), under no circumstances shall either party (or their respective Affiliates or LYNQ's subcontractors) be liable to the other party or any third party for any loss or damage (whether or not the other party had been advised of the possibility of such loss or damage) in any amount, to the extent that such loss or damage is (i) consequential, indirect, exemplary, special or punitive; or (ii) for any loss of profits, loss of business, loss of business opportunity, loss of goodwill, loss resulting from work stoppage, or loss of revenue or anticipated savings, whether any such loss or damage is direct or indirect, and

(b) LYNQ will not be liable for any damages caused by any Cloud Service provided for no fee.

9.4 Risk Allocation

The Agreement allocates the risks between LYNQ and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 LYNQ Ownership

LYNQ owns all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved by LYNQ.

10.2 Customer Ownership

Customer retains all rights in and related to the Customer Data. LYNQ may use Customer-provided trademarks solely to provide and support the Cloud Service.

10.3 Non-Assertion of Rights

Customer covenants, on behalf of itself and its successors and assigns, not to assert against LYNQ, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation, or Consulting Services.

11. CONFIDENTIALITY

11.1 Use of Confidential Information

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorised Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

11.2 Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

11.3 Publicity

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that LYNQ may use Customer's name in customer listings or, at times mutually agreeable to the parties, as part of LYNQ's marketing efforts (including reference calls and stories, press testimonials, site visits). Customer agrees that LYNQ may share information on Customer with its Partners for marketing and other business purposes and that it has secured appropriate authorisations to share Customer employee contact information with LYNQ.

12. MISCELLANEOUS

12.1 Severability

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

12.2 No Waiver

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

12.3 Electronic Signature

Electronic signatures that comply with applicable law are deemed original signatures.

12.4 Notices

All notices will be in writing and given when delivered to the address set forth in an Order Form. Notices by LYNQ relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in

the form of an electronic notice to Customer's authorised representative or administrator identified in the Order Form.

12.5 Assignment

Without LYNQ's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party.

12.6 Subcontracting

LYNQ may subcontract parts of the Cloud Service or Consulting Services to third parties. LYNQ is responsible for breaches of the Agreement caused by its subcontractors.

12.7 Relationship of the Parties

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.8 Force Majeure

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.9 Governing Law

The Agreement and any claims relating to its subject matter will be governed by and construed under the laws of England, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in London. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.10 Entire Agreement

The Agreement constitutes the complete and exclusive statement of the agreement between LYNQ and Customer relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that in entering into the Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those expressly set out in the Agreement. Each party waives all rights and remedies which, but for this section, might otherwise be available to it in respect of any such representation, discussion, collateral contract or other assurance. Except as permitted under Section 3.4, this Agreement may be modified only by a writing signed by both parties. The Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order furnished by one party to the other, and any additional terms and conditions in any such purchase order shall have no force and effect, notwithstanding the non-furnishing party's acceptance or execution of such purchase order.

12.11 Contracts Rights of Third Parties

Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.

GLOSSARY

- 1.1 **"Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2 **"Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 **"Authorised User"** means any individual to whom Customer grants access authorisation to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer's Affiliates, and/or Customer's and Customer's Affiliates' Business Partners.
- 1.4 **"Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.
- 1.5 **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by LYNQ under an Order Form.
- 1.6 **"Cloud Materials"** mean any materials provided or developed by LYNQ (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.7 **"Confidential Information"** means
- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
 - (b) with respect to LYNQ: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding LYNQ research and development, product offerings, pricing and availability.
 - (c) Confidential Information of either LYNQ or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 1.8 **"Consulting Services"** means professional services, such as implementation, configuration, custom development and training, performed by LYNQ's employees or subcontractors as described in any Order Form and which are governed by the Consulting Services or similar agreement.
- 1.9 **"Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include LYNQ's Confidential Information.
- 1.10 **"Documentation"** means LYNQ's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 **"Order Form"** means the ordering document for a Cloud Service that references the General Terms and Conditions.
- 1.12 **"LYNQ Policies"** means the operational guidelines and policies applied by LYNQ to provide and support the Cloud Service as incorporated in an Order Form.
- 1.13 **"Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.



1.14 “Usage Metric” means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.