



## GENERAL TERMS AND CONDITIONS FOR LYNQ SOFTWARE AND SUPPORT

### 1. DEFINITIONS

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

### 2. LICENSE GRANT

#### 2.1 License.

- a) **Subject to Licensee’s compliance with all the terms and conditions of this Agreement**, LYNQ grants to Licensee a non-exclusive, non-transferable, perpetual (except for subscription or term based licenses) license to Use the Software, Documentation, and other LYNQ **Materials to run Licensee’s and its Affiliates’** internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations, unless terminated in accordance with the terms of this Agreement. Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with this Section 2.1 (a) and Section 6.3. Licensee shall not: (i) use the LYNQ Materials to provide services to third parties (e.g. business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, resell, sublicense or otherwise distribute the LYNQ Materials, other than distribution to Affiliates (subject to Section 2.2); (iii) distribute or publish keycode(s); (iv) make any Use of or perform any acts with respect to the LYNQ Materials other than as expressly permitted in accordance with the terms of this Agreement; (v) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Licensee may permit **Business Partners to Use the Software only through screen access, solely in conjunction with Licensee’s Use**. Business Partner may not Use the Software to manage or operate its own business operations.
- b) **Licensee agrees to install the Software only on Designated Units located at Licensee’s facilities and in Licensee’s direct possession. With advance written notice to LYNQ**, the information technology devices may also be located in the facilities of an Affiliate and **be in the Affiliate’s direct possession**. Licensee must be appropriately licensed as stated in the Use Terms for any individuals or machines that Use the Software, including employees, machines or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system. If Licensee receives licensed Software that replaces previously licensed Software, its rights under this Agreement with regard to the previously licensed Software end when it deploys the replacement Software for Use on productive systems following a reasonable testing period. At the date the rights to the previously licensed Software end, Licensee shall comply with Section 5.2 of this Agreement with respect to such previously licensed Software.
- c) **The terms and conditions of this Agreement relative to “Software” apply to Third Party Software except (i)** Licensee shall not make Modifications and/or Add-ons to Third Party Software or otherwise modify Third Party Software unless expressly authorised by LYNQ; and (ii) as otherwise stated in the Use Terms.

**2.2 Affiliate Use. Affiliates’ Use of the Software, Documentation and other LYNQ Materials to run their internal business operations as permitted under Section 2.1 (a) is subject to the following:** (i) Licensee ensures that the Affiliate agree in writing to comply with the terms of this Agreement as if it were the Licensee; and (ii) a breach of the Agreement terms by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate license or support agreement for LYNQ software with LYNQ directly, an affiliate of LYNQ or any other distributor of LYNQ software, the **Software shall not be Used to run such affiliate’s or subsidiary’s business operations and such affiliate or**

subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

- 2.3 **Services Providers.** With LYNQ's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) these rights will continue only while Licensee and such services provider have in place a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of LYNQ Confidential Information; (ii) Licensee must be appropriately licensed for all employees of such services provider authorised to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition; and (vi) Licensee expressly agrees to indemnify LYNQ, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable legal fees) suffered by LYNQ arising from a breach by the services provider of the conditions of this Agreement. Upon LYNQ request, Licensee shall provide written confirmation to LYNQ that items (i)-(iv) are fulfilled.

### 3. VERIFICATION.

LYNQ shall be permitted to audit (at least once annually and in accordance with LYNQ standard procedures, which may include on-site and/or remote audit) the usage of the LYNQ Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid Software license fees and/or LYNQ Support fees to LYNQ and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, Licensee shall pay such underpaid fees and/or for such excess usage based on the then-current LYNQ price list, terms and conditions in effect at the time of the audit, and shall execute an additional Software Order Form to affect the required licensing of any additional quantities or levels. Reasonable costs of LYNQ's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels. LYNQ reserves all rights at law and equity with respect to both Licensee's underpayment of Software license fees or LYNQ Support fees and usage in excess of the license quantities or levels.

### 4. PRICE AND PAYMENT.

- 4.1 **Fees.** Licensee shall pay to LYNQ the Software license fees and the LYNQ Support fees as specified in the Software Order Forms. Unless otherwise specified in the relevant Software Order Form, all payment terms are net thirty (30) days from date of invoice. Any fees not paid when due shall accrue interest at the rate of 3% per annum over the base lending rate of HSBC Bank plc per annum, but not to exceed the maximum amount as allowed by law. Software license fees include costs of initial delivery and packaging for physical shipment. In cases of electronic delivery, LYNQ makes the Software available for download from a network at its own cost, and Licensee is responsible for the cost of downloading the Software. Licensee acknowledges that a purchase order is for administrative convenience only and that Licensor has the right to issue an invoice and collect payment without a corresponding purchase order.
- 4.2 **Taxes.** Fees and other charges described in this Agreement do not include sales, VAT, withholding, use, property, excise, service, or similar taxes ("**Tax(es)**") now or hereafter levied, all of which shall be for Licensee's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to LYNQ prior to the execution of this Agreement. If LYNQ is required to pay Taxes, Licensee shall reimburse LYNQ for such amounts. Licensee hereby agrees to indemnify LYNQ for any Taxes and related costs, interest and penalties paid or payable by LYNQ.



## 5. TERM.

**5.1 Term.** This Agreement and the license granted hereunder shall become effective as of the date first set forth in the applicable Software Order Form and shall continue in effect thereafter unless terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives LYNQ written notice of Licensee's direction to terminate this Agreement but only after payment of all Software license and LYNQ Support fees then due and owing; (ii) thirty days after LYNQ gives Licensee written notice of Licensee's material breach of any provision of this Agreement (other than Licensee's breach of its obligations under Sections 6, 10 or 11, which breach shall **result in immediate termination**), including Licensee's failure to pay any money due hereunder, unless Licensee has cured such breach during such thirty day period; (iii) immediately if an administrator, an administrative receiver or a receiver is appointed in respect of Licensee, if Licensee is the subject of an order for winding up, becomes insolvent, or makes an assignment for the benefit of creditors or if Licensee is subject to any similar insolvency event.

**5.2 End of Term Duties.** Upon termination of this Agreement Licensee and its Affiliates shall immediately cease Use of all LYNQ Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon LYNQ's **request deliver** to LYNQ all copies of the LYNQ Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee agrees to certify in writing to LYNQ that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.5 and 12.7 shall survive termination. If this Agreement is terminated, for whatever reason, Licensee shall not be entitled to any relief from its obligation to pay fees that remain unpaid or to any refund of any payments made hereunder. Termination of this Agreement shall strictly apply to all LYNQ **Materials licensed hereunder and to this Agreement's appendices, schedules, addenda, Order Forms, order documents and any other incorporated documents.** Partial termination of this Agreement by Licensee shall not be permitted in respect of any part of this Agreement.

## 6. INTELLECTUAL PROPERTY RIGHTS.

**6.1 Reservation of Rights.** The LYNQ Materials, and all Intellectual Property Rights embodied therein, shall be the sole and exclusive property of LYNQ, subject to any rights expressly granted to Licensee in Section 2 and 6.3 herein. Except for the rights set forth in Sections 2 and 6.3 herein, Licensee is not permitted to modify or otherwise make derivative works of the Software or other LYNQ Materials.

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### 6.3 Modifications/Add-ons.

a) Licensee shall comply with LYNQ's **registration procedure prior to making Modifications or Add-ons.** All Modifications and all rights associated therewith shall be the exclusive property of LYNQ. All Add-ons developed by LYNQ (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of LYNQ. Licensee agrees to execute those documents reasonably necessary to secure LYNQ's **rights in the foregoing Modifications and Add-ons.** All Add-ons developed by or on behalf of Licensee without LYNQ's **participation (“Licensee Add-on”), and all rights associated therewith, shall be** the exclusive property of Licensee subject to LYNQ's **rights in and to the Software and LYNQ Materials;** provided, Licensee shall not commercialise, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. LYNQ retains the right to independently develop its own

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- b) Any Modification developed by or on behalf of Licensee without LYNQ's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning LYNQ software license terms, Software, or any other information related to LYNQ Materials.
- c) Licensee covenants, on behalf of itself and its successors and assigns, not to assert against LYNQ or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any (i) Licensee Add-ons or Modifications, or (ii) other functionality of the LYNQ Software accessed by such Licensee Add-ons or Modifications.

## 7. WARRANTY.

7.1 **Warranty.** LYNQ warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by LYNQ and which is provided through LYNQ Support or under warranty), Licensee or third-party software; or (iii) to any Licensee unlicensed activities. LYNQ does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements. Licensee accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet Licensee's individual requirements. **Provided Licensee notifies** LYNQ in writing with a **specific description of the Software's non-conformance** within the warranty period and LYNQ validates the existence of such non-conformance, LYNQ will, at its option: a) repair or replace the nonconforming Software, or b) refund the Software license fees paid for the applicable non-conforming Software in exchange for a return of such non-conforming Software. **This is Licensee's sole and exclusive remedy** under this warranty.

7.2 **Express Disclaimer.** Except as expressly set out in this Agreement, LYNQ and its licensors disclaim all warranties or terms, conditions, representations 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 satisfactory quality or fitness for purpose.

## 8. THIRD PARTY CLAIMS.

8.1 **Infringement and Defence of Licensee.** LYNQ shall defend Licensee against claims brought against Licensee by any third party alleging that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of such **third party's** patent claim(s), copyright or trade secret rights, and LYNQ will pay damages finally awarded against Licensee (or the amount of any settlement LYNQ enters into) with respect to such claims. This obligation of LYNQ shall not apply if the alleged infringement or misappropriation results from (i) Use of the Software in conjunction with any other software; (ii) Use of the Software with an apparatus other than a Designated Unit; (iii) failure to promptly use an update provided by LYNQ if such infringement or misappropriation could have been avoided by use of the update; or (iv) any Use not permitted by this Agreement. This obligation of LYNQ also shall not apply if Licensee fails to timely notify LYNQ in writing of any such claim; **however Licensee's failure to provide or delay in providing such notice shall not relieve LYNQ of its obligations under this Section except to the extent LYNQ is prejudiced by Licensee's failure to provide or delay in providing such notice.** LYNQ is permitted to control fully the defence and any settlement of any

such claim as long as such settlement shall not include a financial obligation on or admission of liability by Licensee. In the event Licensee declines LYNQ’s **proffered** defence, or otherwise fails to give full control of the defence to LYNQ’s **designated counsel**, then Licensee waives LYNQ’s **obligations under this Section 8.1**. Licensee shall reasonably cooperate in the defence of such claim and may appear, at its own expense, through counsel reasonably acceptable to LYNQ. LYNQ expressly reserves the right to cease such defence of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, **the third party’s rights**. LYNQ may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to LYNQ’s **rights**.

8.2 The provisions of this Section 8 state the sole, exclusive, and entire liability of LYNQ and its licensors to Licensee, and is Licensee’s sole remedy, with respect to any infringement or misappropriation of third-party Intellectual Property Rights.

## 9. LIMITATIONS OF LIABILITY.

9.1 **Not Responsible.** LYNQ and its licensors will not be liable for any Licensee activities not permitted under this Agreement, including without limitation to the extent that any liability arises from: (i) the Software not being used in accordance with the Documentation; or (ii) any defect or liability caused by Licensee, a Modification or Add-on (other than a Modification or Add-on made by LYNQ and provided through LYNQ Support or under warranty), or third-party software; or (iii) the Software being used in conjunction with any third party software for which the Licensee lacks sufficient rights from the third party vendor for such use. LYNQ and its licensors shall not be liable for any claims or damages arising from inherently dangerous Use of the Software and/or Third-Party Software.

### 9.2 Exclusion of Damages; Limitation of Liability.

- a) Subject to Section 9.2 (a) below 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) neither LYNQ or Licensee shall be liable to the other or any other party for any loss or damage arising under or in relation to this Agreement to the extent that such loss or damage:
- is (i) loss of profits or revenue; (ii) loss of business; (iii) loss of or damage to data; (iv) loss of goodwill; (v) losses from computer failure or malfunction; (vi) legal fees; or (vii) loss of anticipated savings; and regardless of whether any such loss or damage listed in this sub-section (a) is direct, indirect, special, incidental or consequential;
  - is indirect, special, incidental or consequential and whether or not the other party had been advised of the possibility of such loss or damage;
  - (where such loss or damage relates to Software other than Third Party Software) exceeds the net Software licence fee paid in respect of the Software directly causing the loss or damage;
  - (where such loss or damage relates to Third Party Software) exceeds the net Software licence fee paid for the Third Party Software directly causing the loss or damage.
- b) Subject to Sections 9.2 (a), 9.2 (c) and 9.2 (d) 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 or claims by third parties arising from any breach of this Agreement) the aggregate liability of each party to the other or any other party for any loss or damage arising under or

in relation to this Agreement shall not exceed the aggregate Software licence fees paid under this Agreement.

- c) **Nothing in this Agreement shall exclude or limit either party's liability for death or personal injury** caused by negligence, breach of the obligations imposed by s.12, Sale of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982, fraudulent misrepresentation or any other liability which cannot be excluded or limited by applicable law.
- d) **Nothing in this Agreement shall exclude or limit either party's liability under Section 10, LYNQ's liability under Section 8.1 or Licensee's liability for any failure to pay any fees due hereunder or for any breach of Section 6 or for any breach, misuse or infringement of LYNQ's Intellectual Property Rights.**

9.3 The parties agree that the provisions of this Agreement appropriately allocate the risks between LYNQ and Licensee and the Software license and LYNQ Support fees reflect this allocation of risk and the limitations of liability herein.

## 10. CONFIDENTIALITY.

10.1 **Use of Confidential Information.** Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party : (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights and/or perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to those set forth herein. As used herein "**Reasonable Steps**" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

10.2 **Exceptions.** The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without **reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information;** (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

10.3 **Confidential Terms and Conditions; Publicity.** Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained herein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that LYNQ and its affiliated companies may use Licensee's name and logo in customer listings or, at times mutually agreeable to the parties, as part of LYNQ's marketing efforts (including without limitation reference calls and stories, press testimonials and site visits). LYNQ will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business. Licensee agrees that LYNQ may share information on Licensee with its affiliated companies for marketing and other business purposes and that Licensee has secured permission from its employees to allow LYNQ to share business contact information with its affiliates.

11. **ASSIGNMENT.** Licensee may not, without LYNQ's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the LYNQ Materials or LYNQ Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. LYNQ may assign this Agreement to any of its affiliates.
12. **GENERAL PROVISIONS.**
- 12.1 **Severability.** It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 12.2 **No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 12.3 **Counterparts.** This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement. Both parties agree that this document and its signature can be established in electronic form (sending by facsimile, scanned copy sent via e-mail, or electronic signature by using means implemented by LYNQ – for example Adobe Sign) and that, in electronic form, they shall be deemed originals.
- 12.4 **Governing Law; Limitations Period.** This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of England, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and English law, rules, and regulations, English law, rules, and regulations shall prevail and govern and the parties hereby submit to the exclusive jurisdiction of the English Courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 12.5 **Notices.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of LYNQ and Licensee at the addresses first set forth in any Software Order Form. Where in this Section 12.5 or elsewhere in this Agreement a written form is required, except for any notice of termination or notice of a material breach which shall occur by exchange of letter(s), that requirement can be met by facsimile transmission, exchange of letters or other written form, including email.
- 12.6 **Force Majeure.** Any delay or non-performance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 12.7 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between LYNQ and Licensee 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 this Agreement it has not relied on any representation, discussion, collateral contract or other assurance except those expressly set out in this 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. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional,

conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to LYNQ. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal-and-agent relationship.

- 12.8 **Hierarchy.** The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) the Software Order Form; (ii) the Specific Terms and Conditions; (iii) the General Terms and Conditions; and (iv) the Use Terms; except with respect to third party pass-through terms for Third Party Software stated in the Use Terms, in which case the Use Terms prevail over any conflict or inconsistency in any component of this General Terms and Conditions solely with respect to such third party pass-through terms.
- 12.9 **Contracts (Rights of Third Parties) Act 1999.** 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.

### 13. PERSONAL DATA.

**"Data Protection Legislation"** means any legislation in force from time to time which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC and is applicable to this Agreement, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the United Kingdom;

**"Data Controller"** and **"Data Processor"** are as defined in Data Protection Legislation;

**"Personal Data"** means any personal data (as such term is defined in Data Protection Legislation) processed under this Agreement;

- a) **During the Term of this Agreement, either Party may be given access to the other Party's systems and data** in such circumstances that under the Data Protection Legislation one Party shall be the Data Controller and the other a Data Processor.
- b) In the event that Section 13 (a) applies, each Party will carry out its obligations under the Agreement in accordance with the Data Protection Legislation, including (but not limited) to:
- a. acting only on the **Data Controller's instructions**;
  - b. taking all appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, personal data; and
  - c. refraining from processing Personal Data outside of the European Economic Area in a manner which would be contrary to those obligations imposed by the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998.



## GLOSSARY OF TERMS

**“Add-on”** means any development that adds new and independent functionality, but does not modify existing LYNQ functionality, and is developed using LYNQ application programming interfaces or other LYNQ code that allows other software products to communicate with or call on LYNQ Software.

**“Affiliate”** means any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such interest is maintained.

**“Agreement”** means the agreement as defined in the Software Order Form.

**“Business Partner”** means a legal entity or individual that requires access to the Software in connection with Licensee’s internal business operations, such as customers, distributors and/or suppliers of Licensee.

**“Confidential Information”** means, with respect to Licensee: Licensee’s marketing and business plans and/or financial information, and with respect to LYNQ : (a) the Software and Documentation and other LYNQ Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of LYNQ; and (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies. In addition, Confidential Information of either LYNQ or Licensee (the party disclosing such information being the “Disclosing Party”) includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies 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; including, without limitation, information from, about or concerning any third party that is disclosed under this Agreement. Confidential Information does not include information that is trivial or obvious.

**“Designated Unit”** means information technology devices (e.g. hard disks, servers or central processing units) identified by Licensee pursuant to this Agreement that have been officially made known as appropriate for Use or interoperation with the Software.

**“Documentation”** means LYNQ’s then-current technical and/or functional documentation which is delivered or made available to Licensee with the Software under this Agreement.

**“Intellectual Property Rights”** means patents of any type, design rights, utility models or other similar invention rights, copyrights, 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.

**“Modification”** means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customises, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of LYNQ data structures; or (iii) any other change to the Software (other than an Add-on) utilising or incorporating any LYNQ Materials (defined below).

**“LYNQ Materials”** means any software, programs, tools, systems, data or other materials made available by LYNQ to Licensee prior to or 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 LYNQ relating to the Software and Documentation.

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