

## lyticOS® SOFTWARE LICENCE AGREEMENT

### 1 DEFINITIONS

- 1.1 In this licence agreement the following words and phrases have the following meanings:
- 1.1.1 **Fee:** the fees payable by you in connection with this licence agreement for the use of the Software, as specified in the Order Form;
  - 1.1.2 **Open Source Software:** open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>); A list of applied Open Source Software including the respective license texts as well as copyright and modification notices can be found [here](#).
  - 1.1.3 **Order Form:** the order form completed by you when you place your order for the Software, which sets out your requirements for the Software, including the Fee payable and the number of devices on which the Software may be installed;
  - 1.1.4 **Maintenance Release:** release of the Software (including a patch) that corrects bugs, or otherwise amends or upgrades the Software, but which does not constitute a New Version; a "Maintenance Release", will be identified by a change in the second digit of the version number e.g. "2.1", "2.2" etc.
  - 1.1.5 **Minimum Requirements:** the minimum installation requirements that all devices must meet as published by us online [here](#).
  - 1.1.6 **New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by us in the course of our normal business, being a version which contains substantial additional functionality; a "New Version" will be identified by a change in the first digit of the version number e.g. "2.0", "3.0" etc.
  - 1.1.7 **Software:** the *lyticOS™* software;
  - 1.1.8 **Third Party Software:** third party software used in conjunction with the Software, which is installed by the installer at the time of installation of the Software and certain third party plug-ins included within the Software;
  - 1.1.9 **Website:** <https://elementar.com>
  - 1.1.10 **you:** the legal entity on whose behalf the Order Form and the Fee is submitted. We do not licence to consumers.
  - 1.1.11 **Written, in writing:** at least in text form (e.g. e-mail).

### 2 LICENCE

- 2.1 This licence agreement forms an agreement between you and Elementar Analysensysteme GmbH ("Elementar" or "we/our/us"), the owner and licensor of the Software.
- 2.2 The Software operates certain features of instruments and also analyses and processes data derived from these instruments in real time. A fuller description of the current version of the Software can be found on our [Website](#). The contractual quality and functionality of the

Software are specified exclusively in the Order Form and the aforementioned description on our Website, both of which are explicitly included as part of this agreement. The information contained therein is to be understood exclusively as a description of performance and not as guarantees. A further quality is not owed and in particular does not result from public statements or advertising by Elementar or our sales partners.

- 2.3 In consideration of the Fee paid by you to Elementar, Elementar grants to you a non-exclusive, perpetual licence to use the Software in accordance with the terms of this licence agreement including, in particular, clause 5, and the references made in this licence agreement.

### **3 DOWNLOAD & INSTALLATION**

- 3.1 Following your registration on our Website, you will be able to download and install the Software and other files on the number of devices set out in the Order Form, provided that the devices meet the Minimum Requirements.
- 3.2 The files you will be prompted to download and install contain the Software, this licence agreement, an activation file which activates the Software and Third Party Software which runs with the Software.
- 3.3 You will see this licence agreement on screen when you install the licence file on your device and you will be prompted to accept its terms. By installing these files, or by clicking 'I accept', you are accepting this licence agreement. So please take time to read it.
- 3.4 Following installation of the Software and your acceptance of this licence agreement, the Software will attempt automatic online activation of the licence file via our web services. If automatic online activation is not possible then you must manually activate the Software via our Website. The Software must be activated within 30 days of installing the licence file, after which the Software will not function until activation has been completed.

### **4 COMMENCEMENT DATE**

- 4.1 The term of this licence agreement begins on the day on which you accept this licence agreement as specified in clause 3.3 (the "**Commencement Date**").

### **5 USE**

- 5.1 Use of the Software shall be restricted to use on the number of devices set out in the Order Form for the purpose of analysing and processing data from instruments. The use of the Software is bound to the legal entity and to the number of staff members as specified in the Order Form.
- 5.2 The device upon which you intend to use the Software must meet the Minimum Requirements.
- 5.3 You neither may use the Software other than as specified in this clause 5 nor pass on the access data or transfer the software to any third party without our prior written consent. When having given our prior written consent you must provide the Order Form, this licence agreement and all other relevant documentation to the third party. You will fully cease using the Software, remove all installed copies from your device and delete all copies on any other

data carrier, unless you are legally obligated to retain them for a longer period of time. Upon our request, you shall confirm to us in writing that the aforementioned measures have been carried out in full or, if applicable, explain your reasons for longer retention. Furthermore, you shall expressly agree with the third party on the observance of the scope of the granting of rights pursuant to this Section 5. A splitting of purchased licence volume packages is not permitted. Additional fees may be payable for any change of use.

- 5.4 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt, make error corrections to the Software except if necessary for the agreed intended use.

## **6 YOUR OBLIGATIONS**

- 6.1 You shall:

6.1.1 ensure that the number of devices on which the Software is installed does not exceed the number set out in the Order Form;

6.1.2 take appropriate measures to secure the Software and, if applicable, the access data for online access, against access by unauthorized third parties. In particular, all copies of the Software as well as the access data shall be kept in a safe place. Elementar shall be entitled to verify the proper use of the Software, in particular whether the Software is being used qualitatively and quantitatively within the scope of this licence agreement and the Order Form, only if and insofar as reasonable;

6.1.3 notify us as soon as you become aware of any unauthorised use of the Software by any person.

## **7 UPDATES, MAINTENANCE RELEASES & SUPPORT**

- 7.1 We will provide you with, free of charge, either automatically or by way of download from our Website: all Maintenance Releases generally made available to our customers for the Software; and for each New Version which is issued to you free in accordance with clause 9 below.

- 7.2 If a critical issue affecting all customers of the Software arises within a period of 10 years from which you first purchased the Software, we will use all reasonable endeavours to fix that issue free of charge by, at our option, repairing or replacing the Software, including making a software patch available for download. If, at our discretion, we do not consider the issue to be critical, we reserve the right to make a charge for fixing the issue, or not offer to fix the issue at all.

## **8 NEW VERSIONS**

- 8.1 Whilst it is our intention to issue a New Version each year, we are not obliged to do so. We will notify you when a New Version becomes available.

- 8.2 You will be entitled to receive, free of charge, any New Version which we issue within a period of two years from the date on which you first purchased the Software. Any New

Version which we issue after the expiry of that two year period will fall outside this entitlement. For the avoidance of doubt, the provision of Maintenance Releases as set out in clause 7 shall not include the provision of any New Version.

## **9 CONFIDENTIALITY AND PUBLICITY**

- 9.1 Each party shall, during the term of this licence agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

## **10 WARRANTY**

- 10.1 We warrant that the Software will conform in all material respects with the description of the functionality of the Software on the Website and the Order Form. If you notify us in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects with the description of the functionality of the Software on the Website, and such defect or fault does not result from you, or anyone acting with your authority, having modified the Software or used it outside the terms of this licence agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by us, or it has not been loaded onto equipment specified by us or suitably configured equipment, we shall, at our option, do one of the following:

10.1.1 repair the Software;

10.1.2 replace the Software; or

10.1.3 terminate this licence agreement immediately by notice in writing to you and refund the Fee,

provided you provide all the information that may be necessary to assist us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable us to re-create the defect or fault.

The warranty begins with the Commencement Date. Upon accepting this licence agreement, you must without undue delay inspect the Software for obvious defects and notify us without undue delay of any such defects. Otherwise, any warranty for obvious defects shall be excluded. The same applies if such a defect becomes apparent later.

For defects that are not obvious, warranty shall be granted for a period of one (1) year.

- 10.2 You accept responsibility for the selection of the Software to achieve your intended results and acknowledge that the Software has not been developed to meet your individual requirements.

You acknowledge that any Open-Source Software is provided "as is" and expressly subject to the disclaimer contained in the respective licence text, if applicable. **Error! Reference source not found.** Clause 11 remains unaffected.

- 10.3 Nothing in this clause affects the provisions regarding support contained in clause 8.2.

## 11 LIABILITY AND LIMITATION OF LIABILITY

- 11.1 We shall be liable without limitation

- for intent or gross negligence,
- for injury to life, body or health,
- according to the regulations of the German Act on Product Liability ("Produkthaftungsgesetz") and
- to the extent of a guarantee granted by us.

- 11.2 In the event of ordinary negligence, we shall only be liable in the case of a culpable violation of an essential contractual obligation or cardinal duty, limited to the typically foreseeable damage.

- 11.3 We shall have no further liability.

- 11.4 The above limitation and exclusion of liability shall also apply to the personal liability of our employees, representatives and vicarious agents.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 You acknowledge that all Intellectual Property Rights in the Software (including any New Versions and Maintenance Releases) belong and shall belong to the Supplier or the relevant third-party owners (as the case may be), and you shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence agreement.

## 13 DATA

- 13.1 We will also collect and use certain anonymised data (including an anonymised identifier of the device on which the Software is installed) in the following ways:

- 13.1.1 To activate the Software; to make Software updates available; to record the dates of downloads and to collect error reports and feature usage.

- 13.2 All personal and anonymised data collected from you in accordance with this clause 13 is stored securely and is used only for the purpose of running, improving and administering the Software.

## **14 DURATION AND TERMINATION**

- 14.1 Without affecting any other right or remedy available to it, we may terminate this licence agreement with immediate effect and deactivate the Software if you commit a material breach of any other term of this licence agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so.
- 14.2 Any provision of this licence agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this licence agreement shall remain in full force and effect.
- 14.3 Termination or expiry of this licence agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this licence agreement which existed at or before the date of termination or expiry.
- 14.4 On termination for any reason:
- 14.4.1 all rights granted to you under this licence agreement shall cease;
  - 14.4.2 you shall cease all activities authorised by this licence agreement;
  - 14.4.3 you shall immediately uninstall the Software and all copies thereof from your device(s), delete any copies contained in other data carriers and certify to us that you have done so.

## **15 WAIVER**

- 15.1 No failure or delay by a party to exercise any right or remedy provided under this licence agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **16 REMEDIES**

- 16.1 Except as expressly provided in this licence agreement any rights or remedies provided by law remain unaffected.

## **17 ENTIRE AGREEMENT**

- 17.1 This licence agreement and the documents to which it links or refers (Order Form, Website and Minimum Requirements) contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 17.2 Each party acknowledges that, in entering into this licence agreement and the documents to which it links or refers, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to

this licence agreement or not) ("**Representation**") other than as expressly set out in this licence agreement.

## **18 VARIATION**

18.1 Amendments and supplements of this licence agreement must be made in writing and signed by the parties (or their authorised representatives).

## **19 FORCE MAJEURE**

19.1 Neither party shall be in breach of this licence agreement nor liable for delay in performing, or failure to perform, any of its obligations under this licence agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate this licence agreement by giving thirty (30) days' written notice to the affected party.

## **20 MISCELLANEOUS**

20.1 Your general terms and conditions shall not apply.

20.2 You are not allowed to assign any claims against Elementar.

20.3 You are only allowed to set-off with claims that are undisputed or legally enforceable. The same applies to the right of retention.

20.4 The Parties are aware that the Software might be subject to export and import restrictions. In particular, licencing requirements may exist or the use of the Software or related technologies may be subject to restrictions abroad. You shall comply with all applicable export and import control regulations. Our performance of this licence agreement is subject to the condition that there are no impediments to performance based on national and international regulations of export and import law nor other statutory provisions.

## **21 GOVERNING LAW AND JURISDICTION**

21.1 This licence agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Germany to the exclusion of the provisions of international private law as well as the UN Convention on Contracts for the International Sale of Goods (CISG).

21.2 The parties irrevocably agree that the courts of Germany shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this licence agreement or its subject matter or formation (including non-contractual disputes or claims).