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**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)**

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours

contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) **Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) **Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) **Limitation of Liability: Subject to the following:**

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

- (s) **Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) **Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) **Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

NLYTE SOFTWARE LIMITED and **[NAME]**

SOFTWARE LICENCE AGREEMENT

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AGREEMENT dated 2009 PARTIES:

(1) **NLYTE SOFTWARE LIMITED** a company incorporated in England and Wales under the Companies Act (registered company number 04805444) of Riverside House, 26 Osiers Road, London SW18 1NH, United Kingdom ("**Licensor**"); and

(2) **[NAME]** a company incorporated in the State of **[STATE]** of ADDRESS ("**the Client**").

RECITALS

(A) The Client has placed an order with an approved Licensor Reseller, **[RESELLER NAME]**. ("**Reseller**") for the supply and licence of certain Products, and related software maintenance and support, from Licensor.

(B) In consideration of the Client agreeing to make promptly all payments due to Reseller or Licensor, whichever is appropriate, for the supply, licence, maintenance and support of such Products, Licensor agrees (i) to grant the Client a licence to use such Products and (ii) to provide certain maintenance and support services to the Client in relation to such Products, in each case on the terms and conditions set out in this Agreement.

AGREED TERMS:

1. Definitions and interpretation

To make this Agreement short and easy to understand, it uses some defined terms. These are explained in Schedule 1. Schedule 1 also explains some rules to be used in interpreting this Agreement.

2. Summary of agreement

This Agreement explains the terms on which Licensor will supply software, hardware and services to the Client. This Agreement is made up of a number of parts:

(a) The terms in the main body of this Agreement plus those in Schedule 1 (together, the "**General Terms**") apply to everything to be supplied by Licensor under this Agreement.

(b) The terms in the following schedules apply in addition to the General Terms to specific things to be supplied by Licensor as follows:

(i) the terms in Schedule 2 (the "**Licence Terms**") apply to the supply and licensing of Products; and

(ii) the terms in Schedule 3 (the "**Maintenance and Support Terms**") apply to the supply of Services relating to software maintenance and support.

3. Licensor's obligations

Licensor will:

(a) supply and license the Products;

(b) supply the Maintenance and Support Services,

in each case in accordance with the terms of the relevant schedule (as described in Clause 2) and the General Terms.

1 Unless Licensor agrees otherwise (which will include an agreement to this effect in a schedule), Licensor will provide Services only during Working Hours. Services (including Maintenance and Support Services) provided outside Working Hours may be subject to an additional charge as explained in Clause 10.

2 **The Client's obligations**

4.1 The Client shall make all payments due to Reseller or Licensor, whichever is appropriate, in connection with the supply, licence, maintenance or support of the Products (whether pursuant to the terms of the Client's agreement(s) with Reseller or the terms of this Agreement) promptly and in accordance with the terms of this Agreement or the relevant Reseller agreement(s) (as applicable).

4.2 Without prejudice to Licensor's rights or remedies under or pursuant to this Agreement, where the Client fails to comply with the terms of Clause 4.1, Licensor shall be entitled to suspend the supply of any Services or Products until the Client complies fully with Clause 4.1.

4.3 The Client shall provide to Licensor all assistance, facilities and services as are reasonably necessary to enable Licensor to fulfil its obligations under this Agreement. Unless agreed otherwise, this assistance will include:

(a) provision of, and access to, accurate and complete information and data;

(b) reasonable use of normal office facilities including, where necessary, office accommodation, access to and use of phones, faxes and data lines and photocopying and printing facilities;

(c) where Services are provided to the Client at a location outside the UK, access to and use of phones, faxes and data lines that can be used to communicate with the UK;

(d) reasonable access to any relevant premises and IT systems;

(e) reasonable access to, and co-operation by, the staff of the Client; and

(f) provision of any facilities specified in any relevant schedule;

(g) provision of listings of outputs and data; and

(h) providing Licensor with a means to access Products via secure remote login whenever required.

These will be provided without charge to Licensor but will be subject to Licensor complying with any reasonable requirements notified to it in writing in advance by the Client (for example, access and security provisions in relation to any relevant IT systems).

4.4 The Client is responsible for making sure that reasonable computer house-keeping measures are implemented by the Client as appropriate in relation to the Products and any environment on which the Products operate. These house-keeping procedures shall be in accordance with current best practice including (but not limited to) the making of back-up copies of software and data on a regular basis and secure storage of those back-up copies. Licensor will not be liable for any loss or damage (however it is caused) to the extent the loss or damage could reasonably have been avoided if reasonable house-keeping measures had been adopted and carried out by the Client.

Acceptance

5.1 The Client will be considered to have taken delivery of a Product on the date the Product is delivered.

5.2 On delivery of each Product, the Client shall have 10 Working Days to perform Acceptance Testing of the Product.

5.3 If, under Acceptance Testing, any Material Errors are found in a Product then the Client shall notify Licensor of the Material Errors promptly and supply to Licensor all information relating to the Material Errors. Licensor shall make reasonable efforts to correct the Material Errors within a reasonable time and re-deliver the Product to the Client for re-testing. In that case, the period allowed for testing shall be increased by an additional period agreed between the parties, which shall be no greater than a period equivalent to the original period provided for testing.

5.4 Once Licensor has corrected any Material Errors, the Client shall resume the Acceptance Tests. If further Material Errors are found, the process in Clause 5.3 shall be repeated.

5.5 If a Product cannot pass its Acceptance Test within 4 weeks of first submission for Acceptance Testing, the parties shall meet to discuss in good faith the best way to proceed for that Product. In the event that both parties cannot agree a way forward, Acceptance Testing will be stopped and the relevant Products returned to Licensor at which time Reseller or Licensor, whichever is appropriate, will refund to the Client any monies received from the Client which relate to the relevant Products (or, where applicable, the affected portion(s) of the Products).

5.6 Successful completion of Acceptance Testing of any Products will be treated as having occurred on the earlier of:

(a) the Client signing an Acceptance Certificate confirming that the Product has completed Acceptance Testing successfully;

(b) 10 Working Days from delivery of each Product unless the Client during such period has in accordance with Clause 5.4 notified Licensor of any Material Errors in the Products in which case the relevant period will be extended as set out in Clause 3 and (subject to further errors being found and the process being repeated) successful completion of Acceptance Testing will be treated as having occurred on the expiration of the extended period; or

(c) the date on which any live use of the Product by the Client first takes place.

1 Successful completion of Acceptance Testing of any Products shall not be withheld on account of Minor Errors.

2 **Warranties, acknowledgement by the Client and opportunity to fix**

6.1 The warranties and other provisions in this Clause 6 apply to all Services and Products made by Licensor and are in addition to any warranties contained in the schedules and that are applicable to a particular Service or Product covered by that schedule.

6.2 Each party warrants that it has the right to enter into this Agreement and to grant to the other the rights and licences granted herein.

6.3 Licensor warrants that all Services and Products will be provided

(a) with reasonable care and skill; and

(b) by means of appropriately qualified and skilled personnel.

6.4 The Client acknowledges:

(a) that software generally (and hence the Products) may contain Minor Errors; and

(b) that the Products are not likely to be entirely error-free or to operate in any entirely uninterrupted way.

The Client agrees that the existence of Minor Errors in the Products and any interruption in the operation of the Products resulting from one or more Minor Errors will not result in a breach of this Agreement.

6.5 Licensor warrants that it shall use commercially reasonable efforts to ensure that the Products will be free from viruses or other harmful code. Client is responsible for virus scanning (using an industry-standard and up-to-date virus scanning tool or service) all Products prior to installation.

6.6 In the event of any breach of the warranties in this Clause 6, the Client must tell Licensor as soon as possible and (if applicable) in any event within any relevant Warranty Period. Where such breach occurs before successful completion of Acceptance Testing, Clause 5 shall apply. Licensor will have no other obligations or liability in relation to a breach of warranty which occurs before successful completion of Acceptance Testing.

Where such breach occurs (i) in relation to any Services or (ii) after successful completion of Acceptance Testing in relation to any Products, Clause 6.7 shall apply.

6.7 The Client must give Licensor a reasonable time to fix the problem and, where Licensor reasonably considers it necessary to do so, to:

(a) supply the Client with a corrected version of any relevant Product; or

(b) supply the Client with a way to work-around the problem that is not materially detrimental to Customer; or

(c) re-perform any relevant Services.

Licensor will have no other obligations or liability in relation to such breach which occurs in relation to any Services or (ii) after successful completion of Acceptance Testing in relation to any Products, provided that if Licensor is unable to fix the problem or supply a work-around Licensor may if it wishes: in relation to Products, elect to take back the relevant Products and to refund to the Client the monies paid by the Client to Reseller or Licensor, whichever is appropriate, which relate to the relevant Products (or, where applicable, the affected portion(s) of the Products); and

1 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT AND THE SCHEDULES ATTACHED HERETO, THE SOFTWARE AND DELIVERABLES ARE PROVIDED "AS IS". LICENSOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

2 **Liability**

7.1 Neither party excludes or limits its liability to the other in respect of:

- (a) death or personal injury caused by its negligence or that of its servants or agents;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter liability for which cannot lawfully be excluded or limited.

7.2 Subject to Clause 7.1, whether or not either party has been advised of the possibility by the other, neither party will be liable, whether under contract, tort (including negligence) or otherwise, for any of the following loss or damage:

- (a) loss of production;
- (b) loss of business;
- (c) loss of or corruption to data;
- (d) loss of profits;
- (e) loss of contracts;
- (f) loss of revenue;
- (g) loss of operational time;
- (h) loss of goodwill;
- (i) loss of anticipated savings;
- (j) wasted management or staff time;

(k) except as expressly provided otherwise by this Agreement, any losses that arise from any contract with or claim by any third party (for example, a contract with or claim by a customer of the Client); or

(l) any indirect loss or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused.

7.3 SUBJECT TO CLAUSES 7.1 AND 7.2, LICENSOR'S TOTAL AGGREGATE LIABILITY TO THE CLIENT (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR BASED ON ANY CLAIM FOR INDEMNITY OR CONTRIBUTION OR OTHERWISE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO 125% OF THE TOTAL AMOUNT PAID BY THE CLIENT TO LICENSOR AND/OR RESELLER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE CLAIM OF SUCH LIABILITY WAS MADE.

7.4 Licensor will not be liable for any failure or delay in performing its obligations under this Agreement or for any breach of this Agreement to the extent that the failure, delay or breach concerned arises from:

- (a) use of any Products other than in accordance with normal operating procedures as described in any relevant manuals or as otherwise notified to the Client by Licensor;
- (b) any alterations to any Products made by anyone other than Licensor or someone authorised by Licensor;
- (c) any problem with the computer on which any Products are installed, any equipment connected to that computer or any other software which is installed on that computer;
- (d) any abnormal or incorrect operating conditions;
- (e) any other hardware or software being used with or in relation to any Products, unless this use has been expressly approved by Licensor;
- (f) failure to implement any previous patches or error corrections of or relating to any Products;
- (g) failure to follow any reasonable instructions given previously by Licensor; or
- (h) failure by Reseller to perform its obligations under separate agreements the Client may have with Reseller.

In the event that any investigation of an apparent problem carried out by Licensor at the Client's request uncovers any defect or other problem with or in relation to a Product that is subject to this Clause 7.4, the costs of carrying out the investigation shall be payable by the Client to Reseller or Licensor, whichever is appropriate, (calculated on the basis of the time reasonably spent by Licensor in carrying out the investigation chargeable at Standard Fee Rates and (if appropriate) for travel, accommodation, computer resources and other out-of-pocket expenses properly and reasonably incurred by Licensor).

7.5 Subject to Clause 6.7, the Client must notify Licensor of any breach of this Agreement or any other alleged wrongful act or omission by Licensor within 10 days of the earlier of:

- (a) the date on which the Client first became aware of the facts giving rise to the breach or wrongful act or omission in question; or
- (b) the date on which the Client ought reasonably have been aware of the facts giving rise to the breach or wrongful act or omission in question (for example, if the facts would have been apparent had the Client carried out testing that it was supposed to carry out under this Agreement).

Subject to Clause 7.1, Licensor will not be liable for any claim that is not notified to it by the Client in accordance with this Clause 7.5.

7.6 All of the terms that have been agreed between the parties in relation to the subject of this Agreement are contained in this Agreement (together with any document expressly referred to in this Agreement as forming part of it). The parties do not intend any other terms to apply unless they specifically agree otherwise. Each party:

(a) acknowledges that, in entering into this Agreement, it has not relied on any representation made by the other party that has not been set out in this Agreement; and

(b) agrees that it will not try to rely on any representation made by the other party except to the extent that the representation concerned is contained in this Agreement.

1 No conditions, warranties or other terms apply to any Services or Products under this Agreement except to the extent that they are expressly set out in this Agreement. Subject to Clause 7.1, no implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

2 **Confidentiality and data protection**

8.1 Confidential information will include information which is either marked as being confidential or which, due to the nature of the information or the circumstances under which it was disclosed, ought reasonably to be treated as confidential information of the party disclosing it. Products and the terms (but not the existence) of this Agreement will be treated as confidential information.

8.2 The party receiving any of the other's confidential information must not:

(a) use the information except to the extent necessary to enable it to perform its obligations or exercise its rights under this Agreement; or

(b) disclose the information to any third party except to the extent expressly allowed by this Agreement.

8.3 The provisions of this Clause 8 shall survive the termination of this Agreement but shall not apply to any information that:

- (a) is already in the public domain or enters it other than as a result of a breach of this Agreement;
- (b) is in the possession of the recipient party other than as a result of disclosure by the other party;
- (c) is trivial or obvious;
- (d) lawfully comes into the possession of the recipient party from a third party without the imposition of any duty of confidentiality; or
- (e) is required to be disclosed as a matter of law.

1 Each party shall be entitled to refer to the existence of this Agreement and the identity of the other party for the purpose of a press announcement.

2 Intellectual Property Rights

9.1 The Client acknowledges that it will not acquire any Intellectual Property Rights in any Products. The Client may use the Products to the extent that it is allowed to do so by this Agreement. Any licence to use (or allow the use of) any Products is non-exclusive and, unless this Agreement says otherwise, is subject to all of the restrictions to which use of the Products is subject under the Licence Terms.

9.2 The Client must not delete any proprietary information, copyright or trade mark notice appearing on any Products. The Client must add such notices verbatim to all copies made by it (or on its behalf) of any relevant Products.

9.3 Nothing contained in this Agreement shall operate to vest in the Client any know-how, ideas, programming tools, skills and techniques belonging to Licensor, or any third party in existence prior to the date of this Agreement.

9.4 Licensor will indemnify the Client against any losses incurred by the Client as a result of a claim that the use or possession of any Products by the Client in accordance with this Agreement infringes the Intellectual Property Rights of a third party, provided that:

(a) Licensor is notified immediately in writing of any notice of claim or threatened or actual action and of the details of the claim or action concerned;

(b) at Licensor's request and expense, Licensor is given full co-operation by the Client in the defence by Licensor in its own name or in the name of the Client of the claim or action; and

(c) the Client does not without Licensor's prior written consent:

(i) make any admissions; or

(ii) enter into any settlement agreement;

in relation to any claim in relation to which it has or intends to seek indemnification under this Agreement; and

(d) the Client complies with all reasonable instructions relating to the claim given by Licensor.

9.5 The indemnity in Clause 9.4 shall not apply to the extent that the third party claim results from:

(a) any breach of the Client's obligations under this Agreement;

(b) the Client or anyone else other than Licensor or its authorised sub-contractors altering, adapting, disassembling or reverse engineering any Products; or

(c) the combination or use of any Products with any other software, hardware or goods not supplied by Licensor or not expressly approved by Licensor for use with the Products.

9.6 Following notice of a claim or a threatened or actual action the Client agrees that Licensor may in satisfaction of its obligations to the Client:

(a) obtain for the Client the right to continue to use the relevant Product; or

(b) replace or modify the Product so as to make it non-infringing (provided that Licensor shall ensure that such replacement or modification shall operate to a standard similar in all material respects to the Product concerned as it was prior to such replacement or modification).

9.7 Licensor will provide the Documentation in English. The Client is allowed to translate the Documentation into any other language in order to support the Client's use of the Products. The Client shall be solely responsible (as between the Client and Licensor) for the accuracy of any such translation and shall indemnify Licensor against any claim (whether made by the Client or otherwise) arising from the translated version of the Documentation. The Client must carry out any such translation itself and may not sub-license this right unless Licensor agrees otherwise (in which case it may impose reasonable conditions on such consent, for example that the sub-licensee enters an agreement direct with Licensor to protect the confidentiality of the Documentation).

9.8 In relation to any Products that are software, the Client is not allowed to decompile or disassemble or reverse-assemble or reverse-engineer the Products from object code into source code (or attempt, authorise or permit the same) except as permitted by any applicable law. Where permitted by applicable law, the Client agrees that before it does so it will make a written request to Licensor for it to supply the relevant information required specifying in reasonable detail the extent and objectives of the proposed decompilation exercise. Licensor shall be entitled to a reasonable fee for the provision of such information.

9.9 Other than as expressly allowed by this Agreement or otherwise agreed with Licensor, the Client is not allowed (directly or indirectly):

(a) to sell, lease, license, assign, transfer or otherwise to grant any rights to third parties in relation to any Products (whether to use them or otherwise); or

(b) to copy, use or otherwise deal with Products in any way.

9.10 The Client acknowledges that Licensor is not responsible for the use that the Client makes of the Products. Accordingly, the Client will indemnify Licensor against any losses incurred by Licensor arising from any claim relating to the Client's use of the Products provided that:

(a) the Client is notified immediately in writing of any notice of claim or threatened or actual action and of the details of the claim or action concerned;

(b) at the Client's request and expense, the Client is given full co-operation by Licensor in the defence by the Client in its own name or in the name of Licensor of the claim or action; and

(c) Licensor does not without the Client's prior written consent:

(i) make any admissions; or

(ii) enter into any settlement agreement;

in relation to any claim in relation to which it has or intends to seek indemnification under this Agreement; and

(d) Licensor complies with all reasonable instructions relating to the claim given by the Client.

This indemnity shall not apply where such losses arise solely as a result of anything for which Licensor would be liable under Clause 9.4.

Fees and payments

10.1 Licensor and the Client acknowledge that certain payments relating to the supply, licence, maintenance and support of the Products have been paid to, or are due to, Reseller or Licensor, whichever is appropriate.

10.2 Payment of charges and expenses to Licensor must be made without any deduction. If the Client is required by law to withhold any tax or other duty from the charges or expenses and to retain this or pay it to a third party (such as a tax collection authority) then the Client must still pay Licensor the total amount of the charges and expenses required by this Agreement and, unless agreed otherwise with Licensor, will itself be responsible for payment of the relevant tax or duty.

10.3 Without prejudice to any other right or remedy of Licensor if any fee or other sum becoming due under this Agreement is not paid to the Reseller or Licensor, whichever is appropriate, within 30 days of the due date then Licensor reserves the right to suspend the supply of any Services or Products until payment in full is made or further written notice is given by Licensor.

11. Non-solicitation

11.1 Without restricting the right of an employee freely to accept employment and change employment, neither party shall induce or permit (directly or indirectly) an employee of the other party to enter into its service or employment:

(a) at any time while this Agreement is in effect; or

- (b) within 1 year of termination of this Agreement.
11. If either party breaches Clause 11.1, it will pay to the party that originally employed the employee concerned an amount equal to that party's annual cost of employing such employee. This payment shall be without prejudice to the payee's other rights under this Agreement and is in recognition of the disruption that such inducement or permission would cause to the efficient conduct of the business of the party that originally employed the employee concerned. The parties agree that such amount is a genuine pre-estimate of the minimum loss which would be caused by that disruption.

12. Term and termination

12. Each party may by written notice to the other terminate this Agreement with immediate effect if:
- 1
- (a) any money due to that party under this Agreement remains due and unpaid for thirty (30) days or more after that party has given notice to the non-paying party that any such amount is overdue for payment;
 - (b) the other party is in material breach of any of the terms of this Agreement and:
 - (i) the breach is not capable of being rectified; or
 - (ii) the breach is capable of being rectified, but the party in breach has not rectified it within 60 days of being notified of the breach and asked to rectify it by the party not in breach; or
 - (c) the other party suffers an Insolvency Event.
12. This Agreement (or any part of this Agreement) may be terminated where any other provision of this Agreement expressly provides for this. Where this Agreement allows for part of it (for example, the provision of particular Services) to be terminated then, unless this Agreement says otherwise, that will not result in termination of this Agreement as a whole.
12. On termination of the whole of this Agreement for any reason:
- 3
- (a) all fees due to Reseller or Licensor, whichever is appropriate, up to and including the relevant date of termination, shall be paid by the Client to Reseller or Licensor, whichever is appropriate, within ten (10) days of the date of termination; and
 - (b) Licensor shall be under no further obligation to supply any further Services or Products save as provided by this Clause 12.3 or as otherwise expressly agreed by Licensor.
12. Where this Agreement is terminated on notice by Licensor, the Client shall on request from Licensor (in addition to any other amounts due under this Agreement) pay to Reseller or Licensor, whichever is appropriate, an amount equal to all reasonable wasted and irrecoverable costs, expenses and commitments which Licensor has incurred or has irrevocably committed to in the performance of its obligations.

13. Force majeure

13. Licensor will not be liable for delay or for failure to perform its obligations under this Agreement if and to the extent such delay or failure results from:
- 1
- (a) any failure or delay by the Client to perform any of its obligations under this Agreement;
 - (b) any other circumstances beyond Licensor's reasonable control,
- but any such circumstances shall not relieve the Client from its obligations to pay for any Products or Services supplied to it prior to such circumstances occurring.
13. If at any time it becomes clear to either party that circumstances have arisen which are likely to result in Licensor failing to perform its obligations under this Agreement or to meet any timescales set out in this Agreement or otherwise agreed in writing between the parties, then it will immediately notify the other party of this and the parties will discuss and agree on what steps can be taken to minimise or, if possible, to eliminate, the risk of this result occurring. Each party will use its reasonable endeavours to minimise and, if possible, eliminate such risk. Where appropriate as part of this exercise the parties may agree in writing any additional steps to be taken and how any additional costs resulting from these will be dealt with.

Term	Meaning
"Acceptance Certificate"	A certificate confirming the Client's successful completion of Acceptance Testing of the Products.
"Acceptance Tests"	User acceptance tests that are to be carried out on Products by the Client. Such tests shall be agreed between the parties prior to the commencement of the Acceptance Tests. "Acceptance Testing" shall mean the carrying out of Acceptance Tests.
"Contract Year"	Shall mean a 12-month period where the first such period runs from the date of this Agreement and each subsequent period shall run from the anniversary of the date of this Agreement.
"Documentation"	The documentation listed in or referred to in the Licence Terms and intended to assist with the use or operation of the Products.
"Environment"	The computer environment described in the Licence Terms or Maintenance and Support Terms (as the case may be) and on which the Products are intended to operate.
"General Terms"	Defined in Clause 2.
"Helpdesk"	Licensor's helpdesk providing a central point of contact for Maintenance and Support Services.
"Initial Period"	Defined in paragraph 2.3(a) of the Maintenance and Support Terms. Schedule 3
"Insolvency Event"	In relation to either party means: (a) ceasing or threatening to cease to carry on business or being deemed to be unable to pay its debts (within the meaning of s.123 Insolvency Act 1986) or admitting that it is unable to pay its debts as they fall due; (b) giving notice to any of its creditors that it has suspended or is about to suspend payment of any of its debts or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of financial difficulties; (c) a meeting of its creditors being convened or held; (d) an arrangement or composition with or

14. Assignment and sub-contracting

14.1 Neither this Agreement nor any rights under this Agreement may be assigned, sub-licensed or otherwise transferred by either party without the prior consent of the other party, such consent not to be unreasonably withheld or delayed.

14.2 Licensor is allowed to use sub-contractors to supply Services or Products, although if it does so Licensor will still be responsible to the Client for performance of its obligations under this Agreement.

15. Notice

15.1 Any notice or other communication to be given under this Agreement shall be:

(a) in writing;

(b) in English;

(c) delivered or sent by registered post to:

Licensor Riverside House 26 Osiers Road London SW18 1NH United Kingdom

The Client [ADDRESS] ; or

(d) sent by fax, e-mail or other electronic communication to:

Licensor +44 (0) 208 877 7205 info@gdcm.com

The Client [fax] [e-mail]

15.2 Notices shall be deemed served:

(a) in the case of notices sent by hand or by registered post, when delivered; and

(b) for notices sent by electronic communication when received at the first device hosting electronic communication services for that party which, in the absence of earlier receipt, shall be deemed to have occurred 96 hours after sending.

15.3 Where this Agreement requires or refers to something being agreed between the parties, then unless this Agreement says otherwise that agreement has to be in writing in order to be effective.

16. Dispute resolution

16.1 Any dispute between the parties concerning this Agreement shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (which Rules shall be deemed incorporated by reference to this clause). The arbitrator's award shall be final and binding upon the parties.

16.2 Clause 16.1 will not prevent either party from bringing proceedings in any court of competent jurisdiction to protect its confidential information or Intellectual Property Rights.

17. Clauses surviving termination

18. General

18.1 No variation, modification, consent or waiver of any provision of this Agreement shall be of any effect unless agreed in writing between the parties. Any such variation, modification, waiver or consent shall be effective only on the specific instance and for the purpose and to the extent for which it is made or given.

Notwithstanding the termination of this Agreement for any reason those terms of this Agreement expressly or impliedly intended to have effect after termination shall continue in full force and effect.

18.2 No failure, delay, or indulgence on the part of Licensor or the Client in exercising any power or right conferred upon them under to this Agreement shall operate as a waiver of such power or right. Further, no single or partial exercise of any such power or right shall preclude any other or further exercise thereof or the exercise of any other such power or right.

18.3 As between Licensor and the Client, risk of loss or damage to the Products shall pass to the Client on delivery.

18.4 If any provision of this Agreement is held to be invalid or unenforceable then such provision shall be deleted and the rest of this Agreement shall remain in full force and effect.

18.5 Licensor is free to provide services or other supplies to any other person in relation to any matter covered by this Agreement. Nothing in this Agreement shall restrict Licensor from doing so.

18.6 Nothing in this Agreement shall create a partnership, between the parties or give the rights of a partner to either party.

18.7 Neither party has any authority (nor shall anything in this Agreement be treated as giving either party authority):

(a) to enter into any contract for or on behalf of the other party;

(b) to assume any liability on behalf of the other party; or

(c) to pledge the credit of the other party;

(d) unless such authority is specifically granted in writing by the other party. Neither party must act as if it has such authority and must not represent (expressly or by implication) that it has such authority.

18.8 A person who is not a party to this Agreement, including without limitation, any subsidiary or holding company of either party, shall not have the benefit of and shall have no right to enforce any term of this Agreement.

18.9 This Agreement (if and as varied and/or supplemented from time to time) shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the federal or state courts of New York, but Licensor is also entitled to apply to any court worldwide for injunctive and other remedies in order to protect or enforce its Intellectual Property Rights.

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1. Definitions

In this Agreement the following terms shall have special meanings:

- (b) within 1 year of termination of this Agreement.
11. If either party breaches Clause 11.1, it will pay to the party that originally employed the employee concerned an amount equal to that party's annual cost of employing such employee. This payment shall be without prejudice to the payee's other rights under this Agreement and is in recognition of the disruption that such inducement or permission would cause to the efficient conduct of the business of the party that originally employed the employee concerned. The parties agree that such amount is a genuine pre-estimate of the minimum loss which would be caused by that disruption.
12. **Term and termination**
12. Each party may by written notice to the other terminate this Agreement with immediate effect if:
- 1 (a) any money due to that party under this Agreement remains due and unpaid for thirty (30) days or more after that party has given notice to the non-paying party that any such amount is overdue for payment;
- (b) the other party is in material breach of any of the terms of this Agreement and:
11. (i) the breach is not capable of being rectified, or
- 2 (ii) the breach is capable of being rectified, but the party in breach has not rectified it within 60 days of being notified of the breach and asked to rectify it by the party not in breach; or
- (c) the other party suffers an Insolvency Event.
12. This Agreement (or any part of this Agreement) may be terminated where any other provision of this Agreement expressly provides for this. Where this Agreement allows for part of it (for example, the provision of particular Services) to be terminated, the rest of this Agreement shall survive, that without a result of termination of this Agreement as a whole.
12. (a) any money due to that party under this Agreement remains due and unpaid for thirty (30) days or more on termination of the whole of this Agreement for any reason;
13. (b) the party in breach is not capable of being rectified, or
- (i) the breach is capable of being rectified, but the party in breach has not rectified it within 60 days of being notified of the breach and asked to rectify it by the party not in breach; or
- (ii) Licensor shall be under no further obligation to supply any further Services or Products save as provided by this Clause 12.3 unless otherwise expressly agreed by Licensor.
12. Where this Agreement is terminated or an Insolvency Event occurs, the Client shall on request from Licensor (in addition to any other amounts due under this Agreement) pay to Reseller and Licensor, whichever is appropriate, an amount equal to all reasonable wasted and irrecoverable costs, expenses and commitments which Licensor has incurred or has irrevocably committed to, in the performance of its obligations, which will not result in termination of this Agreement as a whole.
13. Licensor will not be liable for delay or for failure to perform its obligations under this Agreement if and to the extent such delay or failure results from:
13. (a) all fees due to Reseller or Licensor, whichever is appropriate, up to and including the relevant date of termination, shall be paid by the Client or its agent or delegate, whichever is appropriate, within ten (10) days of the date of termination;
- (b) any of the circumstances beyond Licensor's reasonable control, but any such circumstances shall not relieve the Client from its obligations to pay for any Products or Services supplied to it prior to such circumstances occurring.
13. If at any time it becomes clear to either party that circumstances have arisen which are likely to result in Licensor failing to perform its obligations under this Agreement or to Reseller or Licensor, whichever is appropriate, an amount equal to all reasonable wasted and irrecoverable costs, expenses and commitments which Licensor has incurred or has irrevocably committed to, in the performance of its obligations, then it will immediately notify the other party of this and the parties will discuss and agree on what steps can be taken to minimise or, if possible, to eliminate, the risk of this result occurring. Each party will use its reasonable endeavours to minimise and, if possible, eliminate such risk.
13. Where appropriate as part of this exercise the parties may agree in writing any additional steps to be taken and how any additional costs resulting from these will be dealt with.

Term	Meaning
(b)	any other circumstances beyond Licensor's reasonable control,
"Acceptance Certificate"	A certificate confirming the Client's successful completion of Acceptance Testing of the Products.
"Acceptance Tests"	It becomes clear to either party that the Client has agreed to carry out Acceptance Testing of the Products and the parties will discuss and agree on what steps to be taken to minimise or, if possible, to eliminate, the risk of this result occurring. Each party will use its reasonable endeavours to minimise and, if possible, eliminate such risk.
"Contract Year"	Shall mean a 12-month period which shall start on the date of this Agreement and each subsequent anniversary of the date of this Agreement.
"Documentation"	The documentation listed in or referred to in the Licence Terms and intended to assist with the use or operation of the Products.
"Environment Tests"	The computer environment described in the Licence Terms or the Client and such tests shall be agreed between the parties prior to the commencement of the Acceptance Tests.
"General Terms"	Defined in Clause 2.
"Helpdesk"	Licensor's helpdesk providing a central point of contact for Maintenance and Support Services.
"Contract Year"	Shall mean a 12-month period which shall start on the date of this Agreement and each subsequent anniversary of the date of this Agreement.
"Initial Period"	Defined in paragraph 2.3(a) of the Maintenance and Support Terms Schedule 3
"Insolvency Event"	The documentation listed in or referred to in the Licence Terms and intended to assist with the use or operation of the Products.
"Environment"	The computer environment described in the Licence Terms or the Client and such tests shall be agreed between the parties prior to the commencement of the Acceptance Tests.
"General Terms"	Defined in Clause 2.
"Helpdesk"	Licensor's helpdesk providing a central point of contact for Maintenance and Support Services.
"Initial Period"	Defined in paragraph 2.3(a) of the Maintenance and Support Terms. Schedule 3

Interpretation

2.1 In this Agreement, unless it says otherwise:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) reference to "including" or "for example" in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;
- (c) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;
- (d) references to a Clause means a clause of the main body of this Agreement;
- (e) references to a Schedule or Appendix shall mean a schedule or appendix to this Agreement;
- (f) clause headings are inserted for ease of reference only and shall be given no effect in the construction of this Agreement;
- (g) reference to this Agreement shall include reference to it after it has been amended, added to or replaced by a new Agreement;
and
- (h) "electronic communication" has the same meaning as in the Electronic Communications Act 2000.

2.2 Any software supplied or licensed under this Agreement will not be treated as goods.

SCHEDULE 2 LICENCE TERMS
1. Application

The terms in this Schedule 2 apply to the supply and licensing of Products by Licensor. They apply in addition to the General Terms.

2. Licence

2.1 For the purposes of this Agreement, the "Product" will be:

(a) nlyte[®] Enterprise version [].

2.2 Licensor grants to the Client a non-exclusive, perpetual licence to use each Product upon the Environment and at the Location (or otherwise agreed in writing with Licensor) subject to the other terms of this Agreement. The license granted herein provides a right to use the Product to manage a maximum of [000] Managed Racks at the Location subject to all the terms of this Agreement.

2.3 Additional Managed Racks loaded into and managed by the Products, attract an additional per Managed Rack Licence Fee.

2.4 The Client is only allowed to use the Products:

- (a) on the Environment;
- (b) at the Location;
- (c) for the processing of its own data; and
- (d) for its own internal business purposes.

2.5 The Client is not allowed to use the Products in order to provide a bureau service for third parties.

2.6 The Client may use only one production version of a Product in a live environment at any one time.

1 The Client may make a reasonable number of back-up copies of the Products at any one time provided that these are used only for security or back-up purposes and not for live or any other use.

2 Third party software

Licensor warrants that the Products will operate with the Third Party Software to the extent necessary to enable the Products to be used by the Client in accordance with this Agreement, provided that:

(a) Licensor has no control over, or responsibility for any other third party software (including any that is not supplied by Licensor) and does not give or enter into any condition, warranty or other term to the effect that the Product(s) will be compatible or will operate with such software; and

(b) if any Third Party Software is modified or replaced with a new version, Licensor cannot guarantee its continued compatibility with the Products or the continued applicability of the warranty referred to above, although Licensor will use all commercially reasonable efforts to ensure that the Products are made compatible with such Third Party Software to the extent of the warranty referred to above within a reasonable time of the release or the modified or new version concerned.

EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH 3, THE PRODUCTS ARE PROVIDED "AS IS". LICENSOR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE

4. Use of the Products

4.1 The Client will provide Licensor with accurate and complete information each month showing the number and details of Managed Racks tracked by the Product.

4.2 Licensor may, by encoding features into a Product or otherwise, track the number of Managed Racks tracked by the Product against the permitted number.

4.3 Where the number of Managed Racks exceeds the permitted threshold, additional Licence Fees will be due in order to entitle the Client to use the Products in excess of the permitted threshold. If the Client fails to pay such additional Licence Fees to Reseller or Licensor, whichever is appropriate, within 90 days of a request from Licensor to do so and if the Client continues to run Products in excess of the permitted threshold, Licensor may by notice to the Client and with immediate effect:

- (a) suspend the Client's licence to use the Products concerned;
- (b) terminate the licence to use the Products concerned (without terminating this Agreement as a whole); or
- (c) terminate this Agreement.

5. Visits

5.1 During the term of this Agreement, Licensor may visit the Location, giving at least one week's prior notice to the Client.

5.2 Upon a Visit the Client undertakes to:

- (a) allow Licensor to check and maintain the Product to ensure that it is functioning correctly;
- (b) allow Licensor to audit the Client's use of the Products in order to enable Licensor to make sure that the Client is complying with the terms of this Agreement and is not otherwise infringing Licensor's Intellectual Property Rights; and
- (c) give full co-operation to Licensor in carrying out such checks and audits.

1 Licensor shall use reasonable endeavours to minimise any disruption caused to the Client's operations as a result of its visit (the Products will not be taken out of live operation as part of the audit). Licensor shall be entitled to take copies of such documents as are relevant to the visit with due consideration to local privacy laws. In the event that the visit reveals any non-compliance with the terms of the Agreement by the Client, then without prejudice to Licensor's other rights under the Agreement, those breaches will be discussed between the parties and suitable remedies put in place.

2 Term

6.1 The licence to use a given Product will commence on the date that the Product is delivered to the Client.

6.2 The licence to use a given Product will continue until:

- (a) termination of the licence in accordance with the terms of this Agreement; or
- (b) termination of this Agreement, whichever occurs first.

7. Products operation

The Client will:

- (a) be responsible for providing the Environment at the Location in order to enable the installation, commissioning and use of the Products;
- (b) ensure that it directly controls and resources the operation of the Products and the Environment upon which they run and does not sub-contract or sub-license any of these functions to a third party without first obtaining Licensor's prior written consent;
- (c) maintain accurate up-to-date records of the number and location of all copies of the Products in its possession or control and provides copies of these to Licensor on request.

8. Fees

8.1 The initial Licence Fee shall be payable to Reseller in accordance with the terms of the Client's agreement with Reseller.

1 Incremental Licence Fees, over and above the initial Licence Fee, shall be invoiced by Reseller or Licensor, whichever is appropriate, quarterly based on the additional number of Managed Racks recorded by the Product during the preceding three months. The quarterly invoice will be payable within 30 days from the date of issue.

2 Performance

9.1 Licensor warrants that for a period of 90 days from the date of installation of the Products or until the Maintenance and Support Services commence (whichever is earlier) (the "**Warranty Period**") the Products and Documentation provided with those Products will contain no Material Errors.

9.2 The warranty in paragraph 9.1 of these Licence Terms does not apply to Third Party Software. In relation to that:

(a) Licensor will use its reasonable endeavours to assign to the Client the benefit of any warranties of which Licensor has the benefit in relation to the Third Party Software concerned; and

(b) In the event of any material defect arising in any Third Party Software within the Warranty Period of any Products with which the Third Party Software concerned is intended to operate, Licensor will use its reasonable endeavours to obtain from the relevant third party a resolution to the material defects concerned.

10. Termination

10.1 On termination of this Agreement or of any licence to use particular Products under this Agreement:

(a) the Client will not be entitled to a refund of any fees or charges paid in relation to the relevant Products prior to termination and which relate or are attributable to the period after the date of termination;

(b) the rights of the Client to use the relevant Products and Documentation shall terminate;

(c) within 10 days of the date of termination, the Client must erase all copies of the relevant Products and, to the extent that they are not contained on media that forms an integral part of equipment belonging to the Client, return to Licensor all copies of the relevant Products, Documentation and any other Products and shall provide Licensor with a certificate certifying that this has been done. The Client shall not be expected to return any data which Licensor does not have rights to under this Agreement or otherwise;

(d) Licensor will provide such reasonable support to the Client as may be required to ensure that paragraph 10(c) has been complied with, such support to be provided at Licensor's Standard Fee Rates.

SCHEDULE 3 MAINTENANCE AND SUPPORT TERMS

1. General

The terms in this Schedule 3 apply to the supply of services in relation to the maintenance and support of Products. They apply in addition to the General Terms.

2. Maintenance and Support Services

2.1 In relation to the Product named in Schedule 2 (but not otherwise), Licensor will provide a maintenance and support service based upon [000] Managed Racks in accordance with these Maintenance and Support Terms and the other terms of this Agreement. Additional Maintenance and Support Fees will be charged for any Managed Racks added to the system after the initial licence.

2.2 The Maintenance and Support Services will be provided for the following periods:

(a) the service will start on the date of first installation of a Product and will continue for an initial term of 12 months (the "**Initial Period**"); and

(b) the service will then (unless terminated in accordance with this Agreement) be automatically renewed annually on the anniversary of the Initial Period for further periods of 12 months (the "**Renewal Period**").

3. Releases

3.1 Licensor may produce Updates and Product Releases from time to time and such Updates and Product Releases will be supplied to the Client free of charge.

New Product Releases and Product Versions will be made from time to time by Licensor and the Client will be offered the opportunity to purchase New Product Releases and Product Versions.

3.2 Maintenance and Support Services will only be provided in respect of:

(a) the version of the latest Product Release (i.e. as updated with all Updates released by Licensor to the Client); and

(b) the one immediately before that, up to the end of a period of eighteen months from the date of first availability of the latest Product Release.

4. Provision of Maintenance and Support Services

4.1 All requests by the Client for Maintenance and Support Services must be routed via the Helpdesk unless otherwise agreed in writing by Licensor.

4.2 Maintenance and Support Services will comprise the following:

(a) Licensor will provide the Helpdesk. This will be available via email and telephone with requests for assistance to be submitted in a manner agreed with Licensor;

(b) Licensor will use its reasonable endeavours to correct defects in any relevant Products in accordance with paragraphs 6, 7 and the other provisions of these Maintenance and Support Terms.

4.3 The Client may only request support via one of its designated representatives who shall be the Client's primary or secondary administrators for the Products. These must be named and will be limited to 5 people. The Client may change its designated representatives on 48 hours' notice to Licensor.

4.4 Maintenance and Support Services do not apply to Third Party Software except to the extent provided by this paragraph 4.4 of these Maintenance and Support Terms. In relation to any requests for support that relate to Third Party Software, Licensor will only provide limited first level assistance. Any such queries (including any requiring specialist knowledge of the Third Party Software or the amendment, modification or re-configuration of the Third Party Software) may need to be escalated to the relevant manufacturer or distributor. Licensor does not give or enter into a condition, warranty or other term regarding the assistance that may be provided by such manufacturer or distributor (for example, the agreement of the manufacturer to provide such assistance or the response times, fix times or effectiveness of such assistance).

1 In addition to the support set out in paragraph 5 below, at the Client's request, Licensor may also agree to provide additional support on-site at the Location. Such support will be charged for at Licensor's Standard Fee Rates.

2 **Support call categories**

5.1 Severity level for support calls:

(a) Severity Code 1: The Client's production use of the Products is stopped or so severely impacted that the Client cannot reasonably continue work. The goal in this case is to fix the problem or to provide a Workaround as quickly as possible so that the essential functionality of the Products is available to the Client. The problem would be either resolved or (on provision of a Workaround) reduced to Severity Code 2 level.

(b) Severity Code 2: The Client's production use of the Products key functional aspects is severely impaired but operationally critical processing is not prevented. The goal in this case is to remedy the problem or provide a Workaround.

(c) Severity Code 3: The Client's use of a function within the Product is impaired but operationally critical processing is not prevented. The goal in this case is to resolve the problem or to incorporate a correction into a future Product Release.

(d) Enhancement Request: A feature or suggestion identified as an improvement to the existing functionality of the Products. Consideration but no commitment will be given to these requests.

1 The severity level to be assigned to a particular problem will be decided by Licensor, acting reasonably and after consultation with the Client.

2 **Response times**

Target response times for problems logged with the Helpdesk are as follows:

(a) Acknowledgement: Licensor will use its reasonable endeavours to acknowledge receipt of a Severity Code 1 or Severity Code 2 problem within 4 Working Hours of the problem being logged with the Helpdesk. A Severity Code 3 problem will be acknowledged within 3 Working Days. An Enhancement Request will be acknowledged within 5 Working Days.

(b) Validation: Licensor will use its reasonable endeavours to validate a Severity Code 1 or Severity Code 2 problem within 24 hours from its acknowledgement of the problem. Licensor will use its reasonable endeavours to validate a Severity Code 3 problem within 5 Working Days. "Validate" in this context means to investigate the problem so as to identify its cause (but not necessarily to provide a resolution).

7. Remedial action

Once a problem has been validated, target resolution times will be as follows:

- (a) Severity Code 1: Licensor will use reasonable endeavours to implement a Workaround within 24 hours of Validation of the problem. If after 24 hours no Workaround is available, Licensor shall assign staff to work continuously during Working Hours on the problem until a Workaround is found or the problem is fixed.
- (b) Severity Code 2: Licensor will use reasonable endeavours to implement a Workaround within 48 hours of Validation of the problem. If after 48 hours no Workaround is available to the Client, Licensor shall assign staff to work continuously during Working Hours on the problem until a Workaround is found or the problem is fixed.
- (c) Severity Code 3: Licensor will use reasonable endeavours to implement a Workaround within 20 Working Days and may provide a fix in the next Releases.

In order to resolve a Client's problem, remote access must be provided. In the event resolution cannot be provided through remote access, it may be necessary to carry out the remedial action at the Clients premises.

8. The Client's responsibilities

The Client shall:

- (a) follow the Support Procedures when using the Helpdesk;
- (b) make sure that the Products are correctly configured upon installation and are tested to confirm they have been configured correctly and adhere to the minimum system requirements as specified by Licensor.;
- (c) maintain properly trained staff who are qualified to use the Products; and
- (d) comply with all of its other obligations under this Agreement in relation to the Products and to providing assistance to Licensor.

9. Fees

9.1 Maintenance and Support Fees are payable to Reseller in advance for the Initial Period within 30 days following the date of installation of the Products and annually in advance to Reseller or Licensor, whichever is appropriate, within 30 days of receipt of an invoice, during each Renewal Period.

9.2 The following matters are not covered by the Maintenance and Support Fees and are chargeable separately:

- (a) installation of New Product Releases and Product Versions;
- (b) the provision of Services outside the scope of these Maintenance and Support Terms;
- (c) reasonable expenses and costs incurred (if any) in the installation of Updates, Product Releases, New Products and Product Versions (although wherever possible these will be agreed in advance in writing between the parties);
- (d) reasonable expenses and costs incurred (if any) in the investigation and/or correction of errors in the Products where Licensor is required to work at the Location (although wherever possible these will be agreed in advance in writing between the parties); and
- (e) reasonable expenses and costs incurred in the investigation and/or correction of errors in the Products that are not the responsibility of Licensor in accordance with Clause 7.4.

9.3 On the anniversary of the Initial Period, and thereafter on the anniversary of the commencement of a Renewal Period, Licensor may increase the Maintenance and Support Fee by no more than the equivalent year-on-year percentage increase of the United Kingdom Retail Prices Index.

10. Termination

10.1 Either party may terminate the Maintenance and Support Services, without affecting this Agreement as a whole, by giving the other party 180 days written notice after the end of the first Renewal Period.

10.2 Either party may terminate the Maintenance and Support Services without terminating this Agreement as a whole if the other party is in material breach of any of the terms of this Agreement in relation to the Maintenance and Support Services concerned and:

(a) the breach is not capable of being rectified; or

(b) the breach is capable of being rectified, but the party in breach has not rectified it within 30 days of being notified or the breach and asked to rectify it by the party not in breach.

10.3 Where the Client chooses to terminate Maintenance and Support Services but later decides to reinstate provision of those Services from Licensor, the Client may be required to purchase and install all relevant Product Releases produced since the Maintenance and Support Services terminated. Licensor may also charge the Client a reasonable fee to cover its costs of reinstating the Maintenance and Support Services.

This Agreement has been entered into on the date shown on the first page.

SIGNED for and on behalf of **NLYTE SOFTWARE LIMITED**

Print Name

Date

SIGNED for and on behalf of **NLYTE SOFTWARE LIMITED**

Print Name

Date

SIGNED for and on behalf of **[NAME]**

Print Name

Date