



Registration of a Charge

Company name: **NLYTE SOFTWARE AMERICAS LIMITED**

Company number: **07470046**

Received for Electronic Filing: **03/04/2020**



X926YB7V

Details of Charge

Date of creation: **02/04/2020**

Charge code: **0747 0046 0004**

Persons entitled: **SILICON VALLEY BANK**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **WE CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.

Certified by:

OSBORNE CLARKE LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7470046

Charge code: 0747 0046 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd April 2020 and created by NLYTE SOFTWARE AMERICAS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd April 2020 .

Given at Companies House, Cardiff on 6th April 2020

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

We certify that, save for material redacted pursuant to s. 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Dated this 2 April 2020

Signed 

Osborne Clarke LLP

2 Temple Back East

Temple Quay

Bristol BS1 6EG

Supplemental Debenture

- (1) The entities listed in Schedule 1 (as Chargors)
- (2) Silicon Valley Bank

Dated 2 April 2020

Osborne Clarke LLP

This Supplemental Debenture is made on

2 April 2020

Between:

- (1) **Each person** listed in Schedule 1 (the "**Chargors**"); and
- (2) **Silicon Valley Bank** a California corporation with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 US (the "**Bank**").

Background

- (A) Pursuant to the Original Debenture (as defined below), the Chargors created Security Interests over all of their assets for their present and future obligations and liabilities owing to the Bank.
- (B) The Chargors have agreed to amend the Original Facility Agreement to increase the total amount of the facility made available under the Original Facility Agreement from \$3,000,000 to \$5,000,000.
- (C) This Supplemental Debenture is supplemental to the Original Debenture (as defined below).

This Supplemental Debenture witnesses as follows:

1. **Definitions and interpretation**

Terms defined in the Original Debenture shall, unless otherwise defined in this Supplemental Debenture or unless a contrary intention appears, bear the same meaning when used in this Supplemental Debenture and the following definitions shall apply:

"Amended Facility Agreement" means the Original Facility Agreement, as amended and restated by the amendment and restatement agreement entered into on or about the date of this Supplemental Debenture between amongst others (1) the Chargors and (2) the Bank.

"Liabilities" means all present and future liabilities and obligations of each Obligor to the Bank under the Loan Documents (including, without limitation, the Obligations), both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any documents or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Obligor of a Payment on the grounds or preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"Loan Documents" has the meaning given to such term in the Amended Facility Agreement.

"Original Debenture" means the debenture between (1) the Chargors and (2) the Bank dated 28 February 2019.

"Original Facility Agreement" means the facility agreement dated 28 February 2019 and made between (1) Nlyte Software Limited and certain of its subsidiaries as original obligors and (2) the Bank.

"Secured Liabilities" means all Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by each Obligor to the Bank, both actual and contingent and whether incurred solely or jointly and whether as principal or surety or in any other capacity.

"Security Interest" shall have the meaning given to such term in the Amended Facility Agreement.

"SVB Blocked Accounts" means the accounts designated as SVB Blocked Accounts in Part 1 of Schedule 2 (*Security Assets*) or such other accounts as may be agreed in writing between a Chargor and the Bank for this purpose and all monies standing to the credit of each such account and all Related Rights in respect of each such account.

"SVB Operating Accounts" means the accounts designated as SVB Operating Accounts in Part 1 of Schedule 2 (*Security Assets*) and any future accounts of a Chargor not held with the Bank and all monies standing to the credit of each such account and all Related Rights in respect of each such account.

"Third Party Accounts" means the accounts designated as Third Party Accounts in Part 1 of Schedule 2 (*Security Assets*) and any future accounts of a Chargor not held with the Bank and all monies standing to the credit of each such account and all Related Rights in respect of each such account.

1.2 **Construction**

Unless a contrary intention appears, sub-clause 1.2 (*Construction*) of the Original Debenture applies to this Supplemental Debenture, and shall be deemed to be incorporated into this Supplemental Debenture, mutatis mutandis, as though set out in full in this Supplemental Debenture, with any reference to **"this Deed"** being deemed to be a reference to **"this Supplemental Debenture"**, subject to any necessary changes.

1.3 **Law of Property (Miscellaneous Provisions) Act 1989**

To the extent necessary for any agreement for the disposition of the Security Assets in this Supplemental Debenture to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Loan Documents and of any side letters between the parties to this Supplemental Debenture are incorporated into this Supplemental Debenture.

1.4 **Implied covenants for title**

The obligations of the Chargors under this Supplemental Debenture shall be in addition to the covenants for title deemed to be included in this Supplemental Debenture by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

2. **Security Assets**

2.1 Supplemental to clause 3 (*Security Assets*) of the Original Debenture, each of the Chargors, as security for the payment of the Secured Liabilities:

- (a) charges by way of first legal mortgage, each Property legal title to which is vested in it on the date of this Supplemental Debenture specified in Part 5 of Schedule 2 (*Security Assets*); and
- (b) charges by way of fixed charge:

- (i) all Property not effectively mortgaged under clause 2.1(a) above;
 - (ii) all Plant and Machinery;
 - (iii) all Shares;
 - (iv) all Investments other than the Shares;
 - (v) all Receivables directed to be paid into the SVB Blocked Accounts;
 - (vi) all Receivables directed to be paid into the SVB Operating Accounts;
 - (vii) all Receivables directed to be paid into the Third Party Accounts;
 - (viii) the SVB Blocked Accounts;
 - (ix) the SVB Operating Accounts;
 - (x) the Third Party Accounts;
 - (xi) all Intellectual Property specified in Part 2 of Schedule 2 (*Security Assets*);
 - (xii) all other Intellectual Property; and
 - (xiii) its goodwill and uncalled capital;
- (c) assigns by way of security:
- (i) all Insurances and Insurance Proceeds;
 - (ii) any Assigned Contract; and
 - (iii) all Related Rights in respect of each of the assets referred to at paragraphs (i) and (ii) above,
- subject in each case to reassignment by the Bank to the relevant Chargor of all such rights, title and interest upon payment or discharge in full of the Secured Liabilities; and
- (d) charges by way of floating charge, all its undertaking and all its present and future assets other than those assets which are effectively charged by way of first fixed charge or legal mortgage under sub-clauses 2.1(a) and 2.1(b) above or which are effectively assigned by way of security under sub-clause 2.1(c) above.

2.2 The floating charge created by sub-clause 2.1(d) (*Security*) is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act.

2.3 Sub-clauses 3.4 and 3.5 of the Original Debenture apply to the floating charge created by sub-clause 2.1(d) (*Security*).

3. **Incorporation**

The provisions of clause 2 (*Covenant to Pay*) and clauses 4 (*Nature of Security*) to 19 (*Miscellaneous*) (inclusive) of the Original Debenture apply to this Supplemental Debenture as though they were set out in full in this Supplemental Debenture except that references to "**this Deed**" in the Original Debenture are to be construed as references to "**this Supplemental Debenture**".

4. **Continuation**

- 4.1 Except insofar as supplemental hereby, the Original Debenture will remain in full force and effect.
- 4.2 Each of the Chargors agrees that the execution of this Supplemental Debenture shall in no way prejudice or affect the security granted by it (or the covenants given by it) under the Original Debenture.
- 4.3 References in the Original Debenture to **"this Deed"** and expressions of similar import shall be deemed to be references to the Original Debenture as supplemented by this Supplemental Debenture and to this Supplemental Debenture.

5. **Governing law**

This Supplemental Debenture and any non-contractual obligations arising out of or in connection with it are governed by English law.

6. **Jurisdiction**

- 6.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Supplemental Debenture (including a dispute relating to the existence, validity or termination of this Supplemental Debenture or any non-contractual obligation arising out of or in connection with this Supplemental Debenture) (a **"Dispute"**).
- 6.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 6.3 This clause is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

In witness this Supplemental Debenture is executed on the date appearing at the head of page 1.

Schedule 1

The Original Chargors

Name of Original Chargor	Jurisdiction of incorporation/formation (if applicable)	Registration number (if any)
Nlyte Software Limited	England & Wales	04805444
Nlyte Software Americas Limited	England & Wales	07470046

Schedule 2

Security Assets

Part 1

The Bank Accounts

SVB Blocked Accounts

Chargor	Account number	Sort Code	Branch Address	Reference/designation
Nlyte Software Limited	████████	██████	Alphabeta, 14-18 Finsbury Square, London EC2A, 1BR	██████████
Nlyte Software Limited	████████	██████	Alphabeta, 14-18 Finsbury Square, London EC2A, 1BR	██████████
Nlyte Software Limited	████████	██████	Alphabeta, 14-18 Finsbury Square, London EC2A, 1BR	██████████
Nlyte Software Limited	USD	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR	

SVB Operating Accounts

Chargor	Currency	Account number	Branch Address
Nlyte Software Limited	GBP	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Limited	EURO	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Limited	USD	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Americas Limited	USD	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Limited	USD	████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR

Nlyte Software Limited	USD	██████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Limited	USD	██████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Americas Limited	CAD	██████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Nlyte Software Americas Limited	USD	██████████	Alphabeta, 14-18 Finsbury Square, London EC2A 1BR

Third Party Accounts

Chargor	Third Party Bank	Account Number	Sort Code	Branch Address	Reference/designation
Nlyte Software Limited	Citizen Bank	██████████	N/A	28 State Street, Boston MA 02109	Nlyte Software Limited - USD
Nlyte Software Americas Limited	Citizen Bank	██████████	N/A	28 State Street, Boston MA 02109	Nlyte Software Americas Limited - USD

Part 2

Intellectual Property

Registered trade marks

Owner Name	Registration Number	Jurisdiction	Class	Trade Mark
nlyte Software Limited	Reg 3181875	United Kingdom	9 35 42	NEO
nlyte Software Limited	Reg 3181616	United Kingdom	9 35 42	NEO (Nlyte Energy Optimizer)
nlyte Software Limited	Reg 3157826	United Kingdom	9 35 42	FieldView
nlyte Software Limited	Reg 2450542	United Kingdom	9 35 38 42	NLYTE nlyte
nlyte Software Limited	Reg 2450543	United Kingdom	9 35 38 42	GDCM

nlyte Software Limited	Reg 6325153	EU trade marks	9 35 38 42	NLYTE
nlyte Software Limited	Reg 6325476	EU trade marks	9 35 38 42	GDCM
nlyte Software Limited	Reg 1366179	International Register	9 35 42	NEO
nlyte Software Limited	Reg 945926	International Register	9 35 42	NLYTE
NLYTE SOFTWARE LIMITED	Reg 5522010	United States	9 35 42	NEO (Nlyte Energy Optimizer)
NLYTE SOFTWARE LIMITED	Reg 4144393	United States	42	ASSET INTELLIGENCE
NLYTE SOFTWARE LIMITED	Reg 3651249	United States	9 35 42	NLYTE
nlyte Software Limited	Reg TMA825122	Canada	9 35 38 42	NLYTE
NLYTE SOFTWARE LIMITED	Reg 830700803	Brazil	42	NLYTE
nlyte Software Limited		India	9 35 42	NLYTE
nlyte Software Limited	App 17918715	EU trade marks	9 35 42	NEO (Nlyte Energy Optimizer)

Trade mark applications

Owner Name	Application Number	Jurisdiction	Class	Trade Mark	Status
NLYTE SOFTWARE LIMITED	App 87149143	United States	9 35 42	FIELDVIEW	Pending
NLYTE SOFTWARE LIMITED	App 87147317	United States	9 35 42	NEO	Pending

nlyte Software Limited	App 3648722	India	9 35 42	NEO	Pending
nlyte Software Limited	App 1933291	Canada	9 35 38 42	NEO (Nlyte Energy Optimizer) CompuMark Trademark: NEO (Nlyte Energy Optimizer) Cross References: NEO ENLIGHT ENERGY OPTIMIZER	Formalized (Pending)
nlyte Software Limited	App 1933290	Canada	9 35 38 42	NEO CompuMark Trademark: NEO	Formalized (Pending)

Patents

Owner name	Application No	Jurisdiction	Description
Nlyte Software Limited	7765286	United States	Method and apparatus for managing assets within a datacenter

Part 3

Shares

Chargor	Name of company in which Shares are held	Number and class of shares
Nlyte Software Limited	Nlyte Software Americas Limited	3 ordinary shares of £1 each

Part 4

Assigned Contracts

Chargor	Details of contract	Date of contract
Nlyte Software Limited	Asset purchase agreement between (amongst others) (1) Nlyte Software Limited and (2) InControl Technology, Inc., relating to certain intellectual property rights and customer contracts of InControl Technology, Inc.	5 July 2017

Part 5

Property

None at the date of this Supplemental Debenture.

Signatories to Supplemental Debenture

Chargors

Executed as a Deed by)
Nlyte Software Limited)
acting by Doug Sabella)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

[REDACTED]
[REDACTED]
KENNETH D. MOYES

55240 PEBBLE BEACH, LAQUINTA, CA

EXECUTIVE

Executed as a Deed by)
Nlyte Software Americas)
Limited)
acting by Doug Sabella)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

[REDACTED]
[REDACTED]
KENNETH D. MOYES

55240 PEBBLE BEACH, LAQUINTA, CA

EXECUTIVE

Bank

Signed by)
authorised signatory)
for and on behalf of)
Silicon Valley Bank)

Notice Details

Address: Alphabeta, 14-18 Finsbury Square, London EC2A 1BR
Facsimile: +44 (0) 207 600 9556
Attention: Ella Botham

Signatories to Supplemental Debenture

Chargors

Executed as a Deed by)
Nlyte Software Limited)
acting by)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Executed as a Deed by)
Nlyte Software Americas)
Limited)
acting by)
in the presence of:)

Signature of director

Signature of witness

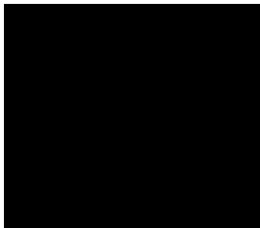
Name of witness

Address of witness

Occupation of witness

Bank

Signed by)
authorised signatory)
for and on behalf of)
Silicon Valley Bank)



Notice Details

Address: Alphabet, 14-18 Finsbury Square, London EC2A 1BR
Facsimile: +44 (0) 207 600 9556
Attention: Ella Botham