



**Registration of a Charge**

Company name: **NLYTE SOFTWARE AMERICAS LIMITED**

Company number: **07470046**

Received for Electronic Filing: **10/07/2017**



X6AEPE1K

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**Details of Charge**

Date of creation: **06/07/2017**

Charge code: **0747 0046 0002**

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.**

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**Authentication of Form**

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

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**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 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th July 2017 and created by NLYTE SOFTWARE AMERICAS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th July 2017 .

Given at Companies House, Cardiff on 12th July 2017

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 hereby certify that this is a true  
and accurate copy of the original  
dated this 7 day of July 2017  
Signed Osborne Clarke LLP  
Osborne Clarke LLP  
One London Wall  
London EC2Y 5EB

### Supplemental Debenture

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

Dated 6 July 2017

Osborne Clarke LLP

This Supplemental Debenture is made on 6 July

2017

**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 \$1,000,000 to \$2,000,000.
- (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.

**"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 31 March 2017.

**"Original Facility Agreement"** means the facility agreement dated 31 March 2017 and made between (1) Nlyte Software Limited and certain of its subsidiaries as original obligors and (2) the Bank.

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

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

1.1 **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.

1.2 **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.

1.3 ***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 Operating Accounts**

Chargor	Currency	Account number	Branch Address
Nlyte Software Limited	USD	[REDACTED]	[REDACTED]
Nlyte Software Americas Limited	USD	[REDACTED]	[REDACTED]
Nlyte Software Limited	Euro	[REDACTED]	[REDACTED]
Nlyte Software Limited	USD	[REDACTED]	[REDACTED]
Nlyte Software Limited	USD	[REDACTED]	[REDACTED]
Nlyte Software Limited	GBP	[REDACTED]	[REDACTED]
Nlyte Software Americas Limited	CAD	[REDACTED]	[REDACTED]

**Third Party Accounts**

Chargor	Third Party Bank	Account Number	Sort Code	Branch Address	Reference/designation
Nlyte Software Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Chargor	Third Party Bank	Account Number	Sort Code	Branch Address	Reference/designation
Limited	[REDACTED]	[REDACTED]			[REDACTED]
Nlyte Software Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software Americas Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software Americas Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Nlyte Software Americas Limited	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Part 2

Intellectual Property

Trade marks				
Chargor	Trade mark number	Jurisdiction	Classes	Trade mark text
Nlyte Software Limited	3157826	United Kingdom	9, 35 and 42	FieldView
Nlyte Software Limited	87149143	United States	9, 35 and 42	FieldView
Nlyte Software Limited	6325476	European Union	9, 35, 38 and 42	GDCM
Nlyte Software Limited	2450543	United Kingdom	9, 35, 38 and 42	GDCM
Nlyte Software Limited	3181875	United Kingdom	9, 35 and 42	NEO
Nlyte Software Limited	87147317	United States	9, 35 and 42	NEO
Nlyte Software Limited	3181616	United Kingdom	9, 35 and 42	NEO (Nlyte Energy Optimizer)
Nlyte Software Limited	87147311	United States	9, 35 and 42	NEO (Nlyte Energy Optimizer)
Nlyte Software Limited	945926	Australia – International	9, 35 and 42	NLYTE
Nlyte Software Limited	830700803	Brazil	42	NLYTE
Nlyte Software Limited	1498769	Canada	9, 35 and 42	NLYTE
Nlyte Software Limited	945926	China – International	9, 35 and 42	NLYTE
Nlyte Software Limited	6325153	European Union	9, 35, 38 and 42	NLYTE
Nlyte Software Limited	1974787	India	9, 35 and 42	NLYTE
Nlyte Software Limited	945926	Japan – International	35	NLYTE
Nlyte Software Limited	945926	Russian Federation – International	9, 35 and 42	NLYTE
Nlyte Software Limited	945926	United States – International	9, 35 and 42	NLYTE

<b>Trade marks</b>				
<b>Chargor</b>	<b>Trade mark number</b>	<b>Jurisdiction</b>	<b>Classes</b>	<b>Trade mark text</b>
Nlyte Software Limited	2450542	United Kingdom	9, 35, 38 and 42	NLYTE (Series of 2)
Nlyte Software Limited	87271999	United States	N/A	AssetNow
Nlyte Software Limited	85249987	United States	N/A	Asset Intelligence

<b>Patents</b>			
<b>Chargor</b>	<b>Patent number</b>	<b>Jurisdiction</b>	<b>Description</b>
Nlyte Software Limited	7765286	United States	Method and apparatus for managing assets within a datacenter

### Part 3

#### Shares

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

### Part 4

#### Assigned Contracts

<b>Chargor</b>	<b>Details of contract</b>	<b>Date of contract</b>
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.	On or around the date of this Supplemental Debenture

### 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 [Redacted]

Signature of witness [Redacted]

Name of witness Mark Gaudos

Address of witness [Redacted]

Occupation of witness CMO

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

Signature of director [Redacted]

Signature of witness [Redacted]

Name of witness Mark Gaudos

Address of witness [Redacted]

Occupation of witness CMO

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 )  )  
SONYA IOVIENO

**Notice Details**

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