

Standard Terms and Conditions

1 DEFINITIONS

- 1.1 “Customer” means the party identified as the ‘Customer’ listed in a managed service agreement or purchase documentation.
- 1.2 “Company” means nlightnIT Ltd a company incorporated under the Companies Acts with registered number 04317633 and having its registered office at Elmton Lodge Farm, Spring Lane, Elmton, Worksop, S80 4LX (“the Company”).
- 1.3 “Company Representative(s)” means the Company’s employees, staff, other workers, agents and consultants and any approved sub-contractors who are engaged in the provision of the Services from time to time.
- 1.4 “Third Party Software” means the Vendor Products and all software owned by, or licensed to, the Customer from a third party vendor in respect of which the Services are provided.
- 1.5 “Service(s)” means the service described in “Managed Support Service contract” and any other services as requested by the Customer to be delivered by the Company.

2 PRICE AND PAYMENT

- 2.1 The price (exclusive of VAT if applicable, carriage, freight, postage or insurance costs) for the Service(s) (“the Price”) shall be the price set out in quotation and service contract documentation.
- 2.2 Invoices will be issued in accordance with an agreed service start date.
- 2.4 Invoices will be payable by the Customer 30 days from invoice date. Payments which are not received when payable and which are not reasonably disputed will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at the rate of 3% per annum above the base rate for the time being of HSBC plc. Such interest shall accrue on a daily basis and be payable on demand after as well as before judgment.
- 2.6 Where an invoice or part of an invoice is disputed by the Customer, the Customer shall pay the undisputed amount in accordance with the payment terms of this Agreement. The Customer and Company shall use their reasonable endeavours to resolve the dispute within 10 working days of the issue being raised.
- 2.7 Upon contract renewal the contract price may change based upon the SLA required (amongst other contractual factors). Regardless of this the price will increase in line with the ONS Average Weekly Earnings Index at the time of renewal.

3 SERVICES PROVIDED

- 3.1 The Customer appoints the Company to and the Company shall provide the Services subject to and in accordance with this Agreement.
- 3.2 The Services shall be provided on the specified Third Party Software throughout the Agreement Term.
- 3.3 The Services shall be provided as set out in Section 4 “Managed Support Service” and any other services which the parties agree shall be provided by the Company shall be preceded by an agreed written technical statement of work between the Company and the Customer.
- 3.4 The Services will be provided in accordance with the Service Levels set out in section 5 “Defined Service Level Inclusion”

4 ACCESS AND USE OF CUSTOMER SYSTEMS

- 4.1 The Customer will provide the Company Representative(s) with the appropriate access to its Systems (as defined below) and personnel to complete the provision of Service(s) to the extent necessary for the performance of the Services.
- 4.2 The Company shall procure that Company Representatives shall only use the Customer’s IT infrastructure and systems (“Systems”) for the purposes of providing the Services and not for any other purpose.

4.3 The Company shall at all times comply with and shall procure that the Company Representatives shall at all times comply with the Customer's security and System use policies as notified by the Customer to the Company from time to time.

4.4 The Company shall procure that the Company Representatives take all reasonable security measures and shall maintain confidentiality in relation to any authorized user names, access tokens, information and passwords which enable them to access the Systems (the "Credentials"). The Company shall not allow Credentials to be used by more than one individual Company Representative. The Company shall maintain and shall provide to the Customer on demand an up-to-date list of all Customer Representatives accessing the Systems and the Credentials associated with each Company Representative. The Company shall notify the Customer immediately if it or any Company Representative becomes aware that any third party has obtained or has access to any Credentials or any other unauthorized use of the Systems.

4.5 The Customer also agrees to inform the Company, prior to service commencement, if any form of agreement including but not limited to a non-disclosure agreement is required to be signed prior to such access being granted. The Company personnel are not authorised to sign such agreements and will refer the request to the Company management. The Company will not unreasonably withhold its consent to any requirement of the Customer for Company Representatives to sign non-disclosure agreements. Where Company Personnel are providing the services on the Customer's premises the Customer shall provide a safe environment to work in as defined by the appropriate Health and Safety At Work legislation.

4.6 The Company will use all reasonable endeavours in accordance with best industry practice to make sure that nothing is done in the course of the provision of the Services which contaminates, corrupts, impairs or adversely affects any of the Systems or the Customer's information or data and that no invasive programs, computer viruses or similar are introduced into the Customer's computer systems, software or data.

4.7 The Company shall procure that the Company Representatives shall not access, store, distribute or transmit any material during the course of the provision of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property.

4.8 The Customer reserves the right, without liability or prejudice to its other rights, to disable access to the Systems of any Company Representatives if there is a breach or where the Customer suspects there to be a breach of the provisions of this Section 4.

4.9 A breach of this Section 4 shall be considered a material breach.

5 CONFIDENTIALITY

5.1 Both parties agree to keep any Confidential Information belonging to the other and all other matters arising or coming to their attention in connection with the provision of the Service secret and confidential and not at any time for any reason whatsoever to disclose or use them or permit them to be disclosed to any third party or used for any purpose except as permitted or required by law or any regulatory authority or to enable the Company to carry out the Service or to enable the Customer to receive the benefit of the Service. Neither party will issue any press release, press statement or other publicity material in relation to this Agreement, without first obtaining the written consent of the other party.

5.2 The Company shall procure that Company Representatives comply with the Company's obligations under this Section 5.

5.3 "Confidential Information" means any and all information and data however conveyed or presented whether technical or commercial, disclosed by one party to the other or obtained or received by a party as a result of entering into or performing its obligations under this Agreement, together with any information relating to: (i) the provisions and subject matter of this Agreement; and (ii) any other information clearly designated by a party as being confidential to it, or which its nature should be treated as confidential (whether or not marked "confidential") which may come into the receiving party's possession as a result of or in connection with this Agreement.

6 INSURANCE AND BACKUP PROVISIONS

6.1 The Customer acknowledges and accepts that the performance by the Company on certain elements of the Service(s) may carry a risk to the Customer of loss of data. Both the Customer and Company warrant that they will each, individually and at their own expense, maintain appropriate policies of insurance with a reputable insurer including, without limitation, professional indemnity insurance, public liability insurance and employer's liability insurance. If so requested by the other party, a certificate confirming that such insurance continues to be in effect shall be promptly provided to the requesting party. The Customer undertakes to perform appropriate data and application backup procedures prior to work commencing.

7 COMPANY PERSONNEL

7.1 The Company shall ensure that all Company Representatives are suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged and the Company shall use its reasonable endeavours to maintain continuity of the personnel.

7.2 If reasonably requested by the Customer the Company shall replace Company Representatives.

8 PROPRIETARY RIGHTS IN SOFTWARE PRODUCTS AND CUSTOMER DATA

8.1 The Company hereby acknowledges that any proprietary rights in any Third Party Software or any software owned by the Customer which is accessed or used by the Company or Company Representatives in connection with the supply of the Services to the Company including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, shall at all times and for all purposes vest and remain vested in the Third-Party Software owner or the Customer, as the case may be.

8.2 The Company shall, and shall procure that the Company Representatives shall comply with the terms and conditions of license attaching to Third Party Software accessed or used by the Company or Company Representatives in the connection with the supply of the Services. A failure by the Company or Company Representatives to comply with the terms of the Third-Party Software will be considered a material breach of this Agreement. The Company further agrees to indemnify the Customer in respect of any costs, charges or expenses incurred by the Customer following action by a Third Party Software owner as a direct result of any breach by the Company or the Company Representatives of such conditions.

8.3 No title or ownership of software products or any Third Party Software licensed to the Customer is transferred to the Company under any circumstances.

8.4 The Company acknowledges that all data it and Company Representatives access in the course of providing the Services is the property of the Customer and the Customer reserves all Intellectual Property Rights in such data. The Company shall not make any use of the data other than for the purposes of provision of the Services.

9 INTELLECTUAL PROPERTY

9.1 The Company reserves all copyright and any other Intellectual Property Rights which may subsist in the nGauge monitor tool used by the Company and the Company Representatives in connection with the provision of Service.

9.2 The Company reserves the right to take any appropriate action to restrain or prevent the infringement of such Intellectual Property Rights.

9.3 All Intellectual Property Rights belonging, or licensed to the Customer prior to the date of this Agreement will remain vested in the Customer or its licensors. Subject to Section 9.1, all Intellectual Property Rights arising or created as a result of or as a part of the provision of the Services will vest in the Customer upon their creation.

9.4 The Company warrants and represents that it has all rights to use any Intellectual Property Rights contained in the Services and in the nGauge monitor tool.

9.5 "Intellectual Property Rights" means all patents (including any rights in or to (and any rights in and to), inventions); trademarks, service marks, logos, trade names and business names (including rights in goodwill attached thereto); design rights; rights in or to (or rights in and to) internet domain names and website

addresses; copyright (including future copyright); database rights; rights in and to Confidential Information (including trade secrets); and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and any: (a) pending applications or right to apply for registrations or any of these rights that are capable of registration in any country or jurisdiction; and (b) similar or analogous rights to any of these rights in any jurisdiction.

10 WARRANTY & LIMITATIONS

10.1 The Company warrants that the Service will be provided with all reasonable skill, attention and care and in accordance with good industry practice.

10.2 The Company shall not be liable to the Customer under Clause 6 for any loss (including loss of profit), costs, damages, charges or expenses incurred by the Customer or for any loss or damage to or caused by the Services, save to the extent such loss, costs, damages or expenses are incurred due to the breach of contract, unauthorized or negligent action or omission of the Company or Company Representatives.

10.3 Subject to this (Clause 10) and Specifications supplied by the Company to the Customer all other conditions, warranties or other stipulations concerning the Service(s) whether express or implied by common law or under statute are excluded to the fullest extent permitted by law.

10.4 Neither party will be liable to the other for any of the following losses which may arise by reason of any breach of the terms and conditions or any implied warranty, condition or other terms, any representation or any duty of any kind imposed on either party by operation of law:

10.4.1 any loss of anticipated profits or expected future business;

10.4.2 damage to reputation or goodwill;

10.4.3 loss of any order or contract;

10.4.4 consequential loss;

10.4.5 loss of data or reconstruction and reconstruction of data save to the extent such loss, costs, damages or expenses are incurred due to the unauthorized or negligent action of the Company or Company Representatives; and

10.4.6 business interruption.

3.11 GENERAL

11.1 Nothing contained in this Agreement shall be construed so as to limit or exclude the liability of the Company for death or personal injury as a result of the Company's negligent actions or those of its employees or agents. Nor shall anything in this Agreement exclude either party's liability for fraud or fraudulent misrepresentation.

11.2 In the event of any of these terms and conditions or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.

11.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or benefit from any term of this Agreement.

11.4 This Agreement shall not constitute or be deemed to constitute a partnership between the Customer and Company. Nothing in this Agreement shall give rise to the establishment by either party of the other as its legal representative or agent for any purpose whatsoever and neither party shall have the right to assume, create or incur any liability or any obligation of any kind, express or implied, in the name of or on behalf of the other.

11.5 Neither party may assign, novate, sub-contract or otherwise dispose of this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed). Where Customer permits the Company to sub-contract its obligations under this Agreement the Company shall remain liable for all acts and omissions of the sub-contractor as if they were performed by the Company.

11.6 If any provision, or any part thereof, of this Agreement, is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction or as a result of either party's compliance with any law

of England and Wales, the remainder of this Agreement (and of such provision) shall not be effected except to the extent necessary to delete such illegal, invalid or unenforceable provision (or part thereof).

11.7 Each party warrants that they have and will continue to maintain procedures appropriate to ensure, and upon request demonstrate, their compliance with all applicable laws, directives and regulations, including, but not limited to the Bribery Act 2010 and the General Data Protection Regulations.

11.8 No variation to this Agreement will be effective unless it is in writing and signed by a duly authorized representative on behalf of each of the parties.

11.9 The Company and services supplied shall not extend to the inclusive provision of support in response to a Customer security breach, unauthorised change or cyber attack/incident.

The Company will make all reasonable efforts to assist the Customer in respect to the technology covered by this service agreement, this will be done on a best endeavours professional service basis.

12 GOVERNING LAW AND JURISDICTION

12.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties hereto submit to the exclusive jurisdiction of the English Courts.

13 TERM CLAUSES

13.1 This Agreement shall commence or be deemed to have commenced on the 'Service Start Date' and shall run for the Agreement Term (*see Service schedule*) unless terminated in accordance with clause 13.3.

13.2 Prior to the expiry of the Agreement Term, the parties will meet to discuss the renewal of this Agreement.

13.3 MUTUAL TERMINATION

Either party may terminate the whole of this Agreement forthwith by giving notice in writing to the other if the other party:

13.3.1 Commits a material breach which, where remediable, has not been remedied within 30 days of written notice of breach (which for the avoidance of doubt includes, without limitation: failure by the Company to meet the agreed service level set out in (service contract) Section 5, and failure by the Customer to pay any undisputed sums due to the company in accordance with the terms of this Agreement and within the stated invoice payment terms). Written notice should outline the reason for termination.

13.3.2 Shall have a receiver or administrative receiver appointed of it, or any part of its undertaking or assets or shall pass resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or shall enter into any voluntary arrangement with its creditors or shall become subject to an administrator order.

13.4 SETTLEMENT AND CONSEQUENCES OF TERMINATION

13.4.1 In the case of termination pursuant to section 13.3.1, a settlement figure will be calculated to the nearest working day prior to the date of termination. If a customer is in arrears a settlement invoice will be issued, if a customer has paid time upon account a credit will be raised in full for the remaining period of the (terminated) contract.

13.4.2 Termination or expiry of this Agreement will not affect the obligations and rights of the parties which have accrued on or before or arising out of termination or expiry of this Agreement and the provisions of this Agreement which expressly or by their nature survive termination.

13.4.3 Upon termination or expiry of this Agreement:

(a) the Company shall immediately cease to use and shall procure that Company Representatives immediately cease all use of the Systems.

13.4.4 The parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) (as amended) ("TUPE") is not intended to apply to the provision or cessation of the Services or termination of this Agreement.

13.5 AUDIT

The Company shall allow the Customer and its auditors or other representatives access to Company Representatives and its records relating to this Agreement to verify its compliance with the terms and conditions of this Agreement.