

**SALE AND PURCHASE CONTRACT FOR LICENSE SUPPORT FOR THE NEOTYS
NEOLOAD SOFTWARE No ST-74**

2019-05-21
Vilnius

The State Enterprise Centre of Registers, legal entity code 124110246, registered office at Lvovo str. 25-101, Vilnius, data collected and stored in the Register of Legal Entities of the Republic of Lithuania, represented by Director General Saulius Urbanavičius acting in accordance with the Statutes of the Centre of Registers (hereinafter referred to as the **Purchaser**) and **NEOTYS S.A.S.**, established and operating under French law, legal entity code 480255900, the registered office of which is 389, avenue du château de Jouques - 13420 GEMENOS – FRANCE, data about the company are collected and stored at the Commercial Registry of Marseille, represented by VP Sales EMEA Thomas Ripoché, (hereinafter referred to as the **Seller**); the Purchaser and the Seller are collectively referred to as the **Parties**, and each individually as **Party**, whereas, the Seller's tender was acknowledged as the winner of the public procurement tender for License Support for the Neotys Neoload Software announced by the Purchaser (Procurement No. 4429138);

have entered into the following Purchase and Sale Contract for License Support for the Neotys NeoLoad Software (hereinafter referred to as the Contract):

1. Subject Matter

1.1. The Seller shall undertake to provide the License Support for the Neotys Neoload software (hereinafter referred to as the Products) in accordance with the terms and conditions specified in the Contract and annexes hereto, and the Purchaser shall undertake to accept and pay for properly delivered Products by the Seller in accordance with the terms and conditions specified herein.

1.2. The support for the Neotys Neoload software shall be provided at the level Gold from 15-05-2019 to 31-12-2020.

1.3. The place of delivery of the Products shall be the State Enterprise Centre of Registers in Vilnius, Vinco Kudirkos g. 18-3.

2. Contract Price, Payment Procedure

2.1. The Contract price shall be EUR 27,047.83 (twenty seven thousand forty seven euro and 83 euro cents) excluding VAT.

2.2. Payments for the Products shall be made by stages on the basis of VAT invoices issued by the Seller, indicating the periods for which invoices are provided:

2.2.1. The first VAT invoice shall be issued for the period from 15-05-2019 to 31-12-2019 not earlier than 5 working days after the entry into force of the Contract;

2.2.2. The second VAT invoice shall be issued for the period from 01-01-2020 to 31-12-2020 not earlier than 5 working days after beginning of this period.

2.3. The Purchaser shall pay for the Products to the Seller by bank transfer, transferring the money to the bank account specified by the Seller in the Contract not later than within 20 (twenty) working days from the day of receiving the Product Transfer-Acceptance Statement (example of the form of the Statement is provided in Annex 2 to the Contract) the VAT invoice by e-mail

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info@registrucentras.lt. The term of payment to the Seller starts with receipt of VAT invoice by e-mail and receipt of the Products Transfer-Acceptance Statement.

2.4. The Contract price shall be recalculated (increased or decreased) during the Contract validity period after the change (increase or decrease) in the VAT rate, which had a direct impact on the Contract price. Upon a written agreement between the Purchaser and the Seller, only the part of the Contract price that was affected by changed VAT rate shall be recalculated. The Contract price recalculation due to a changed (increased or decreased) VAT rate shall be initiated by the Seller who applies to the Purchaser in writing providing concrete calculations on the impact of the changed tax on the Contract price.

2.5. Recalculation of the Contract price shall be documented in a protocol (agreement) signed by the Parties to the Contract, which shall contain the recalculated Contract price and conditions for the entry into force of such recalculation.

2.6. The Contract price shall not be recalculated in case of changes in other taxes.

3. Responsibility of the Parties

3.1. If the Purchaser fails to pay the Seller for the Products within the time limit specified in the Contract, upon the Seller's written request, the Purchaser shall undertake to pay a penalty at the rate of 0.02 (two hundredths) percent of the outstanding amount for each day of delay.

3.2. If the Supplier of the Products breaches the Contract obligations, upon the Purchaser's written request, the Supplier of the Products shall undertake to pay a penalty at the rate of 0.02 (two hundredths) percent of the Contract price for each day of delay.

3.3. If the Seller fails to perform or improperly performs contractual obligations or unilaterally terminates the Contract not due to the fault of the Purchaser, without any valid reasons, it shall pay to the Purchaser a penalty at the rate of 10 (ten) percent of the Contract price.

4. Obligations of the Parties

4.1. The Seller shall undertake:

- 4.1.1. to perform its obligations under this Contract properly, professionally and in a timely manner;
- 4.1.2. to allocate an adequate amount of qualified specialists to fulfil the obligations under this Contract;
- 4.1.3. to inform the Purchaser immediately about any changes in the requisites, legal status and changes in the contact details of the persons responsible for the proper execution of the Contract specified in Chapter 6 of the Contract (if they occur during the execution of the Contract) in writing or by e-mail;

4.2. The Purchaser shall undertake:

- 4.2.1. to ensure that all obligations under this Contract are properly and timely executed;
- 4.2.2. under the terms and conditions set out in the Contract, to pay on time for the Software compliant with the terms and conditions set out in the Contract.
- 4.2.3. to notify the Seller immediately of any changes in the requisites, legal status and changes in the contact details of the persons responsible for proper execution of the Contract mentioned in Chapter 6 of the Contract (if they occur during the performance of the Contract) in writing or by e-mail.

5. Subcontract

5.1. After concluding the Contract but not later than the performance of the Contract begins, the Seller shall undertake to inform the Purchaser of the names, contact details and representatives of the subcontractors already known by that time. The Seller must also inform about any changes in

the above-mentioned information during the performance of the Contract, as well as about new subcontractors it intends to invite later.

6. Persons responsible for the performance of the Contract

6.1. The Seller shall appoint the following person to be responsible for proper performance of the Contract: Phoebe Nongrum, Account Executive, direct telephone number +33 442 18 01 34 e-mail address phoebe.nongrum@neotvs.com. This person will be responsible for coordination of the activities provided for in the Contract (in accordance with the obligations and rights attributable to the Seller).

6.2. The Purchaser shall appoint the following person to be responsible for proper performance of the Contract: Kęstutis Naujokaitis, Head of Operations Management Division, direct telephone number +370 5 2364 559, e-mail Kestutis.Naujokaitis@registrucentras.lt. This person will be responsible for coordination of the activities provided for in the Contract (in accordance with the obligations and rights attributable to the Purchaser).

6.3. The Purchaser shall appoint the following person to be responsible for the publication of the Contract and its amendments in accordance with the provisions of Article 86 (9) of the Law on Public Procurement: Ana Pavilionienė, Chief Procurement Specialist, Procurement Division.

7. Validity of the Contract. Other Provisions

7.1. The Contract shall enter into force from the date of its signing and shall remain in force until complete fulfilment of the obligations assumed hereunder or until the termination of the Contract in the cases and according to the procedure established by the Contract or valid legal acts of the Republic of Lithuania.

7.2. The Contract may be terminated by written agreement of the Parties in the cases and following the procedure established by the Law on Public Procurement of the Republic of Lithuania and the Civil Code of the Republic of Lithuania.

7.3. The terms and conditions of the Contract may be amended during the term of validity of the Contract in accordance with the procedure provided for in Paragraphs 1-3 of Article 89 of the Law on Public Procurement of the Republic of Lithuania. In all cases, any amendment of the terms and conditions of the Contract shall be without prejudice to the provisions of Article 89(4). The amendment of the terms and conditions of the Contract shall be documented by drawing up an additional agreement and signed by both Parties.

7.4. The Contract and related relations between the Parties, including issues related to the validity, nullity and termination of the Contract shall be governed by and the Contract shall be interpreted in accordance with the law of the Republic of Lithuania.

7.5. Any disputes, disagreements or claims arising out of, or in connection with the Contract, its conclusion, validity, execution, violation or termination shall be settled by the Parties by means of negotiations in accordance with legal acts of the Republic of Lithuania. If the Parties fail to settle a dispute, disagreement or claim by means of negotiations, then such dispute, disagreement or claim shall be settled by the courts of the Republic of Lithuania according to the place of the registered office of the Purchaser.

7.6. The relations between the Parties not covered by this Contract shall be governed in accordance with the procedure established by the Civil Code and other legal acts of the Republic of Lithuania.

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7.7. The Contract is made in both Lithuanian and English in 2 (two) identical copies – one for each Party (both signed copies shall have the same legal effect). In case of any discrepancies between the Lithuanian and English texts of this Contract, the Lithuanian text shall prevail.

7.8. The Contract is the result of mutual agreement between the two Parties and therefore its provisions shall be interpreted uniformly by each Party.

8. Annexes to the Contract

8.1. The annexes to the Contract shall constitute an integral part hereof:

8.1.1. **Annex 1.** Technical Specification;

8.1.2. **Annex 2.** Technical tender offer;

8.1.3. **Annex 3.** A form of the statement of transfer and acceptance of the Products.

9. Requisites of the Contract Parties

State Enterprise Centre of Registers:

Address: Lvovo g. 25-101,
09320 Vilnius

Tel. (+370 5) 268 8262
Fax (+370 5) 268 8311
E-mail info@registrucentras.lt
Legal entity code 124110246
VAT payer's code LT241102419
Bank account LT944010042400050387
AB Luminor bankas;

Director General
Saulius Urbanavičius

/Seal/

Neotys S.A.S. :

Address: 389 avenue du
château de Jouques -
13420 GEMENOS
FRANCE,
Tel. +33 4 4218 08 30
Fax +33 4 4218 08 31
E-mail sales@neotys.com
Code 480255900
VAT payer's code FR37480255900
Bank account BNP Paribas
Méditerranée Est
IBAN : FR76 3000
4028 1100 0102 7003
783
BIC:BNPAFRPPMEE

VP Sales EMEA
Thomas Ripoche

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Annex I
to Sale and Purchase Contract for License
Support for the Neotys NeoLoad Software No.
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TECHNICAL SPECIFICATION

1. The Contracting Authority seeks to obtain License Support for the Neotys Neoload software.
2. License Support must be provided from from 15-05-2019 and shall be valid until 31-12-2020.
3. License Support must be available for the following software:
 - NeoLoad End User License 5000 VU Professional Edition – 1pc,
 - Integration & Advanced Usage Module for NeoLoad 5000 VU Professional Edition – 1 pc.
4. Current License Support expired on 2018 September 30.
5. License Support must have Gold Support level and be secured by the software vendor.
6. During the License Support period, incidents are registered directly to the software vendor.
7. License Support must include:
 - Upgrades to major and minor versions;
 - Bug fixes, feature requests, priority case processing.
8. Place of supplying the License Support - State Enterprise Center of Registers, address:
Vincu Kudirkos str. 18-3, Vilnius, Lithuania

State Enterprise Centre of Registers:

Director General
Saulius Urbanavičius

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Neotys S.A.S.:

VP Sales EMEA
Thomas Ripoché

/Seal/

NEOTYS SAS
389 Avenue du Château de Jouques
13420 GEMENOS
FRANCE
Siret : 480 255 900 00056 - APE 5829C

**Commercial Quote**
DVNEO-201904-16**SECoR (State Enterprise Centre of Registers)**
Vinco Kudirkos g 18-3,
LT-03105 Vilnius
Lithuania

Gemenos, 16/04/2019

VAT number – required :

Description	Qty	Unit Price	Total
Gold Support renewal for SECoR (State Enterprise Centre of Registers) NeoLoad license - valid from 01/10/2018 to 31/12/2019	1	EUR 14,764.10	EUR 14,764.10
Gold Support renewal for SECoR (State Enterprise Centre of Registers) NeoLoad license valid from 01/01/2020 to 31/12/2020	1	EUR 12,283.73	EUR 12,283.73
		Total*	EUR 27,047.83

Gold Support includes:

- Upgrades to major and minor versions.
- Provides bug fixes, feature requests, priority case processing.
- Permits upgrades to the number of virtual users (cost to license additional virtual users is the net difference between the cost of the current number of VUs and the new number of VUs on the then current price list).

IMPORTANT:

The order is to be made for the whole Gold Support period mentioned above.
Payment can be made on an annual basis for each year as follows:

- For support valid from 01/10/2018 to 31/12/2019 for the amount of EUR 14,764.10 in April 2019 (exceptional case)
- For support valid from 01/01/2020 to 31/12/2020 for the amount of EUR 12,283.73 in January 2020.

***Amount without VAT, any applicable tax to be added.**

Conditions

- This commercial proposal is valid until 30/04/2019.
- To be paid within 60 days of invoice date by check, wire transfer or credit Card.
- In case of the purchase of an End User permanent license, a 60-days license for use of NeoLoad will be delivered upon receipt of the purchase order. The permanent license will be delivered after payment.
- Use of Neotys Software and associated Services. The Neotys Software and accompanying documentation that are made available to download from Neotys' Internet web site are the intellectual property and copyrighted work of Neotys. Use of Neotys Software and Services is governed by the terms and conditions of the applicable software agreement that accompanies the download and that you must read and accept prior to any installation and use of the product. You will not be able to download nor install or use the Software or their associated Services unless you agree to the terms and conditions of such agreements. Such terms and conditions are incorporated herein by reference and are available for review at <http://www.neotys.com/store/agreement.html> and within the products in their installation directory.



- Purchase of Neotys Software for resale upon Neotys approval. If you purchase any Neotys Software in order to resell it to a third party, you undertake to have this party accept and be bound by the applicable software agreement before any installation and use of the product.

Sales Contact

Phoebe Nongrum
phoebe.nongrum@neotys.com
Tel: +33 4 42 18 01 34 - Fax: +33 (0)4 42 18 08 31
<http://www.neotys.com>

NeoLoad® AGREEMENT

IMPORTANT - NOTICE TO USER: PLEASE READ CAREFULLY THIS NEoload SOFTWARE AGREEMENT (“AGREEMENT”) BEFORE INSTALLING AND USING THE PRODUCT AND ITS ASSOCIATED SERVICES. THIS IS A CONTRACT. IT CONTAINS THE RIGHTS AND RESTRICTIONS THAT CUSTOMER ACCEPTS IN WHOLE BY CLICKING THE BUTTON BELOW "I ACKNOWLEDGE HAVING READ THE NEoload SOFTWARE AGREEMENT AND I ACCEPT ITS TERMS AND CONDITIONS" AND/OR BY INSTALLING AND USING ALL OR ANY PART OF THE PRODUCT OR ITS ASSOCIATED SERVICES. CUSTOMER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY CUSTOMER AND CUSTOMER AGREES TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. THEREFORE, THIS AGREEMENT IS ENFORCEABLE AGAINST CUSTOMER AS ANY LEGAL ENTITY THAT OBTAINED THE PRODUCT AND ON WHOSE BEHALF IT IS USED OR THAT USES ITS ASSOCIATED SERVICES. IF CUSTOMER DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, IT MUST DECLINE WHERE INSTRUCTED, AND CUSTOMER SHALL NOT BE AUTHORIZED TO INSTALL OR USE THE PRODUCT OR ITS ASSOCIATED SERVICES. IF CUSTOMER REJECTS THIS AGREEMENT, NEOTYS DOES NOT GRANT CUSTOMER ANY RIGHT TO INSTALL AND USE THE PRODUCT OR BENEFIT FROM ITS ASSOCIATED SERVICES.

This Agreement is a contract between Customer and NEOTYS SAS, with head offices at 389 Avenue du Château de Jouques, 13420 Gémenos, FRANCE or NEOTYS USA, with head offices at 420 Bedford Street, Suite 310, Lexington, MA 02420, USA, in case the Customer’s head offices are located in North America (both hereafter referred to as "NEOTYS"). This Agreement is valid and grants Customer a right to use the Product, and its associated services, ONLY if the Product is authentic and accompanied with a valid license key.

If more than one agreement should apply to the Product and its associated services, the following order of precedence applies: (1) printed written agreement executed with NEOTYS, and (2) the agreement provided with the Product. In addition to the restrictions imposed under this Agreement, any other use restrictions contained in the Product Documentation, installation instructions or release notes, shall apply to Customer’s use of the Product.

1. DEFINITIONS.

“Affiliate” means an entity that controls, is controlled by, or is under common control with a party to this Agreement, where “control” means ownership of more than 50% of the equity in the entity concerned.

“Application Under Test” means the application or web site controlled by or which Customer is duly authorized to test using the Product.

“Cloud Services” means the services supplied by NEOTYS to Customer as described under Section 4 below.

“Controller” is a software component used to design, launch, manage and analyze a test session. It uses one or more "Load Generators" to generate the load. Its use is governed by this Agreement even when made available by a third party in a Cloud infrastructure platform.

“Customer” is the legal entity to which NEOTYS grants the right to use the Product as specified herein.

“Documentation” is the paper and/or electronic documentation containing the installation and utilization guidelines generally provided by NEOTYS to its customers with the Product.

“Load Generators” are software components used to generate traffic to the servers to test, and managed by a "Controller".

“Shared License key” has the meaning set forth in Section 3.1.3.b).

“Licensed Capacity” is the number of Virtual Users licensed as specified in the Order.

“License” is the type of license as specified in the Order and defined in Section 3.1 below.

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“Maintenance Services” are the maintenance and technical support services pertaining to the Product and supplied by NEOTYS under the conditions as described in Section 5 below.

“NeoLoad Web” is a software component connected to one or several Controllers in order to complement the Controller with similar or exclusive features through a web interface. NeoLoad Web is made available for use either as a SAAS as set forth in Section 4.2 below or under an on-premises version licensed under the conditions set forth in section 3 below.

“Neotys Team Server” is a software component used to manage the Shared License keys used by a Controller and to share NeoLoad projects and results among team members.

“New Versions (major releases)” are Product versions with significant functional changes, including, Product milestones with corrections and improvements from the previous versions that NEOTYS generally makes available to its customers covered by Maintenance Services at no additional charge. New Versions typically result from new developments and they offer new functionalities. The first figure in a version number stands for a major release, e.g. version 5.2.1. New Versions do not include new products or components that NEOTYS separately licenses and prices.

“Order” is an agreed written or electronic document identifying the Products licensed and the type of License granted, and/or the Services to be supplied by NEOTYS, the fees to be paid by Customer and any other applicable terms and conditions agreed upon by the parties in connection with this Agreement.

“Product” is the object code of the NeoLoad software and all accompanying Documentation, or the associated modules which may be bought separately, as well as all Updates, bug fixes, enhancements and New Versions of the Product that NEOTYS elects to make available to Customer, in particular under the warranty as set forth in Section 3.8 below or under Maintenance Services as provided for in Section 5 below. Product consists of a Controller, an on-premise Load Generator, an on-premise NeoLoad Web, and a Neotys Team Server.

“Services” refer to Maintenance Services and/or Cloud and SAAS Services.

“Updates (minor releases)” are bundles of bug corrections or Product performance enhancements that NEOTYS generally makes available to its customers covered by Maintenance Services at no additional charge. Updates are regularly made available to the Customer under any medium and method. NEOTYS shall decide when and how to make them available. Updates do not include new products or components that NEOTYS separately licenses and prices.

“Virtual User” is the process that simulates the behavior of a real user of the system to test.

2. **SCOPE OF THIS AGREEMENT.** This Agreement provides for the terms and conditions under which NEOTYS agrees (i) to license Product to Customer (as set forth under Section 3 below), (ii) to provide Cloud and SAAS Services to Customer (as described under Section 4 below), and/or (iii) to provide Maintenance Services to Customer (as defined under Section 5 below), as specified under the Order.
3. **PRODUCT LICENSE.** This Agreement provides for a license to use the Product and not a sale thereof. The supply of the Product shall not include the Product's installation, configuration, adaptation or any customization services. However, NEOTYS may, upon Customer's request, provide such services in accordance with its current commercial, technical and financial conditions.
- 3.1. **Installation and use of the Product.** Subject to the terms and conditions of this Agreement, NEOTYS grants Customer a personal, limited, non-exclusive and non-transferable license to exercise the following rights to use one copy of the Product, in object code form only, under the conditions defined hereinafter, and as specified in the relevant Order, depending on whether the Customer is an End User (3.1.1) or a Service Provider (3.1.2), as defined hereunder. Specific features apply to both the End User and Service Provider Licenses (3.1.3).

However, where agreed by Neotys under the Order acknowledgment, Affiliates may also be authorised to use the Product. In such case, Customer must ensure that each authorised Affiliate complies with the terms of this Agreement, and Customer shall be responsible for the actions

and omissions of each Affiliate using the Product as if the Affiliate's acts or omissions were Customer's acts and omissions.

3.1.1. End User License Agreement.

As an End User, Customer will be permitted to (a) install the Product using an operating system certified by NEOTYS, and to (b) use the Product solely in connection with Customer's own business operations and in no event to perform services for any third party including, without limitation, for its own clients.

3.1.2. Service Provider License Agreement

As a Service Provider, Customer will be permitted to (a) install the Product using an operating system certified by NEOTYS, at one facility at a time, and to (b) use the Product solely for processing Customer's clients' business operations subject to the limitations set forth below.

Customer acknowledges and accepts that certain type of Product licenses are granted solely for use of the Product for processing a specific client's business operations, as identified in the Order.

Customer's right to use the Product under the Service Provider License is personal to the Customer, as a Service Provider, in order to perform services for its own clients on one computer system or from one Neotys Team Server at a time, and does not allow use by its own clients. In addition, Customer is not permitted to assign or transfer its right to use the Product for any reason whatsoever, without NEOTYS' prior written authorization, and Customer strictly undertakes to uninstall the Product after the services to its own clients have been performed.

3.1.3 End User and Service Provider licenses features

- a) Load Generators and Controllers. Load Generators can be installed on as many computers as needed to generate the licensed number of Virtual Users up to the Licensed Capacity. Restrictions apply to the Controller part of the Product only.
- b) Different types of use.
 - Under the Node-locked License, Customer is authorized to install and use the Product on a single computer system. Each additional installation and use of the Product requires an additional Node-locked License. Customer may transfer the Node-locked License to a different computer system certified by NEOTYS, only if Customer has previously removed the previous installation completely and deactivated the License key.
 - Under the Daily License, Customer is authorized to use the Product per day, on a split basis, under the same rights as under the Node-locked License. Daily Licenses are sold under credits which expire 1 (one) year from subscription date.
 - Under the Shared License, Customer is authorized to install the Shared License key on a single Neotys Team Server and share the number of Virtual Users for use under concomitant tests, with a minimum number of Virtual Users per test as described in the Order.
 - Under a Virtual User Hour License ("VUH License"), Customer is authorized to use NeoLoad under a consumable license, under which 1 (one) virtual user consumes 1 (one) credit per hour started. VUH Licenses are sold under credits which expire 1 (one) year from order acceptance by Neotys. The following restrictions apply: (i) the use of a Load Generator is limited to Neotys authorized Cloud Platforms only, (ii) a Load Generator can be used to generate a minimum of 100 (one hundred) and up to a maximum of 500 (five

hundred) concurrent Virtual Users, (iii) a Load Generator, that has been started, will consume the VUH capacity per hour as requested at Cloud session creation, whichever the number of Virtual Users effectively generated or whether or not a test has been run, and (iv) any hour started shall be due.

c) License term.

Licenses are granted either on a "Perpetual" or temporary basis, as set forth in the applicable Order.

Under a "Perpetual" License, Customer is granted a license to use the Product, as provided for hereunder, from the date of activation of the license key for the duration of the Product's legal protection.

Under a license granted for a certain duration (a "Term License"), Customer is authorized to exercise the same rights as under the license as referenced on a limited time basis, meaning that the right to use the Product is granted for a limited time starting from the date of activation of the license key, except for one year term licenses (the "Subscription License") which start from the date of order acceptance by Neotys.

Where a Term License is used (one at a time) to boost the capacity of a Node-locked License, it must be installed on the single computer system where such Node-locked License is installed.

- 3.2 Copy. The law prohibits unauthorized copies and software piracy. Customer may make one copy of the Product lawfully authorized for backup purposes only, provided Customer has reproduced all copyright and other proprietary right notices on such backup copy which has been identified as such. Customer is liable for the monitoring and the protection of such authorized copy.
- 3.3 Free Without License Key License. For Products provided under a Free Without License Key License, Customer may operate the Product only for the purpose of conceiving test scenarios and analyzing results. With respect to such Free Without License Key Licenses, the Product is provided "AS IS", without any support, maintenance or warranty from or liability for NEOTYS. Customer's use of the Product is at Customer's sole risk, and NEOTYS makes no representations that the Product will accurately diagnose or correct every performance problem in Customer's Application Under Test. NEOTYS may terminate a Free Without License Key License at any time for convenience upon notice to Customer. Customer understands that the Product, provided under a Free Without License Key License, has been limited in some way through restricted use.
- 3.4 Free Edition License. For Products provided under a Free Edition License, Customer may operate the Product, during the period of time as specified under the Neotys Internet site registration process, for internal business purposes only. Customer may not use the Product as an application service provider or managed service provider offering, or otherwise generate income from the Product. With respect to such Free Edition License, the Product is provided "AS IS", without any support, maintenance or warranty from or liability for NEOTYS. Customer's use of the Product is at Customer's sole risk, and NEOTYS makes no representations that the Product will accurately diagnose or correct every performance problem in Customer's Application Under Test. NEOTYS may terminate a Free Edition License at any time for convenience upon notice to Customer. Grant of the Free Edition License shall be void where registration information is inaccurate or incomplete. Customer understands that the Product, provided under a Free Edition License, has been limited in some way through restricted use.
- 3.5 Evaluation License. For Products provided under an Evaluation License, Customer may only operate the Product on a trial basis for 30 days, or any longer time period as authorized by

NEOTYS, for purposes of evaluating whether Customer will acquire a license to use the Product for a fee. With respect to such Evaluation License, the Product is provided "AS IS", without any support, maintenance or warranty from or liability for NEOTYS. Customer's use of the Product is at Customer's sole risk, and NEOTYS makes no representations that the Product will accurately diagnose or correct every performance problem in Customer's Application Under Test. NEOTYS may terminate an Evaluation License at any time for convenience upon notice to Customer. Customer shall not use the Product for business operations. Customer understands that the Product provided under an Evaluation license has been limited in some way through restricted use.

3.6 Use restrictions.

Any use not expressly agreed by NEOTYS is prohibited and Customer shall not, nor cause nor permit third parties to:

- (a) copy, duplicate, alter, adapt, translate in any manner, integrate into another software, disassemble, all or part of the Product or the accompanying Documentation, nor engage in any reverse engineering except to the extent authorized by mandatory applicable law as specified in Section 3.7 below, nor attempt to discover the source code,
- (b) modify in any manner the Product, except to correct possible errors only if the modification is required to insure use in accordance with the Product's specifications and with NEOTYS' prior written approval. In such event, NEOTYS reserves the right to make the changes to correct any such error.
- (c) distribute, sub-license, disclose, assign, rent, loan, lease, sell, give, or otherwise transfer, even freely, the Product in whole or in part, by any means, to any third party,
- (d) remove, obscure or alter any proprietary notices or labels from the Product, nor any legal notices, such as trademark or copyright notices, affixed to or contained within the Product or any accompanying Documentation, or
- (e) combine Product with other licenses in order to test higher volumes,
- (f) use a Controller to monitor the infrastructure while the load is generated by Product with other licenses or by a third party product,
- (g) use a Controller to monitor the infrastructure without generating load against the server.
- (h) use the Product to create any derivative works based on all or part of the Product or any related know-how or copy any of the features, functions or graphics of the Product in order to develop any competing or similar product for the duration of the Product's legal protection.

The Product is supposed to be used only in a testing environment, and not in production. Customer further acknowledges that no critical or personal data should be injected or integrated in the Product in any way, and agrees to keep Neotys fully indemnified thereof. Data used directly or indirectly by Product and the entire tested environment (including web servers, database, network components) must have been saved by Customer in a backup. Any use in any other environment is at Customer's own risks. Should the Product nevertheless be operated in a production environment, Customer must justify that it has defined and validated a Disaster Recovery Plan (data, environment, Applications Under Test) and that it can implement such plan in the appropriate timeframe in compliance with industry standards and Customer's activities' constraints and requirements. Customer also acknowledges that it has the necessary technical, material and human resources available in order to restore its infrastructure and system.

NEOTYS remains exclusively authorized to adapt, modify, enhance, correct the Product or its Documentation, or cease their distribution without notice. All rights not expressly granted to Customer are reserved to NEOTYS. In particular, Customer shall have no right to use the Product for productive or commercial purposes except as authorized under the Service Provider License, as the case may be. Any Open Source software provided with the Product may be used only in accordance with the terms of this Agreement, in particular as provided for under Section 20 below.

Customer acknowledges that the Product includes tools enabling NEOTYS to collect and process technical data in connection with use and identification of the Product. The purpose of such collection is to improve the Product and the client relationship. No sensitive data is collected. The collected data's list is set forth in the Documentation. The data collection is automatic and may be deactivated in the Product's options.

- 3.7 Restrictions on reverse engineering. The Customer shall not, nor permit others, to decompile, reverse engineer or disassemble, the Product except to the extent permitted by mandatory applicable law and where such action is required to obtain the information necessary to achieve the interoperability of the Product with any other software for a use meeting the terms of its documentation and its purpose. Such action may only be undertaken by Customer if such information is not readily available and if NEOTYS has received a written request to provide the information and has substantially failed to provide it within a reasonable period of time. Customer shall observe a strict obligation of confidentiality with respect to such information. In no event shall the terms of the present Section allow Customer to infringe NEOTYS' intellectual property rights.
- 3.8 Limited warranty. Except in case of an Evaluation License, Free Without License Key or Free Edition License described above, NEOTYS warrants for a 30 day period from the starting date of the license (as described in section 3.1.3 c) above) that (a) the unmodified Product, if correctly installed and used, will perform substantially in accordance with the functions described in the Documentation provided by NEOTYS when operated with a certified operating system, and that (b) the media on which the Product is furnished is free of defects in materials and workmanship which could prevent its operation, subject to proper use and maintenance.
- 3.8.1 *Customer's Remedies.* Customer's sole and exclusive remedy and the entire liability of NEOTYS under this limited warranty will be for NEOTYS to make commercially reasonable efforts within a reasonable period of time to (i) correct or replace any Product that does not comply with the above warranty, or (ii) if NEOTYS cannot remedy or replace such defective Product within such time period, then NEOTYS will refund the fees actually paid by Customer for the Product license. Any replacement Product will be warranted for the remainder of the original warranty period or 30 days as of the installation of the replacement Product, whichever is longer. This warranty will not apply to any problems caused by software other than the Product, or hardware not supplied by NEOTYS.
- 3.8.2 *Restrictions.* NEOTYS does not warrant that the Product will meet all the needs and requirements that Customer has anticipated or which have motivated Customer's choice for the Product. Furthermore, Customer acknowledges that (i) Customer has received any and all information allowing Customer to be well informed of the Product and to appreciate whether it complies with its needs, (ii) the Product may not be suitable to any and all combinations that Customer may choose, (iii) the Product may not perform in every operating environment, and (iv) the use of the Product may not be uninterrupted or error-free, and all errors may not be corrected or correctable. NEOTYS and its licensors and partners shall not be held liable (i) for any and all defects and/or modifications of the Product and any consequences deriving from a misuse of the Product; (ii) for any inadequate intervention on the Product from a third party; (iii) for the use of the Product with a component or a third party system that is not compatible or not certified by NEOTYS (including a defect caused by any of Customer's malfunctioning operating system); and/or (iv) where the Product has been subjected to abnormal physical or electrical stress, misuse, misapplication, negligence or accident.

4 CLOUD AND SAAS SERVICES.

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- 4.1. Cloud Services. Under Cloud Services, Neotys makes available to Customer, as specified in the Order, a VUH License, preconfigured NeoLoad Load Generator and/or a preconfigured NeoLoad Controller on a virtual machine hosted by the web infrastructure provider mentioned in the Product and chosen by the user for preconfigured NeoLoad Load Generator or chosen by the Customer under the Order process for NeoLoad Controller (“Cloud Instances”) solely for the purpose of allowing Customer to run load tests in connection with an Application Under Test. Cloud Services fees are sold under the form of credits per unit that expire should they not be used within one (1) year from Order acceptance by Neotys.

Where Customer uses a NeoLoad Controller under the Cloud Services, Customer shall take any action or measures necessary for installing a valid license key or using a VUH License, to secure the transfer of the project, for carrying out tests and to ensure the Cloud platform’s security, in particular by checking configuration and security settings. Before expiry of the Controller’s use period, Customer is solely responsible for recovering the project as modified and any information, data and results generated under the Cloud Services and deactivating the NeoLoad license key for use on another computer system, as the case may be.

Customer is solely responsible for making backup copies of data files or programs used in connection with Cloud Instances. Customer shall take all security measures and apply the related procedures by making any necessary security backup copies in order to avoid any loss or damage. It is therefore agreed between the parties that NEOTYS shall under no circumstances be held responsible for loss, theft, disclosure or damage to information, programs, files or data bases occurring during or after performance of the Cloud Services. Customer expressly agrees that it will not have access to data stored on the Cloud during a suspension or following termination of the Services, as Neotys is legally obliged to delete them.

- 4.2. SAAS Services. Under SAAS Services, Neotys makes available to Customer (i) NeoLoad Web as a Software-As-A-Service in accordance with the terms described in Exhibit II, and (ii) support assistance under the conditions set forth in section 5 below. Customer acknowledges that NeoLoad Web’s use is restricted in terms of hours of testing per month and hours of storage of results, according to the Order.

In relation to SAAS Free Plan, Customer may access NeoLoad Web, for the time provided for as specified under the Neotys Internet site registration process or as specified in the Order, for internal purposes only. Under SAAS Free Plan, NeoLoad Web is provided “AS IS”, without any support, maintenance or warranty from or liability for NEOTYS. Customer’s access to NeoLoad Web SAAS is at Customer’s sole risk, and NEOTYS makes no representations that NeoLoad Web will accurately diagnose every performance problem in Customer’s Application Under Test. NEOTYS may terminate a Free Plan at any time for convenience upon notice to Customer. Access to Free Plan shall be void where registration information is inaccurate or incomplete. Customer understands that NeoLoad Web, made available under a Free Plan, has been limited in some way through restricted use.

In relation to SAAS Trial Plan, Customer may operate NeoLoad Web on a trial basis for 30 days, or any longer time period as authorized by NEOTYS, for the purpose of evaluating whether Customer will subscribe to SAAS Services for a fee, but shall not access NeoLoad Web for business operations. Under SAAS Trial Plan, NeoLoad Web is provided “AS IS”, without any support, maintenance or warranty from or liability for NEOTYS. Customer’s access to NeoLoad Web SAAS is at Customer’s sole risk, and NEOTYS makes no representations that NeoLoad Web will accurately diagnose every performance problem in Customer’s Application Under Test. NEOTYS may terminate a Trial Plan at any time for convenience upon notice to Customer. Customer understands that NeoLoad Web, made available under a Trial Plan, has been limited in some way through restricted use.

- 4.3. Customer Obligations and Disclaimers. Customer is solely responsible for maintaining the secrecy and security of any authentication key or credentials given for access to the Cloud and

SAAS Services, and for their use by any and all employees, contractors, or other users that it allows to access the Cloud and SAAS Services. Customer is prohibited from using the Services (i) in connection with personal data, or (ii) for any illegal purpose, such as, without limitation, sending spam/unsolicited mail, forgery, violation of system or network security, storage or transfer of obscene, defamatory, pornographic or indecent material, and infringement of third party rights. Should Customer wish to inject or integrate personal data in the Services, it shall act as controller and should obtain Neotys' prior written authorization and agreement on documented instructions and terms for Neotys to act as processor in accordance with European data protection legislation.

NEOTYS does not promise, warrant or covenant that the Cloud and SAAS Services will be uninterrupted, error-free or completely secure. Customer acknowledges that there are risks inherent in Internet connectivity that could result in the loss of confidentiality or property. Customer is solely responsible for the type of Cloud and SAAS Services chosen under the registration system. Customer acknowledges that NEOTYS may update the functionality, user interface, usability and other user documentation relating to Cloud and SAAS Services from time to time in its sole discretion and as part of its on-going mission to improve the Cloud and SAAS Services.

5 MAINTENANCE SERVICES

- 5.1. Maintenance Services scope and conditions. The Maintenance Services conditions are defined in Exhibit I.

Maintenance Services ("Gold Support") shall consist of: (i) Updates and/or New Versions of the Product (made available under any medium or method at NEOTYS' option); (ii) support assistance (information) through the Neotys website interface; (iii) acknowledgement, analysis and intervention of NEOTYS in connection with reproducible errors which shall be duly reported and documented by the Customer.

In case of a "Perpetual" License, Maintenance Services are payable separately from the Product License for a fee as described in the Order.

- 5.2. Obligations of the Parties under the Maintenance Services.

5.2.1. *Obligations of the Customer.* Customer shall give NEOTYS all the means and information required for the successful performance of the Maintenance Services. Identifying the reported fault is subject to the Customer supplying the necessary related documents, information and any other element. Customer shall comply with the standard use of the Product and NEOTYS recommendations, in particular as provided for under the license conditions set forth in Section 3 above. Customer shall comply with NEOTYS specifications so that maintenance requests are not affected by environmental non-conformities. Customer shall not perform any operations, which may impede or hamper NEOTYS support operations, without the prior authorization of NEOTYS. Customer shall ensure that the hardware in which the Product is installed is properly maintained. During the term of this Agreement, the Customer shall not and shall not allow any third party (other than NEOTYS or any authorized NEOTYS partner) support or maintain the Product. The CUSTOMER shall appoint two contacts for NEOTYS. Customer shall notify NEOTYS in writing of any change in contact personnel. Customer shall inform NEOTYS of any change in the information system which may affect the Product or the performance of the Services by NEOTYS. Before any Product maintenance operation starts, Customer shall be responsible for backing up the data, files, or programs used with the Product in order to avoid any loss or damage. Customer shall be solely responsible for the security of its confidential and proprietary information and not disclose such information except on a "need-to-know" basis for the purpose of NEOTYS' performance of this Agreement. Customer is fully aware that Maintenance Services require active and

consistent cooperation with NEOTYS. Customer shall take all the security measures and apply the related procedures before the Product is installed and before NEOTYS is contacted. It is therefore agreed between the Parties that NEOTYS shall under no circumstances be held responsible for loss or deterioration of information, programs, files or databases occurring during performance of any Maintenance Services.

5.2.2. *Obligations of NEOTYS.* NEOTYS shall use reasonable efforts to provide the Maintenance Services, as herein described. Due to the high technical level of the Product, NEOTYS does not warrant that the Product will run without faults or interruptions. NEOTYS does not warrant that the Maintenance Services will solve all faults, or that the same faults will not occur again, or that any other fault will not occur later. However, NEOTYS warrants that it will perform the Maintenance Services with professional skill and care. The obligations of NEOTYS under this Agreement are limited to correcting any Product malfunctions or repairing the Product as provided herein. Should NEOTYS Services not solve the Product fault, the Customer's sole remedy shall be limited to NEOTYS re-performing the Maintenance Services as described herein.

6. **SERVICES DURATION**

Services' duration is described in the Order.

Where Maintenance Services are bought in association with a "Perpetual" license, they are provided for an initial period of twelve (12) months and are automatically renewed for successive twelve (12) months periods. Each party may notify its decision not to renew Maintenance Services by providing the other a minimum of two (2) months prior written notice before their anniversary date.

Where Maintenance Services are bought in association with a license granted for a more limited time, they are provided for the duration of the license or for the term of validity of the credits in case of a Daily License or VUH License.

The provision of any Services shall terminate should Customer cease to be authorized to use the Product or any associated module, whatever the reason.

NEOTYS shall suspend the Services without liability if (i) NEOTYS reasonably believes that the Services have been used in violation of this Agreement, (ii) any payment by Customer is overdue, or (iii) in connection with Cloud and SAAS Services, where NEOTYS reasonably believes that Services are being accessed or manipulated by a third party without Customer's consent, or (iv) NEOTYS reasonably believes that suspension of the Services is necessary to protect the network used for the Services or NEOTYS' other customers.

7. **NO OTHER WARRANTIES.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCT AND THE SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEOTYS AND ITS LICENSORS AND PARTNERS DISCLAIM ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF THE PRODUCT IN A PRODUCTION ENVIRONMENT AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. NEOTYS MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE PRODUCT OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OR USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE

8. **PRICE.** Customer agrees to pay the applicable fees in the amounts as set forth in the Order. Customer is responsible for any fees assessed for transactions that Customer submits to NEOTYS. Fees are effective and non-cancellable upon Order submission to NEOTYS. All amounts payable by Customer are made without setoff or counterclaim and without deduction or withholding.

The Maintenance Services fee for "Perpetual" licenses shall be revised each year and invoiced one (1) month in advance of the anniversary date of the Agreement, except in case of non-

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renewal as described in Section 6 above.

Where fees are not paid upon Order submission, fees are due within thirty (30) calendar days after the date of invoice issuance by NEOTYS.

9. INTELLECTUAL PROPERTY

9.1. Ownership / Copyright Protection. The Product, all Updates and New Versions, and any authorized copy are the intellectual property, the valuable trade secrets and confidential information of NEOTYS SAS (France) or its licensors with regards to Open Source components embedded in the Product (mentioned in Section 20 below). The Product, all Updates and New Versions, are protected by law, including without limitation the copyright laws of France, the United States and other countries, and by international treaty provisions. NEOTYS does not assign any property right when licensing its software solutions and reserves all rights not herein granted. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights in the Product, Updates, New Versions or any enhancements and all titles, rights, including intellectual property rights and copyrights, interest in and to the Product, Updates, New Versions or any enhancements, the accompanying Documentation, whatever the form, and any copy, are owned by NEOTYS or its licensors. The Product has been lodged with the French Agency for the Protection of Programs ("APP"), member of the **international Interdeposit** foundation. Customer may make, without modification, a reasonable and necessary number of copies of the Documentation for internal purposes only as dedicated to the use of the Product. Any copy that Customer is herein permitted to make must contain the same copyright, confidentiality and other proprietary or legal notices that appear in the Documentation. Customer will not take any action that jeopardizes NEOTYS proprietary rights or third parties software.

9.2. Intellectual Property Rights Indemnity.

9.2.1. *Defense and Covered Claims.* If a third party action is brought against Customer claiming that Customer's use of the Product or Services infringes a valid copyright, NEOTYS will defend Customer at NEOTYS expense and, subject to this Section and Section 11 below, pay any damages and costs finally awarded against Customer in the infringement action, but only if (a) Customer notifies NEOTYS promptly upon learning that the claim might be asserted, (b) grants NEOTYS the sole control over the defense of the claim and any negotiation for its settlement or compromise and (c) Customer fully cooperates with NEOTYS in its defense or settlement of the claim.

9.2.2. *Opportunity to Cure.* If a claim described in 8.2.1 above may be or has been asserted, Customer will permit NEOTYS, at NEOTYS's option and expense, to (a) procure the right for Customer to continue using the Product or Services, (b) replace or modify the Product, Update or New Version to eliminate the infringement or, if (a) or (b) is not economically reasonable, (c) terminate this Agreement and refund to Customer the license fees actually paid by Customer to NEOTYS for the infringing Product or Services, less depreciation based on a 5-year straight-line depreciation schedule.

9.2.3. *Limitation.* The foregoing states the entire obligation and liability and exclusive remedy of NEOTYS with respect to infringement of any copyright caused by or arising from the use of the Product, Services or any part thereof. The indemnity obligation set forth above shall not apply with respect to a claim, demand, action, cost, expense, loss or damage (hereinafter in this Section "the Infringement Claim") which arises (i) from use of the Product or Services outside of the scope or in violation of this Agreement or from a misuse, modification, customization or enhancement of the Product by Customer where such is a material cause of the Infringement Claim (ii) from the use of a superseded or modified release of the Product by Customer, if the Infringement Claim would have been avoided by the use of the current or unmodified release; (iii) from the use, operation, or combination of the Product with programs such as customizations or development of interfaces, data, equipment, or materials not provided by NEOTYS, if the Infringement Claim would have been avoided by the use of the Product without such programs, data,

equipment, or materials, or (iv) to the extent that Customer continues the allegedly infringing activity after being informed of and provided with modifications that would avoid the alleged infringement

10. CONFIDENTIALITY – DATA PROTECTION

- 10.1 **Confidentiality:** Either party's or its Affiliates' business and technical information including, but not limited to, financial information, software code, know-how, methods, techniques, specifications, specific developments, marketing plans, strategies and forecasts, or data belonging or processed for the other party are confidential (the "Confidential Information"). The receiving party may only use the Confidential Information for the furtherance of this Agreement and shall not disclose the Confidential Information to any third party, other than employees who have a need to have access and knowledge of the Confidential Information solely for the purpose identified above. Either party agrees to take all appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure of the Confidential Information.

This non-disclosure commitment is not applicable to information already known in the public domain as of its disclosure, but remains enforceable as long as Confidential Information is not subsequently available to the public through no breach of this Section by the receiving party.

- 10.2 **Data protection:** In addition to the terms of section 3.6 above, Customer is solely liable for processing personal data in connection with the Product, the Cloud Services and SAAS Services and holds Neotys fully indemnified thereof. Customer shall comply with any and all applicable legislation in connection with personal data protection and, in particular, shall be solely responsible for making any request or fill in any form in order to obtain the necessary authorizations in connection with the process of data with the Solution, as the case may be. Customer shall also inform any individual concerned by the process of personal data and obtain its consent as provided for by applicable legislation. Customer undertakes to process and keep personal data in compliance and only for the furtherance of the purposes as agreed by the individuals concerned, as the case may be, , and shall indemnify and hold NEOTYS harmless thereof.

Where Neotys collects and processes personal data of individuals within Customer's organization, it shall be authorized to do so under the terms of the data protection policy available at <https://www.neotys.com/legal>.

11. **EXCLUSION AND LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, UNDER NO CIRCUMSTANCES SHALL NEOTYS, ITS LICENSORS OR ITS PARTNERS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, EVEN IF A THIRD PARTY RAISES AN ACTION, FOR ANY CLAIMS OR COSTS, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LOST SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA OR DATA RENDERED INACCURATE, ARISING OUT OR RELATED TO THE PRODUCT, THE USE, RELIANCE ON, OR INABILITY TO USE THE PRODUCT, THE PROVISION OR FAILURE TO PROVIDE SERVICES, OR A FAILURE OF THE PRODUCT TO OPERATE WITH ANY OTHER PROGRAMS, AND EVEN IF NEOTYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL NEOTYS BE HELD LIABLE FOR ANY OTHER DAMAGES THAN DIRECT DAMAGES EVIDENCED AS ATTRIBUTED TO IT, SUBJECT TO THE FOLLOWING LIMIT: IN NO EVENT WILL THE AGGREGATE LIABILITY THAT NEOTYS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE FEES CUSTOMER ACTUALLY PAID TO NEOTYS FOR THE SPECIFIC PRODUCT OR SERVICES THAT DIRECTLY CAUSED THE DAMAGE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW,

THE HEREIN EXCLUSION AND LIMITATION OF LIABILITY WILL APPLY REGARDLESS THE LEGAL THEORY WHETHER IN CONTRACT, TORT, WARRANTY, INFRINGEMENT, EQUITY OR OTHERWISE. NOTHING IN THIS AGREEMENT SHALL OPERATE, HOWEVER, SO AS TO EXCLUDE OR LIMIT NEOTYS' LIABILITY TO CUSTOMER FOR DEATH OR PERSONAL INJURY ARISING OUT OF NEGLIGENCE, GROSS NEGLIGENCE OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW.

12. **TERMINATION.**

Without prejudice to any right to compensation for any damage suffered, NEOTYS may immediately terminate this Agreement and the relevant Order ipso jure, without further obligation or liability, (i) if Customer fails to pay any applicable fees due within fifteen (15) days after receipt of written notice from NEOTYS of non-payment ; (ii) if Customer or any of the users breaches any term or condition hereof and fails to correct such breach to the reasonable satisfaction of NEOTYS within thirty (30) days after NEOTYS notifies Customer in writing; or (iii) to the extent authorized under applicable law, if Customer ceases to carry on business as a going concern, becomes the object of the institution of proceedings in bankruptcy or liquidation, or a receiver or similar officer is appointed with respect to a substantial part of its assets. Upon termination for any reason then all rights granted to Customer hereunder will cease, and Customer will forthwith (i) purge the Product from all of Customer's computer systems, storage media and other files, (ii) destroy or return to NEOTYS all copies of the Product and other documentation or equipment belonging to NEOTYS, and (iii) deliver to NEOTYS a certification which certifies that Customer has complied with these termination obligations. Any obligation that by its nature shall persist will survive the termination of this Agreement but shall in no event imply or create any continued right to use the Product or Services after termination of this Agreement.

13. **TRADEMARKS/ SERVICE MARKS.** This Agreement does not grant Customer any rights in connection to any trademarks or service marks of NEOTYS.

14. **AUDIT.** At NEOTYS' written request, Customer undertakes to provide NEOTYS with a **written** certification, duly executed by an authorized person (i) certifying that the Product and Documentation are being utilized pursuant to the provisions of this Agreement and the relevant Order and (ii) listing the location(s), type(s) and serial number of any and all environment in which the Product is being used. Customer agrees to grant NEOTYS or its representatives reasonable access during normal working hours to its facility in order to audit the use of the Product and ensure compliance with this Agreement and the relevant order. If an audit reveals that Customer has underpaid fees to NEOTYS, Customer agrees to pay the applicable fees, in effect at the time the audit is completed, for additional capacity. If the understated fees exceed 5% of the license fees initially paid, then Customer agrees to also pay NEOTYS' reasonable costs of conducting the audit.

15. **FORCE MAJEURE.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance of its obligations hereunder due to events outside the defaulting party's reasonable control, such as significant failure of a part of a power grid, significant failure of the Internet, natural disaster, war, riot, epidemic, organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry. The obligations of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

16. **GOVERNING LAW / LITIGATION.** This Agreement shall be construed and enforced in accordance with the laws of France, without giving effect to the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. THE PARTIES EXPRESSLY AGREE THAT ANY DISPUTE ARISING OUT OR IN CONNECTION WITH THE AGREEMENT OR ANY ORDER

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SHALL BE SUBJECT TO THE COURTS COMPETENT FOR NEOTYS REGISTERED OFFICE'S LOCATION IN FRANCE. However, in the event the Customer's principal headquarters are located in North America, then this Agreement shall be construed and enforced in accordance with the laws of the State of New York, USA, without giving effect to the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. THE PARTIES EXPRESSLY AGREE THAT ANY DISPUTE ARISING OUT OR IN CONNECTION WITH THE AGREEMENT OR ANY ORDER SHALL BE SUBJECT TO THE COURTS COMPETENT FOR NEOTYS REGISTERED OFFICE'S LOCATION IN THE UNITED STATES.

17. **INDEPENDENT CONTRACTORS.** NEOTYS and Customer are independent contractors and this Agreement does not create any agency, partnership, joint venture, or franchise relationship between NEOTYS and Customer. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the party by virtue of the existence or the implementation of this Agreement. Customer shall conduct its services and business at its own risk and expense. Customer shall not bind NEOTYS to any agreement with Customer's own clients nor shall agree to any obligation or liability on behalf of NEOTYS. Customer shall not at any time identify itself as acting or making any communication for or on behalf of NEOTYS and shall not communicate in the name of NEOTYS.
18. **SEVERABILITY.** In the event that any of the terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.
19. **WAIVER.** No waiver of rights under this Agreement by NEOTYS shall constitute a subsequent waiver of any other right under this Agreement.
20. **OPEN SOURCE SOFTWARE COMPONENTS EMBEDDED IN NEOLOAD®.** Customer acknowledges that the Product may contain or be accompanied by certain Open Source software products ("Open Source Software"). These Open Source Software, if any, are identified in, and subject to, special license notices, terms and/or conditions as set forth in the "legal" directory accompanying the Product ("Open Source Notices"). The Open Source Notices may include important licensing and warranty information and disclaimers.

In the event of conflict between the Open Source Notices and the other portions of this Agreement, the Open Source Notices will take precedence (but solely with respect to the Open Source Software to which the Open Source Notices relate). In particular, to the extent the terms of the Open Source Notices prohibit any of the restrictions in this Agreement with respect to the Open Source Software, such restrictions will not apply to such Open Source Software. To the extent the terms of the Open Source Notices require NEOTYS to make an offer to provide source code in connection with the Product, such offer is hereby made and the Customer may exercise it by contacting contact@neotys.com.

Furthermore, subject to the Open Source Software being used embedded in the Product and not independently or otherwise, NEOTYS agrees to provide the warranty under Section 3.8 and the maintenance services under Section 5 in relation to the Open Source Software, to the exclusion of Section 9.2 which shall not be applicable.

NeoLoad embeds Open Source Software components submitted to specific licenses listed as follows:

Apache License, version 2.0 (see ApacheLicense-2.0.txt):

- from the Apache Software Foundation: Axis, Batik, commons-chain, commons-cli, commons-codec, commons-collections4, commons-digester, commons-exec, commons-io, commons-lang3, commons-math3, CXF, excalibur-logger, jorphan, Geronimo, HTTPClient, Jakarta ORO,

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neethi, Onami, Santuario, Shiro, WSS4J, Xalan, xml-apis, xml-resolver, XMLSchema
- From other editors: Atinject, ActionButtonTextField, bson, cglib-nodep, componentrenderer, Cryptacular, CyberNeko, Daisy Diff, dhcp4java, Ehcache, equalsverifier, guava, guice, ini4j, Jackson, Jasypt, javax.inject, Jettison, Jetty, Joda-Time, JsonPath, json-smart, hazelcast, hibernate-validator, Lexaden breadcrumb, logstash-logback-encoder, mycila-guice, mongodb-driver-async, mongodb-driver-core, mongo-java-driver, Mvel, Netty, npn-boot, Opencsv, OpenSAML, Plexus, quartz-mongodb, Querydsl, RxJava, snakeyaml, Spring Framework, SyntaxPane, Stax, Vaadin, Vert.X, woodstox

Apache License, version 1.1

Hessian from Caucho (See hessian.txt)

BSD style license

ASM from OW2 (see asm.txt), Bounce from Edwin Dankert (see bounce.txt), Bouncy Castle Crypto API from the Legion of the Bouncy Castle (see bouncycastle.txt), DOM4J by MetaStuff (see dom4j.txt), Dummynet (see files stating by "dummynet"), dnsjava (see dnsjava.txt), hamcrest-core (see hamcrest.txt), JDOM (see jdom.txt), JSON by JSON.org (see json.txt), Trilead SSH2 (see trilead.txt), XStream from Codehaus (see xstream.txt).

CDDL 1.0(Common Development and Distribution License, see CDDL-1.0.txt)

EJB-API, Grizzly, JAXB, javax.mail-api, javax.servlet-api, JMS API, Tyrus

CPL 1.0(Common Public License Version, see CPL-1.0.txt)

wsdl4j

Eclipse Public License, Version 1.0 (see Eclipse Public License-1.0.html)

Aether, Logback, True Commons, TrueVFS, WAFFLE JNA implementation

LGPL version 2.1 (GNU *Lesser General Public License*, see LGPL-2.1.txt)

Hibernate, javassist, JCalendar from Kai Toedter, JNA, Primitive Collections for Java from Søren Bak, Remote Tea, Trove (see trove.txt),

LGPL version 3 (GNU *Lesser General Public License*, see LGPL-3.txt)

BlazeDS project from Adobe, GraniteDS, HTML Parser, jNetPcap, oncrpc, Primitive Collections for Java, XOM

MIT License

Brotli, CAL10N from QOS.ch under the terms of the MIT License (see qos.txt), exifcient, Java-jwt (see mit-java-jwt.txt), jIconFont, jsoup (see mit-jsoup.txt), plist from Daniel Dreibrodt (see plist.txt), Sysout-over-slf4j (see mit-sysout.txt), SLF4J (see mit-qos.txt), unirest from Mashape (see mashape.txt)

MPL1.1 (MOZILLA PUBLIC LICENSE, see MPL-1.1.txt)

Rhino

Public Domain

AOP Alliance, Dough Lea's util.concurrent package, XZ for Java

WTFPL

Reflections

Other

Colt (see colt.txt), HTML Tidy from World Wide Web Consortium (see tidy.txt), JIMI from Sun Microsystems (see jimi.txt), Lightweight Java SNMP Stack from Westhawk (see westhawk.txt), XML Pull Parser (XPP) (see indiana_university.txt)

Related license files are located in the "legal/third parties" directory of NeoLoad folder.

21. **NO ASSIGNMENT.** Customer shall not duplicate, assign or transfer rights in connection with this Agreement and/or the Product, in whole or in part, under whatever media or manner, for any purpose, without NEOTYS' prior written approval. NEOTYS shall be free to assign part or all of its obligations hereunder. NEOTYS may use third party service providers to perform all or any part of the Services, but NEOTYS remains responsible to Customer under this Agreement for Services performed by third party service providers as if NEOTYS performed the Services itself.
22. **EXPORT.** Customer acknowledges that the export of the Product is subject to export or import control and Customer agrees that the Product or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. In furtherance of Customer's export restriction agreements set forth above, Customer agrees as follows: (a) Customer represents that it is not under the control of the government of Cuba, Iran, Sudan, North Korea, Syria, or any country to which the United States has prohibited export; (b) Customer will not download or otherwise export or re-export the Product or Documentation, directly or indirectly, to the countries referenced above or to citizens, nationals or residents of those countries; (c) Customer represents that it is not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor is Customer listed on the United States Department of Commerce Table of Denial Orders; and (d) Customer will not allow the Product to be used for any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.
23. **COMPLIANCE WITH APPLICABLE LAW.** Customer is solely responsible for Customer's compliance with, and Customer agrees to comply with, all applicable laws, rules, and regulations in connection with Customer's use of the Product or Services.
24. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Product is deemed to be commercial computer Product as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Licensed Product - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Licensed Product or Commercial Computer Licensed Product Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Product by the U.S. Government shall be solely in accordance with the terms of this Agreement.
25. **ENTIRE AGREEMENT.** This Agreement and any related Order are the complete and exclusive agreement between Customer and NEOTYS relating to the Product or the Services and supersedes any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This Agreement may only be modified by a written amendment signed by the parties.
26. **COPYRIGHT.** NeoLoad®, Copyright (c) 2004-2018, NEOTYS, NeoLoad®, Copyright (c) 2018, NEOTYS. All rights reserved.

If you have any questions about this Agreement or if you want to contact NEOTYS for any further information, please send an email to contact@neotys.com.

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EXHIBIT I

MAINTENANCE CONDITIONS

1. Maintenance Description

NEOTYS' personnel shall perform the technical support dedicated to the Customer. NEOTYS reserves the right to provide part of the Services through authorized partners.

Technical support shall be available on working days at regular NEOTYS office hours except on NEOTYS recognized holidays. In the event Services are made unavailable on an exceptional basis, the Customer will be informed seven (7) days before suspension.

The Customer will be able to contact the technical support of NEOTYS on the Internet at « <http://www.neotys.com/support/> ».

2. Fault Management Procedure

For every report of a fault by the Customer, a trouble-ticket number is set.

Then, NEOTYS processes the Customer's support need as follows:

A - Submission of the Fault to the Technical Support of NEOTYS

Whether the fault is reported to the technical team of NEOTYS by phone, e-mail, or Web, the Customer shall provide the documents, information, and other elements necessary for NEOTYS to clearly identify the fault. Such documents should at least cover the following:

- Description of the trouble (name, detailed description, consequences);
- Environment (hardware, Product, other software);
- Recursive attempts (scripts, configuration, and instructions to locate the fault);
- Contact Information of the Customer.

B - Fault Record and Priority Rating

An engineer of NEOTYS' technical support team shall respond to the request of the Customer under the conditions as described in paragraph 4 below.

NEOTYS shall acknowledge receipt of the request and shall grant a reference number to the fault for further needs.

The engineer at the technical support of NEOTYS shall rate the fault level. The priority may be defined with the Customer.

The fault priority will be defined in accordance with the following criteria used as guidelines to establish the following three (3) levels scale:

- Priority 1: critical deficiency meaning that the Product does not work;
- Priority 2: moderate impact standing for a Product failure;
- Priority 3: minimum impact involving a change in the Product package (in particular, documentation updates, presentation defaults, enhancement requests).

C - Trouble-shooting Management Conditions

The engineer of NEOTYS' technical support team shall try to produce the fault again with the information given by the Customer. The fault shall be properly described for NEOTYS to identify it. The engineer shall qualify the fault, and will determine whether the fault is due to the use or misuse of the Product or to a Product faulty feature.

- When the fault is due to misuse of the Product by the Customer and not to a Product deficiency, the engineer of NEOTYS' technical support team shall consult the knowledge base on the Product and, if useful, on the add-ons before giving the Customer a solution (level 1). He/she shall answer questions in connection with the Product and shall provide any information, recommendation and instruction to solve the trouble. When the solution is accepted by the Customer, the trouble-ticket is closed. Otherwise, the escalation procedure will be triggered and the fault will be processed by the Engineering department of NEOTYS as follows (level 2).
- When the fault is due to a Product deficiency, the ticket shall be processed by the Engineering department of NEOTYS to upgrade the Product (level 2). The engineer of NEOTYS' technical support team shall suggest a workaround solution. When the solution is accepted by the Customer, the trouble-ticket is closed. When there is no solution to bypass the fault, NEOTYS shall tackle the issue in the next Product upgrade. Should the Customer notify NEOTYS that it

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is not satisfied, the technical team of NEOTYS shall inform the management team of NEOTYS who shall decide the best way to solve the fault and meet the Customer's request.

D - Trouble Processing Reports

The contact person of the Customer will receive reports on the trouble processing from NEOTYS' technical support team. Reports will be issued regularly according to the priority level as agreed between the technical team and the Customer.

E - Trouble-ticket Closure

A trouble-ticket is closed, when the fault is not due to the Product and/or to the add-ons, or when:

- The problem has been resolved ;
- A suitable workaround solution is in place ;
- A satisfactory answer or reply has been made ; or
- A new release of the Product fixes the problem.

3. Unlimited Support

The authorized contacts of the Customer will be able to report trouble to the engineers at the technical support of NEOTYS without any fault limit for the duration of the Agreement.

4. Leadtimes

A fault reported by the Customer shall be acknowledged by NEOTYS within 2 working hours.

Leadtimes are defined as the timeframes between the time the Customer reports a fault to NEOTYS, and the time when the engineers at the technical support of NEOTYS start processing the ticket. The following standard leadtimes are for information purposes only:

- During working day for priority 1 faults,
- Next working day for priority 2 and 3 faults.

5. Maintenance restrictions.

Maintenance Services only include support in connection with defaults of the Product to the exclusion of design related problems. They do not include support for other software, hardware or operating system which are not covered by this Agreement. Maintenance Services do not include system administration related problems, system configuration and test assistance, except as specifically agreed by NEOTYS in writing. NEOTYS is not liable for the Product deployment in the technical environment (hardware and software) of the Customer, the interoperability of the Product with other operating/information systems, and consultancy services required to audit the Customer's needs and adjust the Product accordingly. NEOTYS reserves the right to terminate the Maintenance Services in connection with a Product more than one New Version back to the current version or more than two years release old, should one of these conditions be fulfilled. Updates and New Versions do not include products that NEOTYS either markets or prices separately or which NEOTYS does not make generally available to its customers that subscribe to NEOTYS' applicable maintenance and support services program for the Product.

For the avoidance of doubt, the following support services are expressly excluded: (i) development of new software programs, (ii) appending or modifying the existing programs unless required under mandatory applicable law, (iii) training the Customer staff, (iv) ensuring data backups, and (v) onsite maintenance.

NEOTYS shall not be liable to supply the Maintenance Services in the following cases: (a) defaults are due to the Customer misusing the Product, (b) the Product has been altered, modified or maintained by the Customer, or any third party, without the prior written consent of NEOTYS, (c) modifications made by the Customer are significantly different from those which were applicable at the time the Product was delivered for license, or (d) malfunctions are due to reasons external to the Product including, but not limited to, failure or interruption of the telecommunications and/or electrical networks, deficiencies of the hosting hardware, accidents or natural disasters.

EXHIBIT II

NEOTYS provides clear and detailed service level objectives in relation to SAAS Services it provides to Customer. These service level objectives are targets and guidelines used by NEOTYS to deliver the SAAS Services. They in no way create a legal requirement or obligation for NEOTYS to always meet these objectives.

1. SAAS Services availability

Neotys software services providing the Services are fully redundant to ensure high availability. NEOTYS will use commercially reasonable efforts to operate and manage the SAAS Services with a ninety-nine and one-half percent (99,5%) uptime goal, excluding an outage that results from the following:

- Operations of maintenance and updates;
- Acts or omission of Customer, including use of third party hardware or software, significant change in content, mis-configuration or bad or unintended usage of the SAAS Services;
- Failure of the Internet or any other network unavailability outside of NEOTYS' control.

2. Back up and data recovery

Neotys shall make commercially reasonable efforts to carry out daily backup copies of Customer data generated under SAAS Services and storing and maintaining such data for a period of time consistent with NEOTYS standard business processes. Should such data be, accidentally or not, destroyed or lost by Customer, it may be restored by NEOTYS to Customer, at NEOTYS' sole option, as an extra service for a fee.

3. Security measures

NEOTYS shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of SAAS Services.

Neotys's datacenter has an availability classified Tier III by Uptime Institute, ISO 27001 and SSAE16 (SOC 1, SOC 2, SOC 3) certifications. It is also compliant with GDPR:

<https://aws.amazon.com/blogs/security/all-aws-services-gdpr-ready/>.

SaaS user interface is encrypted using TLS1.2 with AES 128 bits encryption to ensure security over the wire.

Access to Neotys' SaaS platform infrastructure and data for the Services is and will remain secured by multiple authentication challenges including RSA and DSA key pairs, passwords, and network access control lists. Infrastructure and data access is and will remain restricted to Neotys employees and contractors that need to operate and maintain the platform, all of whom are under strict confidentiality agreements.

Insofar as reasonably possible, Neotys undertakes to assist Customer in answering requests in connection with modification or deletion of data.

Neotys also undertakes to notify the Customer with any security breach after being aware of such breach. Such notification shall include any documentation necessary to enable Customer, if necessary, to notify the breach to any public authority.

4. Service decommissioning

Customer data shall be deleted 30 days following the termination of the SAAS Services.

State Enterprise Centre of Registers:

Director General
Saulius Urbanavičius

/Seal/

Neotys SAS:

VP Sales EMEA
Thomas Ripoché



/Seal/

(Form of the statement of transfer and acceptance of the Products)

STATEMENT OF TRANSFER AND ACCEPTANCE OF THE PRODUCTS

15/05/2019 No _____

(place of contract)

The responsible persons signing this statement note that, in accordance with the provisions of the signed Purchase and Sale Contract for License Support for the Neotys NeoLoad Software No. __, the Seller transfers, and the Purchaser accepts the Products specified in the following table:

Ser. No.	Product name	Quantity (units)
1	NeoLoad Gold Support for NeoLoad License until 31/12/2020	1

If due to the deficiencies found during the transfer and acceptance process the Products or a part thereof are refused to accept, the deficiencies shall be indicated and described in the following table:

Ser. No.	Description of the Products' deficiencies	Term for elimination of the Products' deficiencies	Notes

Note: if no deficiencies in quantity, assembly, or quality of the Products are found, the table should be crossed in the "Z" shape.

THE PRODUCTS ACCEPTED BY:

THE PRODUCTS TRANSFERRED BY:

(position)
(full name)

VP Sales
/Seal/ Thomas Ripoché
NEOTYS SAS
389 Avenue du Château de Jouques
13420 GEMENOS /Seal/
FRANCE
Siret : 480 255 900 00056 - APE 5829C

State Enterprise Centre of Registers:

Director General
Saulius Urbanavičius /Seal/

VP Sales EMEA
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