Blue Spider
Software Licence and
Maintenance Agreement

NAVSYSTEMS IOM LIMITED

Software Licence and Maintenance Agreement

DATE:

PARTIES:

(1) **NAVSYSTEMS IOM LIMITED**, a company incorporated in the Isle of Man (registration number 122393C having its registered office at Kissack Court, Parliament Street, Ramsey, Isle of Man, IM8 1AT (the "**Licensor**"); and

(2) [*INSERT COMPANY NAME...*], a company incorporated in [Insert Country / Jurisdiction.........................] (registration number [...reg no...................] having its registered office at [*insert address details*
....
....] (the
"**Licensee**").

BACKGROUND:

(A) NAVSYSTEMS has developed and maintains the Blue Spider software suite and the parties have agreed that the NAVSYSTEMS will license this software to the Licensee, and maintain that software, under the terms of this Agreement.

(B) The Blue Spider software is licensed on the basis of one paid license per Blue Spider server and unlimited usage on workstations. Use on workstations not connected to a Blue Spider server is feature limited and outside of the scope of the maintenance terms. For the usual installation on a ship one Blue Spider server is required but two may be used for optional dual redundancy.

(C) The Software License may be purchased on an annual lease basis, or at our discretion, where only required for a limited period of time may instead be supplied under rental.

AGREEMENT:

1. Definitions and interpretation

1.1 In this Agreement:

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means this software licence and maintenance agreement (including the Schedules) and any amendments to it from time to time;

"**Business Day**" means any week day, other than a bank or public holiday in the Isle of Man;

"**Business Hours**" means between 09:00 and 17:30 GMT on a Business Day;

"**CCN**" means a change control notice issued in accordance with Clause [8], which may be in the form specified in Schedule [4];

"**CCN Consideration Period**" means the period of 30 Business Days following the receipt of a CCN sent by the other party;

"**Change**" means any change to the terms of this Agreement;

"**Charges**" means the amounts payable by the Licensee to the Licensor under or in relation to this Agreement (as set out in Schedule [3]);

"**Confidential Information**" means the Licensee Confidential Information and the Licensor Confidential Information;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" will be construed accordingly);

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Licensee Confidential Information**" means

(a)   any information disclosed (whether disclosed in writing, orally or otherwise) by the Licensee to the Licensor that is marked as "confidential", described as "confidential" or should have been understood by the Licensor at the time of disclosure to be confidential;

(b)   the terms and conditions of this Agreement; and

"**Licensee Indemnity Event**" has the meaning given to it in Clause [13.1];

"**Licensee Representatives**" means an employee, subcontractor or agent appointed by the Licensee;

"**Licensor Confidential Information**" means:

(a)   any information disclosed (whether disclosed in writing, orally or otherwise) by the Licensor to the Licensee that is marked as "confidential", described as "confidential" or should have been understood by the Licensee at the time of disclosure to be confidential;

(b)   the terms and conditions of this Agreement;

(c)   any source code provided;

"**Licensor Representatives**" means employees of NAVSYSTEMS and appointed sub-

contractors;

"**Maintenance Services**" means the support and maintenance services provided or to be provided by the Licensor to the Licensee in accordance with Schedule [2];

"**Minimum Maintenance Period**" means the period of 12 months beginning on the date of delivery of the Software to the Licensee, or in the case of rental, the duration of the rental period.

"**Modifications**" means additions, edits, alterations and modifications made to the Software by the Licensor or the Licensor's authorised sub-contractors under Schedule [2] including Upgrades applied to the Software;

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Representatives**" means the Licensee Representatives and the Licensor Representatives;

"**Schedule**" means a schedule attached to this Agreement;

"**Software**" means the computer software identified in Schedule [1] in executable format only, including where the context permits any authorised derivatives of that computer software and including where the context permits any Upgrades and Modifications applied to the Software; and

"**Source Code**" means the source code of the Software, together with all other technical information reasonably required to enable the maintenance, updating and modification of the Software, including where the context permits any authorised derivatives of the source code;

"**Term**" means the term of this Agreement; and

"**Upgrades**" means new versions of, and updates to, the Software released by the Licensor to its customers generally, whether for the purpose of fixing an error, bug or other issue in the Software or enhancing the functionality of the Software.

1.2 In this Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.

2. Term

This Agreement will come into force on the Effective Date and will continue in force indefinitely, unless terminated in accordance with Clause [17].

3. Project management
Where the Licensee requires that additional features are developed on their behalf:

3.1 The Licensee will ensure that any special instructions in relation to this Agreement will be

given by a Licensee Representative to a Licensor Representative, and the Licensor:

(a)   may treat all such instructions as the fully authorised instructions of the Licensee; and

(b)   will not comply with any other instructions in relation to this Agreement without first obtaining the consent of a Licensee Representative.

3.2   The parties will hold project management meetings at a mutually agreeable location and/or and by telephone and via the internet:

(a)   at the reasonable request of either party.

3.3   A party requesting a project management meeting to be held will give to the other party at least 10 Business Days' notice of the meeting.

3.4   Wherever necessary to enable the efficient conduct of business, the Licensee will be represented at the project management meetings by at least one Licensee Representative and the Licensor will be represented at a project management meeting by at least one Licensor Representative.

4.   Delivery of Software

The Licensor will make the latest version of the Software available to the Licensee via web download following the Effective Date and for the duration of the agreement. Activation codes will be provided for each server for which a license has been purchased. Replacement activation codes and annual renewal re-activation will be provided when required.

5.   Maintenance Services

5.1   From the date of delivery of the Software under Clause [4], the Licensor will provide the Maintenance Services to the Licensee.

5.2   Either party may terminate the Maintenance Services at any time by giving at least 90 days' written notice expiring at or after the end of the Minimum Maintenance Period to the other party.   Where the Maintenance Services are terminated under this Clause, the other provisions of this Agreement will continue notwithstanding such termination.

5.3   If the Licensor stops or makes a good faith decision to stop:

(a)   providing support and maintenance services in relation to the Software to its customers generally; and

(b)   distributing new Upgrades for the Software,

then the Licensor may terminate the Maintenance Services by giving at least 90 days' written notice if termination to the Licensee expiring at or after the end of the Minimum Maintenance Period.   Where the Maintenance Services are terminated under this Clause, the other provisions of this Agreement will continue notwithstanding such termination.

5.4   The Licensor may sub-contract the provision of any of the Maintenance Services without obtaining the consent of the Licensee.

5.5   The Licensor may suspend the provision of any Maintenance Services under this Agreement if any amounts due to be paid by the Licensee to the Licensor under this

Agreement are overdue by more than 30 days.

6.   Scope of Maintenance and Support

6.1   The Licensor will provide the Licensee with: up to 24 hours support time per year for any purpose. Thereafter the Licensor is not obliged to respond to ad-hoc queries and will do so at their discretion when the support request is deemed to be reasonable. Reasonable requests include reports of any problems. Unreasonable requests may include such things as expecting the Licensor to help with general IT support issues or third party software.

6.2   The Licensor will periodically issue new releases of the software. While the subscription remains active the Licensee will have access to all new versions and updates to the software.

6.2   Additional support time may be purchased if needed.

7.   Licensee obligations

7.1   The Licensee will provide the Licensor with:

(a)   such access to the Software and its computer systems and such other co-operation as is required by the Licensor (acting reasonably) to enable the performance by the Licensor of its obligations under this Agreement; and

(b)   all information and documents required by the Licensor (acting reasonably) in connection with the provision of the Maintenance Services;

7.2   The Licensee will be responsible for procuring any third party co-operation reasonably required by the Licensor to enable the Licensor to fulfil its obligations under this Agreement.

7.3   The Licensee is expected to use the latest version of the software and regularly check for updates. Use of older versions of the software is generally discouraged and may lead to support requests being rejected if issues are encountered which have been resolved in the latest generally available releases.

8.   Invoicing and payment

8.1   The Licensor will issue invoices for the Charges to the Licensee on or after the invoicing dates set out in Schedule [3].

8.2   The Licensee will pay the Charges to the Licensor within 30 days of the date of receipt of an invoice issued in accordance with Clause [7.1].

8.3   All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise.

8.4   Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Licensor to the Licensee from time to time).

8.5   If the Licensee does not pay any amount properly due to the Licensor under or in connection with this Agreement, the Licensor may:

(a)   charge the Licensee interest on the overdue amount at the rate of 4% per month with interest compounded monthly or the maximum amount allowed by law, whichever is less.

(b)   claim interest and statutory compensation from the Licensee pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9.   Change control

9.1   The provisions of this Clause [9] apply to all Changes requested by a party.

9.2   Either party may request a Change at any time.

9.3   When requesting a Change, the requesting party will notify the other party and provide a CCN (which may be in the form specified in Schedule [4]). The CCN will set out (as a minimum):

(a)   details of the impact on the timetable for the provision of the Maintenance Services or the scope of the licence of the Software;

(b)   details of any additional resources expected to be required as a result of the Change; and

(c)   details of any variation to the Charges consequent upon the Change.

9.4   The other party will consider any proposed Change within the CCN Consideration Period.

9.5   Either party may:

(a)   accept or reject a CCN issued by the other party;

(b)   request further information concerning any aspect of a CCN issued by the other party; and/or

(c)   request amendments to a CCN issued by the other party.

9.6   Following agreement of a CCN, each party will confirm its agreement to the CCN by:

(a)   signing a copy of the CCN and sending the signed CCN to the other party; or

(b)   otherwise sending its written acceptance of the CCN to the other party.

9.7   Until a CCN recording a proposed Change has been signed or agreed in writing by each party, the proposed Change will not take effect.

10.   Licence

10.1   Subject to the limitations set out in Clause [10.2] and the prohibitions set out in Clause [10.3], the Licensor hereby grants to the Licensee from the date of delivery of the Software to the Licensee a licence to:

(a) install the Software;

(b) use the Software in accordance with its documentation;

(c) back-up the Software;

and the Licensee must not sub-license these rights.

10.2 Save to the extent that the Licensor has given its express written consent, the licence granted by the Licensor to the Licensee under Clause [9.1] is subject to the following limitations:

(a) the Software may only be used by the employees, agents and sub-contractors of the Licensee and:

(i) where the Licensee is a company, the Licensee's officers;

(ii) where the Licensee is a partnership, the Licensee's partners; and

(iii) where the Licensee is a limited liability partnership, the Licensee's members;

(b) the Licensee must comply at all times with the terms of the end user licence agreement set out in Schedule [6], and must ensure that all users of the Software agree to and comply with the terms of that end user licence agreement;

10.3 Except to the extent mandated by applicable law or expressly permitted in this Agreement, the licences granted by the Licensor to the Licensee under this Clause [9] are subject to the following prohibitions:

(a) the Licensee must not sub-license the Software;

(b) the Licensee must not sell, resell, rent, lease, supply, publish or distribute the Software;

(c) the Licensee must not alter or adapt or edit the Software except where such adaptations are allowed e.g. development of plug-ins or other extensions of the Blue Spider software.

(d) the Licensee must not de-compile or reverse engineer the Software; and

11. Intellectual Property Rights

11.1 Notwithstanding any other provision of the Agreement, licences granted by the Licensor under this Agreement are subject to the payment by the Licensee of all amounts owing to the Licensor under this Agreement in full and on time. In the event that the Licensee owes any amount to the Licensor under this Agreement and fails to pay that amount to the Licensor within 14 days of receiving a notice:

(a) requiring it to do so; and

(b) specifying that the licences will terminate if the amount remains unpaid,

then the Licensor may immediately terminate the licences granted by the Licensor under this Agreement by giving written notice of termination to the Licensee.

12. **Warranties**

12.1 The Licensee warrants and represents to the Licensor:

(a) that it has the legal right and authority to enter into and perform its obligations under this Agreement; and

(b) that any works or materials provided by or on behalf of the Licensee to the Licensor for the purpose of assisting with or enabling the maintenance of the Software, and their use by the Licensor in accordance with the terms of this Agreement will not:

(i) infringe any person's Intellectual Property Rights or other legal rights;

(ii) breach any laws, statutes or regulations; or

(iii) give rise to a cause of action against the Licensor or the Licensee or any other person,

in each case in any jurisdiction and under any applicable law.

12.2 The Licensor warrants to the Licensee:

(a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;

(b) that it will perform its obligations under this Agreement with reasonable care and skill;

(c) that the Software will at the date of delivery of the Software perform in accordance with the documentation accompanying the Software;

(d) that the use of the Software by the Licensee in accordance with the terms of this Agreement will not:

(i) infringe any person's Intellectual Property Rights or other legal rights;

(ii) breach any laws, statutes or regulations; or

(iii) give rise to a cause of action against the Licensor or the Licensee or any other person,

in each case in any jurisdiction and under any applicable law; and

(e) the Software will be supplied free from viruses and other malicious software programs.

12.3 The Licensee acknowledges that:

(a) complex software is never wholly free from defects, errors and bugs, and the Licensor gives no warranty or representation that the Software will be wholly free from such

defects, errors and bugs;

(b) the Licensor does not warrant or represent that the Software will be compatible with any application, program or software not specifically identified as compatible in the documentation accompanying the Software; and

12.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

13. Indemnities

13.1 Subject to Licensor's compliance with Clause [13.2], the Licensee will indemnify and will keep indemnified the Licensor against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Licensor and arising as a result of any breach by the Licensee of Clause [12.1(b)].

13.2 The Licensor will indemnify and will keep indemnified the Licensee against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Licensee and arising as a result of any breach by the Licensor of Clause [12.2(d)]

14. Limitations and exclusions of liability

14.1 Nothing in the Agreement will:

(a) limit or exclude the liability of a party for death or personal injury resulting from negligence;

(b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

(c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law.

14.2 The limitations and exclusions of liability set out in this Clause [14] and elsewhere in the Agreement:

(a) are subject to Clause [14.1];

(b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty;

14.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

14.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.

14.5 Neither party will be liable for any loss of or damage to goodwill or reputation.

14.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.

14.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

14.8 Neither party will be liable for any losses arising out of a Force Majeure Event.

14.9 Neither party's liability in relation to any event or series of related events will exceed the greater of:

(a) £100; and

(b) the total amount paid and payable by the Licensee to the Licensor under the Agreement during the year immediately preceding the event or events giving rise to the claim.

15. Data protection

15.1 The Licensee warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Licensor under or in connection with this Agreement.

15.2 The Licensor warrants that:

(a) it will act only on instructions from the Licensee in relation to the processing of any Personal Data performed by the Licensor on behalf of the Licensee; and

(b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Licensor on behalf of the Licensee.

16. Confidentiality and publicity

16.1 The Licensor will:

(a) keep confidential and not disclose the Licensee Confidential Information to any person save as expressly permitted by this Clause [16];

(b) protect the Licensee Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.2 The Licensee will:

(a) keep confidential and not disclose the Licensor Confidential Information to any person save as expressly permitted by this Clause [16];

(b) protect the Licensor Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of

care.

16.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

16.4 The obligations set out in this Clause [16] shall not apply to:

(a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);

(b) Licensee Confidential Information that is in possession of the Licensor prior to disclosure by the Licensee, and Licensor Confidential Information that is in possession of the Licensee prior to disclosure by the Licensor;

(c) Licensee Confidential Information that is received by the Licensor, and Licensor Confidential Information that is received by the Licensee, from an independent third party who has a right to disclose the relevant Confidential Information; or

(d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

16.5 Neither party will make any public disclosure relating to this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

17. Termination

17.1 Either party may terminate this Agreement by giving to the other party not less than 30 days' prior written notice of termination, expiring at or after the end of the Minimum Maintenance Period.

17.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

(a) commits any material breach of any term of this Agreement, and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

(b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

17.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

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(ii)   ceases to conduct all (or substantially all) of its business;

(iii)   is or becomes unable to pay its debts as they fall due;

(iv)   is or becomes insolvent or is declared insolvent; or

(v)   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

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(b)   an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c)   an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or

(d)   (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

18.   Effects of termination

18.1   Upon termination of this Agreement, all the provisions of this Agreement (including for the avoidance of doubt the licences set out in Clause [9]) will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 7.5, 13, 14, 18 and 21].

18.2   Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

18.3   Upon termination of this Agreement by the Licensee under Clause [17.2] or Clause [17.3] the Licensee will be entitled to a refund of any Charges paid by the Licensee to the Licensor in respect of any Maintenance Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Licensor (such amount to be calculated by the Licensor using any reasonable methodology).

18.4   Subject to Clause [18.6], within 30 days following the termination of this Agreement, the Licensee will:

(a)   return to the Licensor or dispose of as the Licensor may instruct all documents and materials containing Licensor Confidential Information; and

(b)   irrevocably delete from its computer systems all Licensor Confidential Information.

18.5   Subject to Clause [18.6], at any time following the termination of this Agreement, the Licensor will within 30 days following receipt of a written request from the Licensee:

(a)   return to the Licensee or dispose of as the Licensee may instruct all documents and materials containing Licensee Confidential Information; and

(b)   irrevocably delete from its computer systems all Licensee Confidential Information.

18.6   A party may retain any document (including any electronic document) containing the

Confidential Information of the other party after the termination of this Agreement if:

(a)   that party is obliged to retain such document by any law or regulation or other rule enforceable against that party; or

(b)   the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document.

19.   Notices

19.1   Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by airmail, fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given or as notified by one party to the other in accordance with this Clause.

19.2   A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

(a)   where the notice is delivered personally, at the time of delivery;

(b)   where the notice is sent by post, 5 days after posting; and

(c)   where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

20.   Force Majeure Event

20.1   Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

20.2   A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will:

(a)   forthwith notify the other; and

(b)   will inform the other of the period for which it is estimated that such failure or delay will continue.

20.3   The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

21.   General

21.1   No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

21.2   If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in

effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

21.3 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

21.4 This Agreement may not be varied except in accordance with Clause [8] or by a written document signed by or on behalf of each of the parties.

21.5 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under this Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.

21.6 Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.

21.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

21.8 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

21.9 Subject to Clause [14.1]:

(a) this Agreement and the end user licence agreement referred to in Clause [9] constitutes the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

(b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

21.10 This Agreement will be governed by and construed in accordance with the laws of The Isle of Man; and the courts of The Isle of Man will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

The parties have indicated their acceptance of this Agreement by executing it below.

EXECUTION:

SIGNED by [*name of signatory*]
duly authorised for and on behalf
of the Licensor

....

Date:

SIGNED by [*name of signatory*]
duly authorised for and on behalf
of the Licensee

....

Date:

Schedule 1
Specification of Software

The specification of the software is to be found detailed in the user manual and the latest version of this may be downloaded from the Blue Spider website. http://bluespider.im

Schedule 2
Maintenance Service Levels

1.   Introduction

References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2.   Help-desk

2.1   The Licensor will make available, during Business Hours, a telephone and email help-desk facility for the purposes of:

(a)   assisting the Licensee with the proper use of the Software;

(b)   determining the causes of errors in the Software; and/or

(c)   fixing errors in the Software.

2.2   Subject to Paragraph [2.3], the Licensee must make all requests for Maintenance Services through the help-desk, and all such requests must include at least the following information: the Customer's name and contact details, and adequate information about the problem or issue giving rise to the request.

2.3   The Licensor will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.

3.   Response and resolution times

3.1   The Licensor will:

(a)   use reasonable endeavours to respond to requests for Maintenance Services made through the help-desk; and

(b)   use reasonable endeavours to resolve issues raised by the Licensee,

3.2   The Licensor will determine, acting reasonably, in to which severity category an issue raised through the Maintenance Services falls.

3.3   All Maintenance Services will be provided remotely unless expressly agreed otherwise by the Licensor.

4.   Upgrades

4.1   The Licensor will:

(a)   give to the Licensee reasonable prior notification of the general release of an Upgrade to the customers of the Licensor;

(b)   provide copies of such Upgrades to the Licensee promptly following the general release of the relevant Upgrade to the customers of the Licensor; and

4.2   Where the Licensee does not apply such an Upgrade to the Software, or notifies the Licensor

in advance of the application of an Upgrade to the Software that the Licensee does not wish the Upgrade to be applied, then the Licensee understands that the Licensor may not be able to provide maintenance and bug fixes to older versions of the software.

5.   Additional development work

5.1   After the delivery to the Licensee of the Software, the Licensee may request that the Licensor perform development work as part of the Maintenance Services for the purpose of creating new functionality for the Software, in which case

the Licensor will only be obliged to perform such development work if the parties agree in writing to their performance.

5.2   Where the Licensor is obliged to perform the development work, the following matters shall be agreed in writing by the parties using the Change control procedure (either before that obligation crystallises, or otherwise acting reasonably as soon as practicable thereafter): the scope of the development work, the estimated Charges, and the timetable for the performance of the development work.

6.   Limits on Maintenance Services

Where the total person-hours spent by the Licensor performing the Maintenance Services (excluding additional development work under Paragraph [5]) during any annual period exceed 80 hours, then:

(a)   the Licensor will cease to have an obligation to provide Maintenance Services to the Licensee during that period; providing that

(b)   the Licensor may agree to provide additional Maintenance Services to the Licensee during that period, but the provision of such services will be subject to payment by the Licensee of additional Charges at the Licensor's standard hourly rate from time to time.

6.2   The Licensor will have no obligation under this Agreement to provide Maintenance Services in respect of any fault or error caused by:

(a)   the improper use of the Software;

(b)   the use of the Software otherwise than in accordance with its documentation; or

(c)   any alteration to the Software (including repairs and upgrades) made without the Licensor's prior written consent.

6.3   **Access and use of Web Monitoring services**

We will allow you to monitor your vessels using our web monitoring service and will configure this for you on request. Without additional charge you are limited to a basic service without use of the data historian. On request and at additional change we can customise web monitoring and provide access to the data historian features.

6.4   **Remote Control**

We will allow you to try out the remote control features on evaluation but this service will incur an additional cost in order to use a standalone blue spider workstation for the purpose of connecting to the remote system(s) as a client.

Schedule 3
Charges

1. Introduction

1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2 The Charges under the Agreement will consist of the following elements:

(a) Licence and maintenance Charges;

(b) other Charges; and

(d) expenses.

2a. Licence and maintenance Charges

On:

(a) annually each year following the year in which the license was initially purchased;

the Licensor shall invoice the Licensee for a fixed Charge of £4,000.00 plus VAT in respect of Maintenance Services to be provided under Schedule [2] during that year.

Should additional maintenance time or support be required then we will notify you in advance and will only charge at an agreed rate.

2b. Rental Option

As an alternative to purchasing an initial license a rental option is offered at a rate of £100 per day per Blue Spider server machine with a minimum rental period of 20 days. If the rental is continued for a period of 120 days then there will be no further charge for the 121st day or thereafter and it will be treated as though a full license had been purchased. The daily rental charge includes maintenance for the period of rental.

4. Other Charges

4.1 In addition to the Charges detailed in Paragraphs [2] and [3] above, the Licensor will invoice in respect of, and the Licensee shall pay to the Licensor:

(a) Charges payable under Paragraph [5] or [6] of Schedule [2]; and

(b) all other Charges that are agreed between the parties in writing from time to time.

4.2 Where other Charges are to be calculated by reference to an daily rate, the following rates shall apply as at the date of this Agreement: £750.00 / per man day.

5. Expenses

5.1 The following expenses may be passed on by the Licensor to the Licensee at cost: *travel*

expenses, accommodation expenses and subsistence expenses.

5.2   The expenses may be invoiced by the Licensor to the Licensee at any time after the relevant expense has been incurred.

6.   Variation of Charges

The Licensor may vary the Charges payable under Paragraphs 2a, 2b, 3 and 4.2 on and from any anniversary of the Effective Date by giving to the Licensee not less than 90 days' written notice of the variation.

Schedule 4
Form of CCN

Title of Change:	
CCN number:	
Change proposed by:	
Date of issue of CCN:	
Date of CCN expiry:	
Summary details of proposed Change:	

1. Detailed description of Change.
2. Details of the impact on the timetable for the provision of the Maintenance Services.
3. Details of any additional resources expected to be required as a result of the Change.
4. Details of any variation to the Charges consequent upon the Change.
5. Any other consequences of, or matters relating to, the Change.

Schedule 5
Licensing

Computers on which Software may be installed:

One server (Blue Spider Engine machine) per Blue Spider license.

Number of computers on which Software may be installed:

Unlimited number of workstations per ship or fixed platform but only one (or two for dual redundancy) server machines per ship.

Premises at which the Software may be used:

Any vessel belonging to or chartered by the Licensee or their agents or for test or training purposes or on any other computer deemed suitable.

Schedule 6
EULA

BLUE SPIDER SOFTWARE END-USER LICENSE AGREEMENT

IMPORTANT-READ CAREFULLY:
Thank you for choosing Blue Spider. This is a license agreement between you and NAVSYSTEMS IOM LIMITED that describes your rights to use the Blue Spider software. You should review the entire agreement, including any linked terms, because all of the terms are important and together create this contract that applies to you.

This End-User License Agreement ("**Agreement**") is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the "**Licensee**"), and NAVSYSTEMS for the Software.
As used herein, "NAVSYSTEMS" means NAVSYSTEMS IOM LIMITED, a private company limited by shares and incorporated in the Isle of Man with company number 122393C

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BLUE SPIDER EULA – 04 Apr 2014
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BLUE SPIDER EULA – 04 Apr 2014

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4. Payment Terms/Shipments. All fees are in GBP. Fees are due within thirty (30) days of the date of the invoice. Licensee shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of NAVSYSTEMS). Any late payments may be subject to a service charge equal to 4% per month of the amount due with interest compounded monthly or the maximum amount allowed by law, whichever is less. All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable invoice. All shipments of any media will be FOB Origin.

5. Taxes. Fees do not include taxes. If NAVSYSTEMS is required to pay any sales, use, VAT, or other taxes in connection with Licensee's order, other than taxes based on NAVSYSTEMS' income, such taxes will be billed to and paid by Licensee. Licensee will make all payments of fees to NAVSYSTEMS free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to NAVSYSTEMS will be Licensee's sole responsibility and consequently the amount of such fees will be increased such that the net fee received by NAVSYSTEMS will be the same as if such withholding taxes were not imposed, and Licensee will provide NAVSYSTEMS with official receipts issued by the appropriate taxing authority, or such other evidence as the NAVSYSTEMS may reasonably request, to establish that such taxes have been paid.

6. Support and Maintenance.

NAVSYSTEMS IOM LIMITED
Reg No: 122393C

a. Support and Maintenance. NAVSYSTEMS shall provide the level of support and maintenance services ("**Support and Maintenance**") set forth on the applicable invoice, if any, during such period as Licensee has paid the applicable fee. Support and Maintenance will be provided in accordance with NAVSYSTEMS' then-current Support and Maintenance terms.

b. Supported Versions. Support and Maintenance is to end users with a current maintenance plan.

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6. Survival. Sections I.4 (Disclaimer), I.5 (Limitation of Liability), II.2 (Disclaimer), II.3 (Limitation of Liability), III.1.e (License Restrictions), III.3 (Ownership), III.4 (Payment and Delivery), III.7.c (Disclaimer), III.8 (Limitation Liability), III.9 (Termination), and all of this Article III (General Terms), as well as any provision that by the very nature of which should survive shall survive any termination or expiration of this Agreement.

7. Confidential Information. Each party agrees that all business and/or technical information that is received by a party ("**Receiving Party**") from the disclosing party ("**Disclosing Party**") that a) is in written, recorded, graphical or other tangible form and is marked "Confidential" or "Trade Secret" or similar designation; b) is in oral form and identified by the Discloser as "Confidential" or "Trade Secret" or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) the nature of which could reasonably be construed to be confidential shall be considered the confidential property of the Disclosing Party ("**Confidential Information**"). Any software, documentation or technical information provided by NAVSYSTEMS (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of NAVSYSTEMS without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's non-disclosure obligation shall not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

8. Company Name and Logo. NAVSYSTEMS may include Licensee's company name and logo in a list of NAVSYSTEMS customers and/or partners.

9. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

10. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Licensee will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

11. Choice of Language. The original of this Agreement has been written in English. Licensee waives any rights it may have under the law of its country to have this Agreement written in the language of that country.

12. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

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14. Equal Opportunity. NAVSYSTEMS agrees that it does not and will not discriminate against any employee or applicant for employment because of race, colour, religion, age, sex, handicap, national origin, or sexual orientation.

15. Ambiguities. Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

16. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.