

## SPINDLE SELF SERVE LICENCE AGREEMENT TERMS

### IMPORTANT NOTICE:

**BY DOWNLOADING THE SOFTWARE OR CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THE LICENCE WHICH WILL BE A LEGALLY BINDING AGREEMENT.**

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this licence.

**Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party or any business entity from time to time controlling, controlled by, or under common control with, either party.

**Approved Environment:** means the hardware (including without limitation scanning equipment), operating software, and other software applications in respect of which Draycir has approved the use of the Licensed Software.

**Commencement Date:** means the date on which the Licensed Software is installed by or on behalf of the Licensee.

**Content:** means all text, information, data, images, in whatever medium or form, inputted into the Licensed Software by the Customer.

**Customer:** means a person or entity which buys goods and/or services from the Licensee.

**Customer Registered Users:** means those Registered Users employed or engaged by a Customer to work in its business.

**Documentation:** means the documentation relating to the Licensed Software (as applicable) issued by Draycir and as updated by Draycir from time to time.

**End User Terms and Conditions:** means the terms and conditions set out at Annex C.

**Initial Term:** means the period of 12 months from the Commencement Date.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Internal Registered Users:** means those Registered Users employed or engaged by the Licensee to work in its business.

**Licence Key:** means the code issued by Draycir to allow the Licensee to use the Licensed Software in the applicable Licence Types set out in the Order.

**Licence Fee:** the licence fee payable by the Licensee in accordance with clause 6 and which is specified in the Order. **Licence Types:** means one of the type of licence of the Licensed Software as set out in the applicable Order.

**Licensed Software:** means the software described in the applicable section of the Order and any Maintenance Release which is acquired by the Licensee during the subsistence of this licence.

**Maintenance Release:** means a release of the Licensed Software that corrects faults, adds functionality or otherwise amends or upgrades the Licensed Software, and which is indicated as such by a minor version number increment to the right of the decimal point in the version number (for example release n.3 to n.4) and which does not constitute a New Version.

**Registered Users:** means users of the Licensed Software as registered by the Licensee which may be Internal Registered Users or Customer Registered Users.

**New Version:** any new version of the Software which from time to time is marketed and offered for purchase by Draycir which is indicated at the sole discretion of Draycir by a major version number increment to the left of the decimal point in the version number (for example version 1.n to version 2.n).

**Order:** means an order for use of the Licensed Software, either agreed with Draycir or submitted via Draycir's reseller, distributor or other authorised party.

**Open-Source Software:** open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

**Portal:** the white labelled Licensee branded portal for which access is provided via the Licensed Software.

**Support and Maintenance:** the support and maintenance services in respect of the Licensed Software as set out in Annex A.

**Support and Maintenance Fee:** the fee payable for the Support and Maintenance in accordance with clause 6 and the applicable Order.

**Term:** the Initial Term and any extension of the Initial Term made in accordance with this Agreement.

**Third-Party Additional Terms:** the additional terms and conditions set out in Annex B relating to Third-Party Software.

**Third-Party Software:** the third-party software identified in Annex B.

**Trial Key:** a licence key which is sent to the Licensee on order and is valid for the Trial Period.

**Trial Licence:** the licence rights set out in Clause 3.1.

**Trial Period:** a period commencing on the issue of the Trial Key and ending on the earlier of: (a) 45 days from that date (or such other period as Draycir (or its reseller or agent) notifies to the Licensee in writing) or (b) upon receipt of payment and issuance of the Licence Key by Draycir.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of the Licensed Software, Portal, or any computer software, hardware or network, any telecommunications service, equipment or network, or any other service of device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time OR it is in force as at the date of this agreement];
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the schedules or appendices, the provision in the body of this licence shall take precedence.

- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.7 The Schedules and Annexes form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules and Annexes.

## **2. TERM**

- 2.1 This Agreement will commence on the Commencement Date and unless terminated in accordance with the provisions of this Agreement, shall continue for the Initial Term.
- 2.2 This Agreement will automatically extend for additional periods of one year ("Extension Period") unless terminated in accordance with the provisions of this Agreement or where either Party has notified the other Party in writing at least 30 days before the end of the Initial Term or then current Extension Period that it does not wish to extend the Agreement.
- 2.3 This Agreement will automatically terminate (and the Licensed Software will cease to operate) in the event that the Licensee ceases to have valid Support and Maintenance either directly with Draycir in accordance with Clause 5 or through Draycir's reseller, distributor, or other authorised party.

## **3. EVALUATION LICENCE, LICENCE KEYS AND INSTALLATION**

- 3.1 In consideration of the obligations set out in this Agreement, the Licensee will be issued with a Trial Key for the Trial Period and Draycir hereby grants the Licensee a personal, non-transferable, non-exclusive royalty free licence to use the Licensed Software during the Trial Period solely for the purposes of evaluating the suitability of the Licensed Software for the business of the Licensee. The Licensee acknowledges and agrees that the Licensed Software will, or may, automatically cease to operate at the end of the Trial Period if the Licensee has not requested a Licence Key or Draycir has not agreed in writing to extend the Trial Period.
- 3.2 During the Trial Period, this Agreement and the Trial Licence, may be terminated immediately by Draycir giving written notice if the Licensee is in breach of any of its obligations under this Agreement. This Agreement and the Trial Licence will automatically terminate without further notice in writing in the event that the Licensee does not request a Licence Key. Upon termination not followed by a full licence, the Licensee shall return to Draycir all copies of all or part of the Licensed Software on any tangible medium and shall completely delete all electronic copies of all or any part of the Licensed Software held by or on behalf of the Licensee.
- 3.3 As soon as practicable following first payment for the Licensed Software, Draycir or its reseller, distributor or other authorised third party will issue the Licensee with Licence Keys sufficient to allow the Licensee to operate the Licensed Software for the number of Registered Users in the applicable Licence Types. Once the Licensee has received the Licence Key it will allocate the Registered Users within the administrative function of the Licensed Software according to the Licence Types in the Order . The Licensee is responsible for keeping the Licence Keys secure and shall procure that the Registered Users do not disclose the Licence Keys to any other party.
- 3.4 The Licence Key will be valid for one year from date of issue and upon receipt of payment for subsequent licence periods further Licence Keys will be issued.
- 3.5 The Licensee shall be deemed to have accepted the Licensed Software if:
  - (a) Draycir receives no notification from the Licensee within 7 days of the Commencement Date (or if earlier, at the end of the Trial Date where applicable) that the Licensed Software is not materially in conformance with the Documentation; or
  - (b) the Licensee commences operational use of the Licensed Software.

#### **4. LICENCE**

- 4.1 In consideration of the Licence Fee, Draycir grants to the Licensee a non-exclusive licence for the Registered Users to use the Licensed Software on the Approved Environment for the Term in accordance with the provisions of this Agreement.
- 4.2 In relation to scope of use:
- (a) for the purposes of Clause 4.1, use of the Licensed Software shall be restricted to the License Types set out in the applicable Order and the use of the Licensed Software for the purpose of providing Licensee and its' Customers with access to enterprise resource planning systems (to review stock and undertake order processing) in the normal course of business of the Licensee (which shall not include allowing the use of the Licensed Software by, or for the benefit of, any person other than an employee or Customer of the Licensee);
  - (b) the Licensee may change the identity of the Registered Users by using the administrative function in the Licensed Software provided that no more than the number of Internal Registered Users set out in the applicable Order are authorised to use the Licensed Software at any one time and the account of any Registered User that is replaced by a new Registered User is deleted (and the Licensee shall ensure that such previous Registered User ceases to use the Licensed Software). Upon Draycir's request from time to time, the Licensee shall provide details of the Internal Registered Users.
  - (c) the Licensee may not use the Licensed Software other than as specified in Clause 4.1 without the prior written consent of Draycir, and the Licensee acknowledges that additional fees may be payable on any change of use approved by Draycir;
  - (d) the Licensee may make two backup copies of the Licensed Software for its lawful use. The Licensee shall record the number and location of all copies of the Licensed Software and take steps to prevent unauthorised copying;
  - (e) except as expressly stated in this Clause 4, the Licensee has no right (and shall not permit any third party) to copy, adapt, or make error corrections to the Licensed Software in whole or in part;
  - (f) the Licensee shall not reverse engineer, decompile, disassemble, the Licensed Software except to the extent permitted by law;
  - (g) the Third-Party Software shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Software shall be subject to the Third-Party Additional Terms.
  - (h) the Licensee shall indemnify and hold Draycir harmless against any loss or damage which it may suffer or incur as a result of the Licensee's breach of any Third-Party Additional Terms howsoever arising.
  - (i) Draycir may treat the Licensee's breach of any Third-Party Additional Terms as a breach of this licence.
- 4.3 The Licensee may not use any such information provided by Draycir or obtained by the Licensee in connection with this Agreement to create any software whose expression is substantially similar to that of the Licensed Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 4.4 The Licensee shall not:
- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
  - (b) allow the Licensed Software to become the subject of any charge, lien or encumbrance; and
  - (c) deal in any other manner with any or all of its rights and obligations under this agreement, without the prior written consent of Draycir.

- 4.5 Draycir may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Licensee.
- 4.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 4.7 The Licensee shall by itself, or in the case of Customers procure that they:
- (a) ensure that only the Registered Users shall access and use the Licensed Software;
  - (b) keep a complete and accurate record of the Licensee's copying and disclosure of the Licensed Software and its users, and produce such record to Draycir on request from time to time;
  - (c) notify Draycir as soon as it becomes aware of any unauthorised use of the Licensed Software by any person;
  - (d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which Draycir would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in Clause 6.3, from such date to the date of payment,
  - (e) use appropriate security measures (and no less onerous than they apply to their own Licensed Software) to prevent malicious hacking and/or viruses infecting the Licensed Software and/or the Portal;
  - (f) ensure that any use of or access to the Licensed Software by Customers is only permitted after the Customer has entered into an agreement containing the End User Terms and Conditions.
- 4.8 The Licensee shall permit Draycir to inspect and have access to any premises (and to the computer equipment located there) at or on which the Licensed Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Licensee is complying with the terms of this licence, provided that Draycir provides reasonable advance notice to the Licensee of such inspections, which shall take place at reasonable times.
- 4.9 The Licensee may amend the Registered Users from time to time provided that one existing Internal Registered User must be deleted before a new Internal Registered User can be allocated. In the event that the Licensee requires additional Internal Registered Users then it will pay the additional Licence Fee for such additional users. The Licensee may use the Licensed Software for an unlimited number of Customer Registered Users.

## **5. SUPPORT AND MAINTENANCE**

- 5.1 Where the Licensee has ordered support and maintenance services directly from Draycir the provisions of Annex A shall apply. In the event that the Licensee has ordered support and maintenance services in respect of the Licensed Software from Draycir's reseller, distributor or other authorised party, then Annex A shall not apply and shall be replaced by the terms of the Licensee's agreement with such reseller, distributor or other authorised party.
- 5.2 Before changing or upgrading any third party software intended to work in conjunction with the Licensed Software, the Licensee shall first check that such software version is listed in the Approved Environment. If such software is not listed in the Approved Environment then the Licensee will notify Draycir. Where Draycir does not approve the use of the Licensed Software with such third party software following notification then the Licensee shall use the Licensed Software with such third party software at its own risk, the warranty contained in Clause 8 shall not apply and the exclusion in paragraph 4 of Annex A shall apply in the event that Draycir is providing Support and Maintenance to the Licensee.

## **6. FEES**

- 6.1 The Licensee shall pay the Licence Fees and the Support and Maintenance Fees to Draycir, (or its reseller, distributor or other authorised party as applicable) in accordance with the provisions of the

Order. Draycir (or its reseller, distributor or other authorised party as applicable) will notify the Licensee of the Support and Maintenance Fees in respect of any Extension Period, on or before the commencement of such Extension Period, to the extent that they are not set out in the Order.

- 6.2 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Licensee shall be responsible.
- 6.3 If the Licensee fails to make any payment due to Draycir under this agreement by the due date for payment, then, without limiting Draycir's remedies under Clause 11, the Licensee shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount.

## **7. CONFIDENTIALITY AND PUBLICITY**

- 7.1 Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 7.2 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **8. SUPPLIER'S WARRANTIES**

- 8.1 Draycir warrants that the Software will conform in all material respects to the Documentation for a period of 90 days from the Commencement Date ("Warranty Period"). If, within the Warranty Period, the Licensee notifies Draycir in writing of any defect or fault in the Licensed Software in consequence of which it fails to conform in all material respects to the Documentation, and such defect or fault does not result from the Licensee, or anyone acting with the authority of the Licensee, having amended the Licensed Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Draycir, or it has not been used other than on the Approved Environment, Draycir shall, at Draycir's option, do one of the following:
  - (a) repair the Licensed Software;
  - (b) replace the Licensed Software; or
  - (c) terminate this licence immediately by notice in writing to the Licensee and refund any of the Licence Fee paid by the Licensee as at the date of termination (less a reasonable sum in respect of the Licensee's use of the Licensed Software to the date of termination) on return of the Software and all copies thereof, provided the Licensee provides all the information that may be necessary to assist Draycir in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Draycir to re-create the defect or fault.
- 8.2 Draycir does not warrant that the use of the Licensed Software will be uninterrupted, error-free or free from any Virus.

- 8.3 The Licensee accepts responsibility for the selection of the Licensed Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Licensee.
- 8.4 The Licensee acknowledges that any Open-Source Software provided by Draycir is provided "as is" and expressly subject to the disclaimer in Clause 8.6.
- 8.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## **9. LIMITS OF LIABILITY**

- 9.1 Notwithstanding any provision to the contrary, nothing in this Agreement shall limit or exclude Draycir's liability for: death; personal injury; fraud; fraudulent misrepresentation; and any liability which may not be lawfully limited or excluded.
- 9.2 Subject to Clause 9.4, Draycir shall not be liable in any circumstances in connection with this Agreement for consequential, special, incidental or indirect losses, or the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits; loss of revenue; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; loss of data; (or any losses arising from a claim by a third party for any of the above losses); whether arising under contract, statute, tort (including without limitation, negligence), or otherwise.
- 9.3 Subject to Clauses 9.1, 9.2, the aggregate annual liability of Draycir for all claims arising under or in connection with this Agreement (whether arising under contract (including without limitation, in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation negligence) or otherwise) in any year of this Agreement shall be limited to the Licence Fees paid or payable in the year in which the claim arose.
- 9.4 Nothing in this Clause 9 shall exclude or restrict the Licensee's obligation to pay the Charges.
- 9.5 The Licensee agrees that it will notify Draycir of any breaches of this Agreement, in respect of which it may wish to pursue its legal remedies, within 30 days of the date of which it became aware of the breach (or if earlier, the date from when it should have reasonably become aware of the breach).
- 9.6 The Licensee acknowledges that the Charges have been calculated on the basis that Draycir will exclude and limit its liability as set out in this Agreement.
- 9.7 All dates supplied by Draycir for the delivery of the Licensed Software or the provision of Services shall be treated as estimates. Draycir shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such estimated dates.
- 9.8 All references to "Draycir" in this Clause 9 shall, for the purposes of this clause and Clause 18 only, be treated as including all employees, subcontractors and suppliers of Draycir and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with Clause 18.
- 9.9 The Licensee accepts responsibility for configuration and acknowledges that Draycir shall not be liable for losses arising from incorrect and/or incomplete configuration (for example, for any losses arising from incorrect permissions being set by Licensee).

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Software and any Maintenance Releases belong and shall belong to Draycir or the relevant third-party owners (as the case may be), and the Licensee shall have no rights in or to the Licensed Software other than the right to use it in accordance with the terms of this Agreement.
- 10.2 Subject to clause 10.1 above, the Licensee shall own all Intellectual Property Rights in the Content.

## **11. TERMINATION**

11.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1(c) to Clause 11.1(i)(inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

11.4 On termination for any reason:

- (a) all rights granted to the Licensee and Registered Users under this licence shall cease;
- (b) the Licensee shall cease and shall procure that Registered Users cease all activities authorised by this licence;

- (c) the Licensee shall immediately pay to Draycir any sums due to Draycir under this licence; and
- (d) the Licensee shall immediately destroy or return to Draycir (at Draycir's option) all copies of the Licensed Software then in its possession, custody or control and, in the case of destruction, certify to Draycir that it has done so.

## **12. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **13. REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **14. ENTIRE AGREEMENT**

- 14.1 This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the "Subject Matter") and supersedes and replaces all other written and oral communications between the Parties relating to the Subject Matter. Except for the express provisions in this Agreement (and any express provisions contained in any documentation which is expressly incorporated), all other warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise are hereby excluded to the maximum extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement, whether as an inducement to enter into this Agreement or otherwise. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party's liability for fraudulent misrepresentations.

## **15. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **16. SEVERANCE**

- 16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 16.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **17. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **18. THIRD-PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **19. NO PARTNERSHIP OR AGENCY**

- 19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **20. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement (other than in respect of the obligation to pay the Charges) if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement (other than in respect of the obligation to pay the Charges) if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement (other than in respect of the obligation to pay the Charges) if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

## **21. NOTICES**

- 21.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 21.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

## **22. GOVERNING LAW AND JURISDICTION**

- 22.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Annex A. Support and Maintenance agreement**

**For the avoidance of doubt, in the event that the Licensee has ordered support and maintenance services in respect of the Licensed Software from Draycir's reseller, distributor or other authorised party, then this Annex A shall not apply and shall be replaced by the terms of the Licensee's agreement with such reseller, distributor or other authorised party.**

### **1. Error Correction**

- 1.1 Subject to Paragraph 4 below (Excluded Services section), if the Licensee discovers that the Licensed Software fails to function in accordance with the Documentation then the Licensee shall within 7 days after such discovery notify Draycir by email of the defect or error in question and provide Draycir (so far as the Licensee is able) with a documented example of such defect or error.
- 1.2 Draycir shall use its reasonable endeavours to respond to any such emails submitted in accordance with Paragraph 1 within 2 working days.
- 1.3 Unless the issue reported is covered by Paragraph 4 below (Excluded Services section) Draycir shall then use its reasonable endeavours to correct such defect or error within a reasonable period of time. Upon completing such correction, Draycir shall deliver to the Licensee the updated version of the Licensed Software together with any amendments to the Documentation specifying the nature of the correction and providing instructions for the use of the corrected version of the Licensed Software.

### **2 Maintenance Releases**

- 2.1 Draycir shall provide the Licensee with Maintenance Releases for the Licensed Software which Draycir shall from time to time make available to its customers and the Licensee shall be responsible for immediately installing the latest Maintenance Release.
- 2.2 Draycir shall also provide the Licensee with any amendments to the Documentation which shall be necessary to enable use of any improved facilities and functions of the updated Licensed Software as a result of a Maintenance Release.
- 2.3 If the Licensee notifies Draycir of any failure of the updated Licensed Software following a Maintenance Release to function in accordance with the updated Documentation within 30 days of the Licensee receiving the Maintenance Release ("Release Warranty Period") then Draycir shall at its option either correct the latest release of the Licensed Software and re-issue it (as if it were a Maintenance Release of the Software) or withdraw it and require the Licensee to re-instate the previous release.
- 2.4 After the Release Warranty Period, the Licensee shall:  
  
cease to use the previous release of the Licensed Software and any part of the previous Documentation which has been superseded, together with all copies of such superseded software and documentation; and/or if so directed by Draycir, destroy the previous release of the Software and Documentation and certify in writing to Draycir that they have been destroyed.

### **3. Support Services**

- 3.1 During Draycir's standard support hours and on standard business days, Draycir shall perform the services referred to in this paragraph 3 ("Support Services").
- 3.2 As part of the Support Services, Draycir shall:  
provide help desk support by means of the following telephone number 0116 255 3010 and e-mail address Support@draycir.com or such other contact details as provided to the Licensee from time to time;
- 3.3 provide technical support for the Licensed Software in accordance with this Annex A.
- 3.4 Draycir may reasonably determine that any services requested by the Licensee are services excluded under Paragraph 4 below. If Draycir makes any such determination, it shall promptly notify the Licensee of that determination.

- 3.5 The Licensee may request Support Services by way of a support request which includes a description of the problem and the start time of the incident.
- 3.6 The Licensee shall provide Draycir where requested, such output and other data, documents, information, assistance and (subject to compliance with the Licensee's security requirements notified to Draycir in writing) remote access to the Licensee's IT systems, as are reasonably necessary to assist Draycir to reproduce operating conditions similar to those present when the Licensee detected the relevant issue and to respond to the relevant support request.
- 3.7 The Licensee acknowledges and agrees that, to properly assess and resolve support requests, it may be necessary to permit Draycir direct access to the Licensee's IT systems, files, equipment and personnel.

#### **4. Excluded Services**

- 4.1 Support and Maintenance does not include services in respect of:

defects or errors resulting from any modifications of the Licensed Software made by any person other than Draycir or without Draycir's written consent;

any version or Maintenance Release of the Licensed Software other than the latest version or Maintenance Release of the Licensed Software provided by Draycir to the Licensee;

incorrect use of the Licensed Software or operator error; and

defects or errors caused by the use of the Licensed Software on or with a system not approved by Draycir in accordance with Clause 5.2;

on-site support.

- 4.2 Draycir shall make an additional charge in accordance with its standard scale of charges from time to time in force for any services which Draycir agrees to provide:

at the request of the Licensee which are excluded from Support and Maintenance; or

at the request of the Licensee but which Draycir finds are not necessary. For the avoidance of doubt nothing in this Paragraph shall impose any obligation on Draycir to provide services in respect of any of the exclusions referred to in this Agreement.

- 4.3 Draycir shall not unless otherwise expressly agreed in writing, provide the Licensee with:

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## **Annex B: Third Party Agreements**

### **ADDENDUM FOR THIRD PARTY SOFTWARE APPLICATIONS:**

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**Illusory Studios C# Crypto Library (CryptSharp)**

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