

# DRAYCIR LIMITED

## RESELLER TERMS AND CONDITIONS

### 1. Definitions and Interpretation

1.1 In these Terms & Conditions, the following expressions have the following respective meanings:-

1.1.1 "Affiliate" means, in relation to either Party, any legal entity controlling, controlled by, or under common control with the Party in question. "Control" for this purpose means direct or indirect possession of the power to direct or to cause the direction of the management or policies of the Party or entity in question (as the case may be) whether pursuant to the ownership of voting securities, by contract or otherwise;

1.1.2 "Agreement" means the written form of Agreement between Draycir and the Reseller pursuant to which Draycir will supply the Products to the Reseller for resale to End Users;

1.1.3 "Contract" means the contract between Draycir and the Reseller for the supply of the Products, comprising the Agreement, the Price List and these Terms and Conditions, subject to Clause 2.4;

1.1.4 "Direct Support" means advice and assistance on accessing and utilising the software provided by Draycir direct to the End User in accordance with Clause 9;

1.1.5 "Documentation" means all and any user guides or manuals supplied by Draycir for use in connection with the Products and specified in the Schedule;

1.1.6 "Draycir" means Draycir Limited, a company registered in England with number 4376912, whose principal place of business is at 3 De Montfort Mews, Leicester LE1 7FW;

1.1.7 "End User" means a customer of the Reseller in the Territory who places an order with the Reseller for the Products;

1.1.8 "Intellectual Property Rights" means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know-how, trade secrets, inventions, get-up, database rights (whether registered or unregistered) and any applications or registrations for the protection of these rights and of all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

1.1.9 "Licence Fee" has the meaning ascribed to it in Clause 14.1;

1.1.10 "Marks" means any trade mark (whether registered or unregistered), service mark, name logo, image, design or other device used either by Draycir or any third party from time to time in connection with the identification, marketing, advertising or promotion of themselves or their respective products (whether applied to the Products or any part thereof, or otherwise);

1.1.11 "Materials" means the Products and the Documentation";

1.1.12 "Partner Support" means advice and assistance in accessing and utilising the software provided by Draycir to the Reseller in accordance with Clause 9;

1.1.13 "Price List" means the price list for the Products published by Draycir and in force at the time when the relevant order placed by the Reseller pursuant to Clause 13 is accepted by Draycir;

1.1.14 "Products" means the computer software products more particularly specified in the Agreement;

1.1.15 "Reseller" means the person, firm or company specified as such in the Agreement;

1.1.16 "Support" means Direct Support or Partner Support (as the Contract provides);

1.1.17 "Support Fee" has the meaning ascribed to it in Clause 14.2;

1.1.18 "Territory" means the geographical territory (if any) specified in the Agreement;

1.1.19 "Term" means the term of the Contract, as specified in Clause 16.1;

1.1.20 "Warranty Period" means the period of ninety (90) days beginning with the delivery of the Products to the Reseller; and

1.1.21 "Working Day" means any day except Saturday, Sunday, and any bank, customary, public or statutory holiday in England and Wales.

1.2 In these Terms and Conditions, unless the context otherwise requires:

1.2.1 words importing any gender include every gender;

1.2.2 words importing the singular number include the plural number and vice versa;

1.2.3 references to a numbered Clause are references to the relevant Clause in these Terms and Conditions;

1.2.4 the headings to the Clauses will not affect their interpretation;

1.2.5 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and

to any subordinate legislation or by law made under that enactment;

1.2.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to permit or suffer that thing to be done or omitted to be done;

1.2.7 references to "a Party" or "the Parties" are references to one or both of the parties to the Contract, as the context so permits; and

1.2.8 save where it is provided to the contrary, references to writing include electronic mail and facsimile transmission.

## 2. Appointment and licence

2.1 Draycir appoints the Reseller as a non-exclusive reseller of the Products to End Users for the Term in the Territory, and the Reseller agrees to act in that capacity subject to these Terms and Conditions.

2.2 Nothing in these Terms and Conditions shall prevent Draycir from supplying the Products to other clients in the Territory either directly or via other resellers or intermediaries.

2.3 In consideration of the acceptance by the Reseller of its obligations under these Terms and Conditions, Draycir grants to the Reseller a personal, non-transferable, non-exclusive right to use, sub-license, market and support the Materials (including the Intellectual Property Rights therein) only to the extent strictly necessary for the Reseller to perform its obligations under the Contract and for no other purpose whatsoever.

2.4 In the event of any conflict between the documents comprising the Contract (as specified in Clause 1.1.3), they shall prevail in the following descending order:-

2.4.1 this Agreement;

- 2.4.2 the Price List; and
- 2.4.3 these Terms and Conditions.

### 3. Intellectual Property Rights

3.1 The Materials and all Intellectual Property Rights in the Materials are and shall remain the property of Draycir.

3.2 Neither these Terms and Conditions nor any licence or sub-licence granted hereunder shall have the objective or effect of conveying or transferring any ownership or proprietary interest in any Intellectual Property Rights in the Products, Documentation or the Marks to the Reseller or to any third party.

3.3 The Reseller must:-

3.3.1 not cause or permit anything to be done which may damage or endanger the Intellectual Property Rights in the Materials or Draycir's ownership of them, nor assist or allow others to do so;

3.3.2 notify Draycir immediately if it becomes aware of any actual, threatened or suspected unauthorised use of the whole or any part of the Materials by any person;

3.3.3 notify Draycir promptly in writing of any allegation by any third party that the Materials infringe any Intellectual Property Rights of any third party;

3.3.4 at the reasonable expense of Draycir take such action as Draycir may specifically request in relation to any alleged infringement to which Clause 3.3.3 applies;

3.3.5 not make, nor attempt to make, any use of Draycir's Intellectual Property Rights or the Materials otherwise than in accordance with the Contract, and (without limiting the generality of the foregoing obligation) shall indemnify Draycir, its employees and officers

from and against any liability incurred by any of them to third parties arising as the result of any breach by the Reseller of this Clause 3.3.5;

3.3.6 not remove or obscure (whether in whole or in part) or tamper with any notices, legend or graphics of any kind which may have been applied by Draycir to the Materials;

3.3.7 use the Marks in compliance with all relevant laws and regulations whenever making any reference to Draycir or to the Materials;

3.3.8 not use any name or mark similar to or capable of being confused with the Marks nor modify any of the Marks in any way nor use the Marks or any derivation of them otherwise than is permitted by the Contract; and

3.3.9 permit Draycir to review without notice marketing materials containing any of the Marks.

3.4 The Reseller hereby acknowledges that any goodwill or reputation relating to the Materials and created by the performance by the Reseller of its obligations under the Contract will belong to Draycir, and upon the termination or expiry of the Contract for whatever reason the Reseller shall not be entitled to claim any form of recompense or compensation in respect of such goodwill or reputation.

### 4. Intellectual Property Claims

4.1 Draycir shall at its own expense defend any action or claim brought against the Reseller alleging that the use of the Materials by the Reseller in accordance with the provisions of the Contract infringes the Intellectual Property Rights of a third party (an "Intellectual Property Claim") and shall pay all costs and damages awarded or agreed

to in settlement of an Intellectual Property Claim, subject to the following conditions being fully observed:-

4.1.1 the Reseller furnishing Draycir promptly with full written details of the Intellectual Property Claim;

4.1.2 the Reseller providing Draycir promptly upon request at Draycir's expense with such assistance and co-operation as Draycir may reasonably require from time to time in connection with the defence or settlement of the Intellectual Property Claim; and

4.1.3 the Reseller giving Draycir sole authority to defend or settle the Intellectual Property Claim, and in particular, but without limiting the generality of this obligation, not seeking to make any admission or offer of settlement in relation to the Intellectual Property Claim, nor entering into any discussions, negotiations or other form of communication of any kind with a view to entering into or facilitating any such settlement without the express prior written consent of Draycir.

4.2 If the use of the whole or any part of the Materials is, or in the reasonable opinion of Draycir is likely to become, the subject of an Intellectual Property Claim, then, subject to Clause 4.3, Draycir shall at its option either:

4.2.1 obtain for the Reseller the right to continue using the Materials which are the subject of the Intellectual Property Claim; or

4.2.2 replace or modify the Materials which are the subject of the Intellectual Property Claim so as to render them non-infringing.

4.3 If in the opinion of Draycir it is not reasonably practicable to provide the Reseller with either of the remedies set out in Clause 4.2 (as to which the decision of Draycir shall

be final), then Draycir may by giving notice to the Reseller terminate the Contract insofar as it relates to the Products affected by the said alleged infringement with immediate effect and refund any monies paid by the Reseller for the Products (subject to a deduction of 25% of such monies in respect of each period of twelve consecutive months during which the Reseller or the End User has enjoyed uninterrupted use or possession of the Products).

4.4 Draycir shall have no liability for any Intellectual Property Claim resulting from any variation or modification of, or addition to, the Materials not previously made or approved in writing by Draycir, or by any abuse, corruption or incorrect use of the Materials, including without limitation the use of the Materials in conjunction with incompatible equipment or software.

## 5. Copying

5.1 The Reseller may make only so many copies of the Products as are strictly necessary for operational security and use.

5.2 The Reseller must not make any copies of the Documentation without the express prior written consent of Draycir.

5.3 All copies made by the Reseller of the Materials (whether permitted or otherwise) and the media on which they are stored shall be Draycir's property with effect from their creation, and the Reseller shall ensure that all such copies bear a proprietary notice in such form as Draycir shall specify at its discretion from time to time. These Terms and Conditions shall apply to all such copies as it applies to the Materials.

## 6. Modifications and Reverse Engineering, etc.

The Reseller must not translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Materials without the express prior written consent of Draycir, except to the extent permitted by law.

## 7. General Obligations of Draycir

Draycir shall:-

7.1 provide to the Reseller such documentation, materials and other items for marketing purposes, and such other information regarding the Materials generally, as Draycir in its discretion may determine from time to time; and

7.2 provide Support in accordance with the provisions of Clause 9;

## 8. General Obligations of the Reseller

8.1 The Reseller shall use all reasonable endeavours to promote and market, and maximise sales to End Users of, the Materials in the Territory, seek orders for the Materials in the Territory, and carry out the other duties specified in this Clause 8, using all due care and diligence and, shall cultivate and maintain good relations with actual and potential End Users in the Territory in accordance with sound commercial principles.

8.2 The Reseller shall refer promptly to Draycir any requests for Support of the Materials made by End Users who have purchased Direct Support, and shall provide such co-operation and assistance to Draycir as Draycir may reasonably require from time to time in order to provide support pursuant to Clause 9.2, it being understood for the avoidance of doubt that Draycir is obliged to provide support to the Reseller only and not directly to the Reseller other than at its absolute discretion. The Reseller shall in addition provide to Draycir promptly on request such information and assistance as

Draycir may reasonably require in order to comply with its obligation to provide Direct Support to an End User.

8.3 The Reseller provide to Draycir promptly upon request details of its sales and promotion activities in relation to the Materials, including without limitation details of all revenues associated with sales of the Materials to End Users, as Draycir may specify from time to time. Draycir may at its own expense inspect or audit the accounts and business records of the Reseller at any time in order to verify the accuracy of the information provided pursuant to this Clause 8.3.

8.4 The Reseller must:-

8.4.1 comply with such reasonable instructions as Draycir may issue from time to time in relation to the Materials and their use;

8.4.2 provide to the Draycir such information and support in connection with its use and possession of the Materials as Draycir may reasonably require from time to time;

8.5.3 ensure that all devices, marks, logos, documentation (including without limitation the Price List) and other items used by it from time to time in the marketing, promotion and sale of the Materials and the performance by it of its obligations under the Contract are complete, accurate and the most up-to-date available; and

8.4.3 provide at its own expense such full and sufficient training in the use of the Materials to its employees and actual and prospective End Users as may reasonably be required from time to time.

8.5 The Reseller must not:

8.5.1 without limiting the generality of the provisions of Clause 26, describe itself as the agent or representative of Draycir;

8.5.2 hold itself out, or permit or suffer any person to hold it out, as being authorised to bind Draycir in any way, nor do any act which might reasonably be considered to create the impression that it is so authorised, nor pledge the credit of Draycir in any way;

8.5.3 use any advertising, marketing or promotional devices, documentation or other items in relation to the Materials, except those supplied or expressly approved in advance by Draycir;

8.5.4 engage in any conduct which in the reasonable opinion of Draycir is prejudicial to business or to the marketing of the Materials generally, or which might reasonably be expected to harm the reputation of Draycir;

8.5.5 make or give any promises, warranties, guarantees or representations concerning the Materials other than such as may have been approved expressly in advance by Draycir, and only then by way of incorporation as an express written term in a form of agreement previously approved by Draycir pursuant to Clause 8.5.6;

8.5.6 supply any Materials to any End User until that End User has entered into a binding written agreement relating to the supply of the Materials in such form as Draycir, acting reasonably, shall have approved in writing in advance for such purpose; or

8.5.7 under any circumstances whatsoever allow any third party (including any End User) directly or indirectly to use or access the Products using any licence key, password or other mode of access supplied by Draycir to the Reseller.

8.6 The Reseller shall indemnify and keep indemnified Draycir, its employees and officers (together, "the indemnified parties") from and against any and all actions, claims, demands, costs (including reasonable legal costs), losses, expenses, damages and liability suffered or incurred by the Indemnified Parties or any of them to the extent that the same arise as the result of any wrongful act or omission on the part of the Reseller, its employees, officers, agents or representatives, save to the extent that such wrongful act or omission arose as the direct result of any wrongful act or omission on the part of the Indemnified Parties or any of them.

## 9. Support, Updates and Upgrades

9.1 Draycir shall provide such Support to the Reseller and to End Users as is specified in the Contract.

9.2 Without limiting the generality of Clause 9.1:-

9.2.1 Where Draycir is obliged to provide Direct Support, this shall be provided by Draycir directly to the End User; and

9.2.2 Where Draycir is obliged to provide Partner Support, this shall be provided to the Reseller.

9.3 Draycir shall provide Support by telephone, email or remote access, the precise manner of provision of Support in each specific instance to be determined by Draycir at its discretion.

9.3 For the avoidance of doubt, the expression "Direct Support" shall not include:-

9.3.1 the provision of any advice or assistance which Draycir reasonably considers to constitute training in the use of the Materials. Such training shall be provided subject to the payment of the Reseller of

Draycir's standard charges for training in force on the dates on which it is provided; or

9.3.2 the correction of errors or bugs in the Materials.

9.4 Draycir shall ensure that the Contract specifies whether or not a Support Fee (as more particularly defined in Clause 14.2) is payable in consideration of the provision of any Support by Draycir. The Reseller shall not give any representation, statement or warranty of any kind to an End User to the effect that a Support Fee is not payable unless the Contract so provides.

9.5 Notwithstanding the provisions of Clause 9.1, if the Reseller, having previously purchased a support package from Draycir which has since expired, requests Support from Draycir in respect of the Products, Draycir will provide such support, subject to the purchase by the Reseller of the current version of the Products and (to the extent that the Support is not included free of charge as part of such purchase) a new support package from Draycir at Draycir's current list price.

9.6 For the avoidance of doubt, Draycir shall be under no obligation to provide any form of maintenance, support or other services of a like nature to the Reseller or the End User other than Support in accordance with and subject to the provisions of the Contract.

9.7 To the extent that the Contract so provides, Draycir shall provide the Reseller with updates and upgrades to the Products, either at no additional cost to the Reseller or upon payment of the charges determined in accordance with Clause 14.2, as more particularly specified in the Contract.

## 10. Limited Warranties

10.1 Draycir hereby warrants that, during the Warranty Period:-

10.1.1 The Materials shall perform substantially in accordance with any published representations made by Draycir regarding its functionality current at the time of delivery; and

10.1.2 The Documentation will provide adequate instructions to enable proper use to be made of the facilities and functions set out in the said specification.

10.2 The warranties set out in Clause 10.1 are given subject to the Reseller complying with its obligations under the Contract and subject also to the limits and exclusions of liability set out in Clause 10. In particular, the said warranties shall not apply to the extent that any defect in the Materials arose or was exacerbated as a result of any actual or attempted variation or modification of, or addition to, the Materials not made or approved in writing by Draycir, or by any abuse, corruption or incorrect use of the Materials, including without limitation the use of the Materials in conjunction with incompatible equipment or software.

10.3 To the extent permitted by applicable law, Draycir:-

10.3.1 hereby disclaims all other warranties with respect to the Materials, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;

10.3.2 makes no warranty that the Materials are error free or that their use will be uninterrupted, and the Reseller hereby acknowledges and agrees that the existence of such errors or the occurrence of such interruption shall not constitute or give rise to a breach of the Contract; and

10.3.3 makes no representation or warranty that the Materials will be suitable to meet the specific commercial, operational or administrative requirements of the Reseller or any End User or will achieve any specific result, and the Reseller hereby acknowledges that both itself and any End User must satisfy themselves as to the suitability of the Materials to meet their respective requirements through the use of any trial of the materials that may be made available by Draycir from time to time.

## 11. Warranty Remedies

11.1 The Reseller hereby acknowledges and agree that its sole remedy in respect of any non-conformance with the warranties set out in Clause 10.1 is that Draycir shall, subject to Clause 10.2, remedy such non-conformance, provided that, if in its reasonable opinion Draycir is unable to remedy such non-conformance, then Draycir may by giving notice to the Reseller terminate the Contract with immediate effect and refund to the Reseller the Licence Fee (if already paid).

11.2 The Reseller's remedy under Clause 11.1 is conditional upon its notifying Draycir in writing promptly, and in any event within 30 (thirty) days from the date on which the same was discovered or, if earlier, on which it ought reasonably to have been discovered, of the non-conformance in question. Without limiting the effect of this condition, for the avoidance of doubt no remedy will be available in respect of any non-conformance notified to Draycir more than 30 (thirty) days following the end of the Warranty Period

## 12. Limitation of Liability

12.1 Draycir shall indemnify the Reseller against any liability for personal injury or death incurred by it to the extent that such injury or death is caused by the negligence of

Draycir or its employees in connection with the performance of their respective duties under the Contract or by defects in the Materials.

12.2 Except in respect of claims for death or personal injury to which Clause 12.1 applies, in no event and under no circumstances will Draycir be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, loss of opportunity, loss of revenue or diminution of goodwill, nor for any pure economic loss or for any loss or damage that arises as an indirect or secondary consequence of any act or omission on the part of Draycir, whether such damages were reasonably foreseeable or actually foreseen.

12.3 Except as provided in Clause 12.1 in the case of death or personal injury, the liability of Draycir to the Reseller under the Contract or otherwise for any cause whatsoever will be for direct costs and damages only and will be limited to the lesser of:

12.3.1 the sum in which Draycir carries public liability and professional negligence insurance cover (subject to Draycir actually recovering such sum from the relevant insurer); or

12.3.2 a sum equivalent to the Licence Fee paid to us in respect of the Materials that are the subject of the Reseller's claim, plus damages limited to 25% of that sum for any additional costs directly, reasonably and necessarily incurred by the Reseller in obtaining alternative products or services.

12.4 In no event shall Draycir be liable to the Reseller for any losses whatsoever (whether loss of revenue, loss of profit, expenditure incurred to no benefit, or otherwise) suffered or incurred by it solely or



substantially because the Contract has been terminated.

12.5 All liability that is not expressly assumed in the Contract is hereby excluded. The limitations on liability contained in this Clause 12 will apply regardless of the cause of action, whether under statute, in contract, tort (including but not limited to negligence), or any other cause of action. For the purposes of this Clause 12 the expression "Draycir" includes its employees, officers, agents and representatives. The Reseller hereby acknowledges that Draycir's employees, officers, agents and representatives shall have the benefit of the limits and exclusions of liability set out in this Clause 12 in terms of the Contracts (Rights of Third Parties) Act 1999.

12.6 Nothing in the Contract shall exclude or limit liability for fraudulent misrepresentation.

12.7 The Reseller acknowledges and agrees that the limitations and exclusions of liability set out in this Clause 12 are reasonable and have been agreed taking into account the commercial value of the Contract to each Party and the commercial standing of each Party.

### 13. Orders and deliveries

13.1 Prior to entering into a sub-licence with an End User, the Reseller will submit to Draycir a purchase order for the Product being sub-licensed to the specific End User. The Reseller shall ensure that each such order will specify:-

13.1.1 the name, company number (if requested by Draycir) and address of the End User;

13.1.2 the specific Product and number of items being ordered;

13.1.3 the delivery address;

13.1.4 the Licence Fee; and

13.1.5 any other material commercial provision in relation to the sub-licence.

13.2 Each order shall be subject to acceptance by Draycir at its discretion. Where Draycir accepts a particular order, it will notify the Reseller of the delivery date and shall use reasonable endeavours to deliver the Product to the Reseller at the delivery address by such date.

13.3 The Reseller's only remedy for unreasonable delay in the delivery of any Products will be the right to cancel the relevant order in accordance with Clause 16.2.1. Upon such termination Draycir shall repay to the Reseller within a reasonable time any Licence Fee, and (if applicable) any monies paid in consideration of the provision by Draycir of Support, previously paid.

### 14. Price and Payment

14.1 Prior to making any Product available to an End User (save during any trial period which Draycir may grant or permit, whether generally or with regard to a specific actual or potential End User, from time to time), the Reseller shall purchase from Draycir a software licence in accordance with Clause 13, corresponding to each sub-licence to be granted to each End User by the Reseller, at the price (plus VAT) specified for that Product in the Price List (the 'Licence Fee').

14.2 Draycir shall charge the Reseller for Support in respect of each sub-licence granted to each End User (plus VAT) at the rates set out in the Price List (the 'Support Fee').

14.3 The Reseller shall pay to Draycir the Licence Fee and the Support Fee within 30 (thirty) days of receipt of Draycir's invoice therefor, or, in the case of Credit Guardian

and if earlier, in advance of the Products being supplied.

14.4 The Reseller may at its sole discretion determine the price for the Products and for any Support that it supplies to End Users.

14.5 The Reseller shall be liable for any other agreed fees and any taxes, duties and impositions of any kind payable in respect of the Products and any Support delivered or provided by Draycir, howsoever arising.

14.6 The Reseller shall pay interest on any sum outstanding and due to Draycir following the due date for payment at the rate determined in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 from the due date for payment until the date of actual payment, whether before or after any judgment. In addition, Draycir reserves the right to suspend the provision of any Products for which the Reseller has not made payment in full by the due date for payment.

14.7 The Reseller hereby acknowledges for the avoidance of doubt that, except as stated specifically in the Contract, its entire compensation for the resale of the Products to End Users shall be the margin on each transaction, being the difference between the respective prices at which the Reseller purchases the Products from Draycir and resells them to the End User.

14.8 Draycir reserves the right, by means of the issuing of a limited licence key, to restrict the access of the Reseller and the End User to the Products, by reference to the number of permitted concurrent users, the duration of the access, or both, until Draycir has received the Licence Fee and (if applicable) the Support Fee in full, together with any interest payable pursuant to Clause 14.6. In the event that the Reseller fails to pay the Licence Fee or (if applicable) the Support

Fee in full before the expiry of any such limited licence key, the Reseller shall not be entitled to withdraw from the Contract and, without prejudice to any other right or remedy that Draycir may have as a result of such failure, any unpaid Licence Fee or Support Fee will remain due and payable in full.

## 15. Confidentiality

15.1 The parties each undertake to keep confidential and not to disclose to any third party, or to use themselves other than as permitted under or in accordance with the Contract, any information of whatever kind and in whatever form received directly or indirectly from the other Party or which comes to that Party's attention as a result of the parties having entered into the Contract, and which relates in any way to the other Party or its Affiliates or their respective affairs, businesses or products ("Confidential Information").

15.2 Notwithstanding the provisions of Clause 15.1, each Party ("the receiving Party") shall be permitted to disclose Confidential Information of the other Party ("the disclosing Party") to those of its advisers, officers or employees to whom, and to the extent to which, such disclosure is necessary to enable such persons to perform their duties and functions in relation to the Contract. The receiving Party shall inform each such person prior to disclosure of the restrictions on disclosure and use of the Confidential Information contained in Clause 15.1 and shall use reasonable endeavours to ensure that all such persons comply with such restrictions.

15.3 The obligations contained in this Clause 15 shall survive the expiry or termination of the Contract for any reason,

but shall not apply, or shall cease to apply, to any information which:

15.3.1 is publicly known at the time of disclosure to the receiving Party or becomes publicly known otherwise than through a breach of the Contract by the receiving Party, its officers, employees, agents or contractors; or

15.3.2 is already known to the receiving Party and at its free disposal at the time of disclosure to it; or

15.3.3 is disclosed to the receiving Party, without any obligation of confidentiality being imposed in respect of it, from a third party lawfully entitled to disclose the same; or

15.3.4 is required to be disclosed by law (including, without limitation, pursuant to the order of any court or tribunal of competent jurisdiction).

## 16. Duration and Termination

16.1 This Agreement shall become effective on the Commencement Date and shall continue in force for a term of one (1) year, whereupon it shall renew automatically for successive terms of one (1) year unless terminated by either Party giving not less than thirty (30) days' notice of termination, such notice to expire on the day prior to the Commencement Date ("the Expiry Date") or any anniversary of the Expiry Date.

16.2 Draycir shall be entitled to terminate the Contract with immediate effect by giving notice to the Reseller if:-

16.2.1 the Reseller commits any material breach of any of the provisions of the Contract and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice from Draycir giving particulars of the breach and requiring it to be remedied;

16.2.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Reseller;

16.2.3 the Reseller makes any voluntary arrangement with its creditors or becomes subject to an administration order;

16.2.4 the Reseller goes into liquidation (except for the purposes of and followed by a solvent amalgamation or reconstruction);

16.2.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Reseller; or

16.2.6 the Reseller ceases, or threatens to cease, or in the reasonable opinion of Draycir is likely to cease, to carry on business.

## 17. Consequences of Termination

17.1 Upon the termination of the Contract for any reason:

17.1.1 the Reseller shall within 30 days send to Draycir or, at Draycir's option, dispose of in such manner as Draycir shall direct, copies of all Products and Documentation and all advertising, promotional, sales material and Confidential Information then in the possession of the Reseller;

17.1.2 the Reseller shall cease to promote, market, advertise or solicit End Users for the Products; and

17.1.3 the Reseller shall have no claim of any kind against Draycir for compensation for any loss, expense, costs or damage incurred or sustained by the Reseller, of any kind whatsoever and howsoever arising, to the extent that the same arose by virtue alone of the termination of the Contract.

17.2 The provisions of Clauses 3, 5.2, 5.3, 6, 8.6, 10, 11, 12, 14.3, 14.5, 14.6, 14.8, 15,

17, 25, 27, 28 and 29 shall survive termination of the Contract.

17.3 Termination of the Contract shall be without prejudice to the rights and remedies of the parties accrued as at the effective date of termination.

## 18. Assignment and Sub-Contracting

18.1 Draycir may assign any of its rights or obligations under the Contract to any of its Affiliates.

18.2 Subject to Clause 18.1, and save as expressly provided to the contrary elsewhere in the Contract, the Contract is personal to the Parties who shall not without the prior written consent of the other assign any of their rights or obligations or sub-contract the performance of any of their obligations hereunder, and any purported or attempted assignment or sub-contracting by either Party or transfer by operation of law without such consent shall give the other Party the right to terminate the Contract with immediate effect by giving notice to the assigning Party.

18.3 This Agreement shall be binding on the permitted assignees and successors of the Parties.

## 19. Force Majeure

19.1 Neither Party shall be under any liability whatsoever to the other for failure or delay in the performance of its obligations under the Contract where its performance becomes or has become impracticable by reason of Force Majeure.

19.2 The Party whose performance is not so affected by reason of Force Majeure shall be entitled to terminate the Contract with immediate effect by giving notice to the other Party if the performance by the other Party of its obligations under the Contract becomes or remains impracticable by reason of Force

Majeure for a continuous period in excess of three months.

19.3 In this Clause 19 the expression "Force Majeure" means any matters which in the circumstances are beyond the reasonable control of the Party affected.

## 20. Invalidity and Severability

20.1 If any provision of the Contract shall be held unlawful, invalid or unenforceable in whole or in part by any court or other competent authority that provision shall be deemed to have been severed, and the Contract shall, subject to the remainder of this Clause 20.1 and to Clause 20.2 continue to be valid as to all other provisions. The Parties shall meet and negotiate in good faith a valid and enforceable replacement for the severed provision which replacement shall be designed to achieve as nearly as possible the same commercial objective as the original.

20.2 In the event that notwithstanding Clause 20.1, the Parties cannot agree upon a replacement provision within 20 (twenty) Working Days of the said provision being held unlawful, invalid or unenforceable then Draycir may terminate the Contract with immediate effect by giving notice to the Reseller.

## 21. Expenses

Each Party shall pay its own costs and expenses incidental to or incurred in relation to or in connection with the preparation, negotiation, execution and carrying into effect of the Contract.

## 22. Waiver

22.1 No relaxation, forbearance, delay or indulgence by either Party in exercising its rights under the Contract or any granting of

time by such Party shall prejudice or affect these rights.

22.2 No waiver of any default or breach under the Contract or failure to enforce any rights by either Party shall constitute a waiver of any subsequent or continuing default or breach.

22.3 No waiver shall be effective unless made in writing, agreed and signed by an authorised representative of the Party so granting the waiver.

### 23. Entire Agreement and Amendments

23.1 This Agreement constitutes the entire agreement between both parties as to its subject matter and supersedes all other agreements, warranties, statements, representations and understandings in relation to the same, whether written or oral.

23.2 Each Party acknowledges that in entering into the Contract it has not relied upon any representation, inducement promise or agreement, whether oral, written or otherwise made by or on behalf of the other Party and which has not been incorporated within or specifically referred to in the Contract, and that no other agreement, statement or promise not contained in the Contract shall be valid or binding.

23.3 Nothing in this Clause 23 shall operate so as to restrict or limit the liability of either Party for fraud or fraudulent misrepresentation.

23.4 No amendment to or alteration of the Contract shall be effective unless made in

writing, agreed and signed by an authorised representative of each Party.

### 24. Contracts (Third Party Rights)

With the exception of Clauses 3.3.5, 8.6 and 12.5, no provision of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Contract (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

### 25. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable by Draycir from the Reseller or payable by the Reseller, the same may be deducted from any sum which is then due, or at any time thereafter will become due, to the Reseller under the Contract or any other dealing involving the Parties.

### 26. No Agency or Partnership

26.1 Nothing in the Contract shall have the effect of creating any form of agency or partnership between Draycir and the Reseller.

26.2 Without limiting the generality of Clause 24.1, neither Party shall hold itself or allow itself to be held out as being the agent or partner of the other.

26.3 Neither Party shall in any circumstances hold itself out, or allow itself to be held out as being authorised in any way to bind, or to enter into any contract on behalf of, the other.

### 27. Notices

27.1 Any notice required to be given under the Agreement shall be made in the English language in writing (which expression shall for this purpose not include electronic mail) and may be delivered by hand or sent by pre-paid first class post to the recipient to the respective addresses and representatives of the parties set out in Clause 27.2.

27.2 Each Party shall procure that each notice given by it by post or served by hand is addressed as follows:-

27.2.1 in the case of a notice given by Draycir, to the address of the Reseller specified in the Contract, marked for the attention of the person specified in the Agreement; and

27.2.2 in the case of a notice given by the Reseller, to the address of Draycir specified in the Contract, marked for the attention of the Managing Director.

27.3 Subject to Clause 27.4, each notice given in accordance with Clause 27.1 shall be deemed to have been received:-

27.3.1 if sent by post, on the second day after the date of posting; or

27.3.2 if delivered by hand, on the date of delivery.

27.4 Where, pursuant to Clause 27.3, any notice would be deemed to have been received on a day other than a Working Day, or where the actual time of receipt of any notice is after 16.00 hours local time, at the recipient's premises, then in either case that notice shall be deemed to have been received on the next following Working Day.

27.5 It shall be sufficient in proving service that the letter containing the notice was properly addressed and, as the case may be, put in the post or delivered.

28. Applicable Law, Language and Service of Process

28.1 The construction interpretation meaning validity and performance of the Contract shall be governed by the law of England which is agreed to be the proper law of the Contract.

28.2 The definitive text of the Contract is in the English language. In the event of any dispute concerning the construction, interpretation or meaning of the Contract, reference shall be made to the Agreement as written in English and not to any translation into any other language.

28.3 The parties hereby submit to the non-exclusive jurisdiction of the English Courts.

29. Publicity

The Reseller shall not without the prior written consent of Draycir (such consent not to be unreasonably withheld) make any announcement or public statement, or make any other form of public disclosure (including, without limitation, the issuing of any press release) relating to or concerning the Products, the Contract or any activity carried on pursuant thereto.