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- (c) Licensee shall not disclose the results of Software performance benchmarks to any third party without the prior written consent of NCL.
- (d) Licensee is prohibited from using and shall not use Software for deployment-production use or deployment-redistribution use or offer it for resale.
- (e) In the event that Licensee proposes to use Software for the purpose of deployment-production use, Licensee shall obtain the appropriate Deployment-Production Use License defined in sub-paragraph 3.3.
- (f) In the event that Licensee integrates Software into any product or software application and proposes to resell or redistribute the resulting integrated product or software application, Licensee shall obtain the appropriate Deployment-Redistribution Use License defined in sub-paragraph 3.4.
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## 3.3. Deployment–Production Use License

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- (b) Subject to the terms of Agreement, NCL grants to Licensee, a non-exclusive and non-transferable, fee-bearing, license to use Software for the sole purpose of deployment-production use in respect of those Machines specified in the section entitled “*Machine*” in Schedule A of Agreement and in respect of that number of Machines specified in the section entitled “*Number of Machines*” in Schedule A of Agreement, unless otherwise specified in writing by NCL.
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Agreement shall be governed in all respects by Irish Law and Licensee agrees to accept the exclusive jurisdiction of the Irish courts. No choice of law rules of any jurisdiction will apply. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

## **13. SEVERABILITY**

If any provisions of Agreement are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived and Agreement shall be otherwise enforceable in such jurisdiction. However, if, in the opinion of NCL, deletion of any provisions of Agreement by operation of this paragraph unreasonably compromises the rights or increase the liabilities of NCL, its servants or agents, NCL reserves the right to terminate Agreement and refund the fee paid by Licensee, if any, as Licensee's sole and exclusive remedy.

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## **16. TECHNICAL SUPPORT**

### **16.1. Point of Contact**

NCL will provide Technical Support for Software to one employee ("Point of Contact") of Licensee for the duration of a Warranty Period as specified in Paragraph 17 (Limited Warranty) of Agreement. The Point of Contact may be nominated by Licensee and communicated to NCL during a Warranty Period.

### **16.2. Errors and Queries**

The following provisions shall apply during a Warranty Period

- (a) Where the Point of Contact communicates to NCL a Major Error (namely, one which causes Software to cease working), NCL will provide: a response within twenty four (24) hours; a workaround within two (2) working days.
- (b) Where the Point of Contact communicates to NCL a Minor Error (namely, that Software contains a non-service affecting problem), NCL will provide: a response within forty eight (48) hours; a workaround within six (6) working days of the fault being logged.
- (c) Where the Point of Contact communicates to NCL a Query (namely, usage or assistance question), NCL will provide a response within two (2) working days of the query.
- (d) NCL will provide the Point of Contact with daily Status Update Reports on all outstanding Major and Minor Errors communicated to NCL by the Point of Contact.
- (e) Major Errors shall be communicated to NCL by the Point of Contact via telephone.
- (f) The Point of Contact may communicate Minor Errors and Queries to NCL via telephone, electronic mail or facsimile. Responses and Status Update Reports may be communicated to the Point of Contact via telephone, electronic mail or facsimile.

## **17. LIMITED WARRANTY**

### **17.1. Initial Warranty Period**

The duration of the Initial Warranty Period shall be a period of three (3) months from the date of installation of the product by Licensee. Notwithstanding the provisions of Paragraph 9 (Disclaimer of Liability), NCL warrants for the duration of the Initial Warranty Period that: (i)

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Software complies with the specification as defined in the section entitled “*Specification*” of schedule A of Agreement; (ii) it is the owner of the Product and has the right and authority to grant the rights and licences contained herein to Licensee, and warrants that there are no existing restrictions or constraints on its right and authority to supply and license Software and to grant to Licensee the rights contained herein; (iii) Software in the form supplied to Licensee does not contain any virus or built-in, automatic and/or random expiry dates; (iv) Software in the form supplied to Licensee incorporates all current upgrades, enhancements, alterations, changes or other modifications; (v) it will provide technical support for the duration of a warranty period in accordance with Paragraph 16 (Technical Support); and (vi) if the software is found to be defective during a Warranty Period, NCL shall rectify Software defect in accordance with Paragraph 16 (Technical Support) and deliver an update of Software with the defect remedied.

## **17.2. Extended Warranty Period**

Prior to the expiration of a warranty period, Licensee may request an Extended Warranty Period for a period of twelve (12) months for a fee of twenty percent (20%) of the cost of Software per Point of Contact. The prices of such Extended Warranty Period may be subject to review and mutual agreement upon 30 days prior written notice from NCL.

## **18. CONFIDENTIALITY**

NCL and Licensee (“Party”) undertake to maintain any and all technical and commercial information received from the other Party in confidence and to use it only in accordance with the provisions of Agreement. This applies to all information that a reasonable person would understand as being confidential. Information shall not be disclosed by the receiving Party to any third party without the prior written consent of the disclosing Party. The receiving Party undertakes to ensure that dissemination of information within its own organisation is on a strict “need-to-know” basis. However, no information shall be regarded as confidential which (i) has passed into the public domain other than by breach of Agreement; (ii) is known to the respective receiving Party prior to the disclosure by the disclosing Party as proven by its contemporaneous written record; (iii) is independently developed by the receiving Party without use of confidential information as proven by its contemporaneous written records; and (iv) is disclosed to the receiving Party without restriction by a third party having the full right to disclose the same.

## **19. FORCE MAJEURE**

Neither Party to Agreement shall be held responsible for the fulfilment of any obligation under Agreement provided such fulfilment is hindered or prevented by any of the following circumstances: Force Majeure including, but not limited or confined to war, riot, strike, lock-out, flood, or other natural catastrophe or national or local Government regulation; and any event beyond the control of the Party and provided the Party frustrated notifies the beginning and end of any such circumstances to the other without delay in writing, and shall use every endeavour to minimise the hindrance or prevention of such fulfilment.

## **20. TERM AND TERMINATION**

Agreement shall commence on date of installation of Software by Licensee.

Any license granted to Licensee under Agreement shall terminate immediately and automatically in the event that Licensee fails to comply with any provision of Agreement.

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The expiration or termination of any license granted to Licensee under Agreement shall not affect or prejudice any provisions of Agreement which, expressly or by implication, are provided to survive the aforesaid termination.

## Schedule A - for SwiftPush 1.0 - Evaluation Use

Accompanying Software and Documentation:	
Evaluation Period (Evaluation User only)	30 days
Number of Points of Contact	0
Re-distributable Files (Deployment-Redistribution License only)	None
Use of Software	For the purposes of developing and deploying mobile applications
Payment Terms	N/A
Machine	(1) SMSC (2) Cellular Modem OR (3) Computer/CPU or (4) Message throughput depending on commercial license arrangement
Specification	
Number Of Machines	N/A
Licensee Fee	N/A
License Type	Evaluation Use
Trademarks	