

Terms of Supply - Professional Services

PARTIES:

- (1) **"Cyres"**: CYRES LIMITED whose registered office is at Knights Lowe, Eldo House, Kempson Way, Bury St Edmunds IP32 7AR and
- (2) **"The Client"**: The party with whom Cyres has entered into the agreement to which these terms apply.

These terms ("the Terms") set out the basis on which Cyres agrees to provide professional services to the Client

1 DEFINITIONS

"the Agreement"	means the contract between Cyres and the Client comprising the Proposal and these Terms.
"Code of Conduct"	means Cyres' own standard "Code of Conduct for the Delivery of Professional Services" (available at www.cyres.co.uk)
"the Location"	means the address stated in the Proposal at which the Services are to be provided. If no such address is specified then it means the address of the Client to which the Proposal was sent.
"Prevailing Rates"	means Cyres standard prices and payment terms, as revised from time to time, details of which are available at any time upon written request.
"the Proposal"	means the written proposal or the written offer of services or the written description of services by Cyres (as referred to in clause 2.1) which is expressed to incorporate these Terms.
"the Representative"	means any person appointed by Cyres to provide the Services or any part thereof. Where there is more than one such person then the definition shall be construed in the plural <i>mutatis mutandis</i> .
"the Services"	means the professional services described in the Proposal
"Working Day"	means any day Monday to Friday 9:00 am to 5:00 pm excluding weekends and UK bank, national and public holidays.

2 FORMATION OF CONTRACT

- 2.1 The Terms form part of any contract made between Cyres and the Client by means of:
 - 2.1.1 The Client accepting a written proposal from Cyres which is expressed to incorporate these Terms or
 - 2.1.2 The Client placing an order for services, the provision of which has been expressed by Cyres (on its website, by email, letter, previous invoice or otherwise) to be subject to these Terms or
 - 2.1.3 The Client paying an invoice for renewal or extension of any existing contract for services (other than software maintenance or software development services) between Cyres and the Client where such invoice expressly incorporates Cyres' terms of business or
 - 2.1.4 The Client accepting the provision of the Services.
- 2.2 In the case of any conflict between these Terms and the Proposal the Proposal shall prevail.
- 2.3 These Terms shall apply to the Agreement to the exclusion of any other terms and conditions contained in a Client purchase order or which the Client may otherwise purport to incorporate. Notwithstanding any statement to the contrary,



the receipt of a formal Client purchase order by Cyres shall be deemed to constitute acceptance by the Client of an offer of services by Cyres, subject only to these Terms.

- 2.4 The Agreement shall supersede all prior arrangements between the parties in respect of the Services.
- 2.5 The Agreement will represent the whole of the agreement reached between the parties and the Client acknowledges that in entering into the Agreement it is not relying on any previous statement made by or on behalf of Cyres.
- 2.6 No variation of the Agreement shall be binding unless agreed in writing between a director of Cyres and a duly authorised representative of the Client.
- 2.7 The Client acknowledges that it enters into the Agreement having had adequate opportunity to evaluate the capabilities and references of Cyres.

3 DURATION OF AGREEMENT

- 3.1 This Agreement shall commence on the date on which the contract is made in accordance with clause 2.1 and shall continue in force until:
 - 3.1.1 The end date (if any) specified in the Proposal, or
 - 3.1.2 The date on which the supply of the Services is completed, unless
 - 3.1.3 Terminated as provided in the Agreement.

4 PROVISION OF SERVICES

- 4.1 Cyres agrees to provide the Services with reasonable skill and care and in accordance the Code of Conduct. Where there is any conflict between these Terms and the Code of Conduct then these Terms will prevail.
- 4.2 Where the Proposal states that the Services are to be provided at a specific address or "on site" then Cyres will provide the Services at the Location.
- 4.3 The following shall apply where the Services include the service described:
 - 4.3.1 Data Extraction: Cyres will assist the Client with the creation of a data extract file from their existing systems but responsibility for the production and quality of the extracted data rests solely with the Client's staff (by reason of their greater knowledge and understanding of their own data and system).
 - 4.3.2 Data Import: Cyres will create an appropriate computer program ("the Importer") to transfer the Client's data into the system supplied by Cyres.

The functionality of the Importer will be based on (a) a data mapping document created by Cyres and (b) any formal import rules specified in writing by the Client prior to commencement of the creation of the Importer.

Cyres will rectify any data not mapped correctly in accordance with (a) and (b).

Once a single data import has been completed using the Importer in accordance with (a) and (b), then the Client will issue any written confirmation to that effect requested by Cyres.

Any alteration to the Importer which is necessitated by changes to the Client's data, import rules or mapping requirements notified to Cyres after commencement of the creation of the Importer may (at Cyres' discretion) be chargeable as additional work in accordance with the Prevailing Rates.
 - 4.3.3 Software Installation: Cyres will install the software specified in the Proposal onto the computers (or the quantity of computers) specified in the Proposal at the Location.

Cyres will supply the Client with one copy of comprehensive written installation instructions (in printed or electronic form) in case these are needed for future installations.
 - 4.3.4 Training: Cyres will provide appropriate user training to such people (or such quantity of people) as specified in the Proposal.

Any additional training materials will be made available to authorised users online.
- 4.4 Unless otherwise agreed in writing by Cyres, the Services will be provided during normal Working Days.



4.5 Cyres shall use all reasonable endeavours to perform the Services on the dates and times or within the timescales specified in the Proposal. Where no such dates, times or timescales are specified, Cyres shall use all reasonable endeavours to perform the Services promptly. However, time for performance shall not be of the essence and any delay in performance shall not entitle to the Client to treat Cyres as being in breach of the Agreement.

4.6 Where any services are performed at the request of the Client or its employees which are not within the scope of this Agreement, then the Client shall be liable to pay for Cyres' time and expense incurred in performing those additional services as charged by Cyres' in accordance with the Prevailing Rates.

5 SUPPLY OF DOCUMENTATION

5.1 Where the provision of the Services includes the supply of training manuals or other documentation, Cyres shall supply one copy in either printed or digital format.

5.2 The Client agrees that no copyright or any other kind of intellectual property right in the training manuals or other documentation shall pass to the Client by virtue of the Agreement.

5.3 The Client shall not, without the prior written, consent of Cyres copy, distribute or alter in any way any of the training manuals or other documentation.

6 PAYMENT

6.1 In consideration of the provision of the Services, the Client agrees to pay the price stated in the Proposal (together with any applicable VAT).

6.2 Payment terms shall be as set out in the Proposal. If no payment terms are stated then payment is due within 14 days of the date of Cyres' invoice.

6.3 The Client shall pay all sums due under the Agreement in full without any discount, deduction, set-off or abatement on any grounds.

6.4 If any sum payable under the Agreement remains unpaid 30 days after falling due then (without prejudice to any other rights or remedies Cyres may have) Cyres may:

6.4.1 Charge the Client interest on the sum outstanding on a daily basis (both before any after judgement) from the due date until the date paid at the rate of 5% p.a. above the Royal Bank of Scotland base rate in force from time to time and

6.4.2 Suspend performance of all or any of its outstanding obligations under the Agreement until full payment is made.

6.5 The Client shall be liable to pay Cyres' additional charges in accordance with the Prevailing Rates in respect of any time costs, expenses or other work incurred by Cyres by reason of any breach of the Client's obligations set out in clause 7.

7 CLIENT'S OBLIGATIONS

7.1 The Client agrees to provide whatever information, reports and data Cyres may reasonably require to facilitate the provision of the Services.

7.2 The Client shall be responsible for ensuring the accuracy of all information supplied to Cyres in connection with the Agreement.

7.3 Where the Services are to be provided at the Location the Client will ensure that:

7.3.1 A member of staff is available to meet the Representative on arrival and to arrange parking (if necessary) at the Location.

7.3.2 Within thirty (30) minutes of the Representative's arrival at the Location, the Representative is given such access to the Client's computer systems and software as the Representative reasonably requires to perform the Services.

7.3.3 The Representative is advised as to the means of escape in the event of fire and any other appropriate health and safety instructions.

7.3.4 All necessary and reasonable steps are taken to ensure the personal safety of the Representative and the safety and security of the Representative's personal and business property.



7.3.5 All assistance, software, computer equipment, presentation equipment and other facilities reasonably requested by the Representative for the provision of the Services shall be provided promptly and without cost.

7.4 The Client agrees to ensure that suitable backup software, equipment and procedures are in operation at all times to ensure that there is no risk of irretrievable data loss from the Client's systems.

7.5 If at any time any software, computer equipment, storage media or other property belonging to the Client is delivered or taken to Cyres' premises in the course of the provision the Services it shall be the responsibility of the Client to arrange appropriate insurance in respect thereof.

8 SOFTWARE LICENCES & INTELLECTUAL PROPERTY RIGHTS

8.1 The Client agrees that no copyright, design right or any other kind of intellectual property right shall pass to the Client by virtue of the Agreement.

8.2 Where the performance of the Services entails the Representative utilising the Client's computer equipment and computer software at the Location, the Client agrees to indemnify Cyres and keep Cyres fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the performance of the Services infringes the copyright or other intellectual property rights of any third party.

8.3 Where the provision of the Services entails the supply of any computer software programs, software program patches or other items of software (and any related documentation) created by Cyres then the terms under the headings "Grant of Licence" and "Intellectual Property Rights" set out in Cyres' standard "Non-Exclusive End-User Licence Terms" (available at www.cyres.co.uk) shall apply *mutatis mutandis* in respect of such software, and any related documentation, as if those terms were incorporated herein and as if the software and related documentation were the "Software" and "Documentation" referred to in those terms.

9 WARRANTIES AND LIABILITY

9.1 Except in respect of death or personal injury caused by the negligence of Cyres, its employees or agents (and otherwise to the fullest extent permitted by law), Cyres expressly excludes liability for breach of any terms, conditions or warranties implied by law.

9.2 No express warranties are made as to the fitness or suitability of any software for any particular purpose or otherwise.

9.3 Notwithstanding any other term of the Agreement, Cyres shall not be liable to the Client for any loss of profits, loss of contracts, loss of or corruption of computer data or any other indirect or consequential loss howsoever arising.

9.4 Without prejudice to the foregoing provisions of clause 9, the total amount of any liability of Cyres arising in connection with the Agreement shall not exceed the amount of the price paid by the Client in respect of the Services.

10 TERMINATION

10.1 Cyres may terminate the Agreement (without prejudice to any other rights or remedies Cyres may have) at any time if:

10.1.1 Any sum payable under the Agreement remains unpaid 60 days after falling due or

10.1.2 The Client has been in material breach of any other obligation under the Agreement for a period of 21 days after Cyres has given it notice of such breach

10.2 Either party may terminate the Agreement at any time on giving thirty (30) days notice in writing to the other party.

10.3 Where the Agreement is terminated pursuant to clause 10.2 the issue of any refund in relation to sums already paid by the Client shall be at the discretion of Cyres. Where Cyres has commenced performance of the Services at the date of termination but the Client has not yet paid the amount payable under the Agreement then the Client shall remain liable to pay Cyres such sum as Cyres may reasonably specify to reflect the *pro rata* value of the work already undertaken and such amount shall be payable 14 days from receipt of Cyres' invoice.

10.4 Either party may terminate the Agreement if the other convenes a meeting of its creditors or if a proposal is made for a voluntary arrangement under the Insolvency Act 1986 or a proposal or any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of s123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the



purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (other than for the purpose of an amalgamation or reconstruction).

- 10.5 Upon termination of the Agreement the Client will remove any software supplied to it by Cyres from its computer systems and will return all copies of such software and any related documentation to Cyres within 30 days or otherwise destroy or dispose of them as Cyres may direct.
- 10.6 Termination of the Agreement shall be without prejudice to any accrued rights or liabilities nor the continuation in force of any provision which is expressly or by implication intended to continue in force after such termination.

11 CONFIDENTIALITY

- 11.1 Both parties shall treat as confidential all information obtained from the other pursuant to the Agreement and neither shall divulge such information to any person (except to their own respective employees and then only to those employees who need to know the same) without the other's prior written consent. This obligation shall not extend to information which was rightfully in the possession of either party before the commencement of the negotiations leading to the Agreement, or which was already public knowledge or which becomes so at a future date (otherwise than as a result of a breach of this obligation) or which is trivial or obvious.
- 11.2 Both parties shall ensure that their employees are aware of and comply with the provisions of clause 11.1. If either party appoints any sub-contractor it may disclose confidential information to such sub-contractor subject to such sub-contractor giving a similar undertaking to that contained here. These obligations as to confidentiality shall survive any termination of the Agreement.

12 FORCE MAJEURE

- 12.1 Notwithstanding anything else contained in the Agreement if either party is forced to delay the performance of any obligation under the Agreement by reason of acts of God, strikes, civil commotion, war, fire, explosion, sabotage, flood, earthquake, breakdown in public telecommunications networks or any other circumstances beyond the reasonable control of the party concerned then, provided that the delaying party promptly notifies the other of the reasons for the delay (and its likely duration), the performance of that party's obligations shall be suspended whilst the said circumstances persist unless they were caused by the act or omission of the party concerned (in which event the other's rights and remedies shall be those conferred and imposed by the other terms of the Agreement and by law).
- 12.2 Either party may, if the said circumstances persist for more than thirty (30) days terminate the Agreement on giving the other seven (7) days notice. If the Agreement is so terminated neither party shall as a result be liable to the other except that the Client shall pay Cyres a reasonable sum in respect of any work Cyres has carried out before termination. Cyres shall be entitled to deduct such sum from any amounts the Client has previously paid under the Agreement and will at Cyres' discretion return the balance (if any) to the Client.

13 WAIVER OF REMEDIES

- 13.1 No forbearance delay or indulgence by either party in enforcing the provisions of the Agreement shall prejudice or restrict their respective rights. No waiver of either's rights will operate as a waiver of any subsequent breach. No right power or remedy herein conferred upon or reserved to either party is exclusive of any other available right power or remedy and such rights powers or remedies shall be cumulative.

14 ASSIGNMENT

- 14.1 The Client may not assign or otherwise transfer, in whole or in part, any or all of its rights and/or obligations under the Agreement without the prior written consent of Cyres.

15 NOTICES

- 15.1 Any notice required to be given shall be in writing and shall be sent to the last known address of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally, or by first class pre-paid letter, email or fax transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting, and if by email or fax when dispatched (provided that a confirming copy is sent by post in accordance with this clause).

16 LAW

- 16.1 The Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

