

Software Maintenance Terms

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 software maintenance services to the Client in respect of the software defined below.

1 DEFINITIONS

“the Agreement”	means the contract between Cyres and the Client comprising the Proposal and these Terms.
“the Contact Person”	means the person specified as such in the Proposal. If no such person is specified then the person to whom the Proposal is addressed, or where the Proposal is not addressed to an individual, the person who authorised the installation of the Software.
“Designated Contact Details”	means (a) telephone number 01223 655674 (b) email address support@cyres.co.uk (c) Support Desk, Cyres Limited, St Giles Hall, Pound Hill, Cambridge CB3 0AE, or any other details notified by Cyres at any time for the purpose of notifying Support Issues.
“the Documentation”	means the user-manuals and other explanatory materials relating to the Software or any Version Upgrade (whether in printed or electronic format) provided by Cyres to assist the Client in making use of the Software.
“Initial Term”	means the period set out in the Proposal commencing with the Start Date. Where no such period is stated then it means 12 calendar months.
“the Location”	means the address at which the Software is installed as stated in the Proposal. If no such address is specified, then the address of the Client at which the Software was originally installed by Cyres.
“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.
“Renewal Date”	means the day following the end of the Initial Term and, thereafter, the day following the end of each subsequent Renewal Period
“Renewal Period”	means the period commencing on a Renewal Date and lasting for a period equal to the duration of the Initial Term.
“the Start Date”	means the date of the beginning of the period of software support as stated in the Proposal. Where no such date is specified it means the date on which the Software is installed at the Location by Cyres.
“the Software”	means the computer program described or referred to in the Proposal (but not the media on which it is stored).



“Support Issue”	means any error or defect in the Software at the Location which causes it not to perform in accordance with the functionality set out in the Documentation.
“Version Upgrades”	means updated versions of the Software issued from time to time to the Client, at Cyres’ discretion, to improve the functionality of the Software.
“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 software maintenance, 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 software maintenance contract between Cyres and the Client where such invoice expressly incorporates Cyres’ terms of business.
- 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 Software and the Documentation.
- 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.

3 DURATION OF AGREEMENT

- 3.1 This Agreement shall commence on the Start Date and be for an initial period of the Initial Term and thereafter it shall be automatically renewed on each subsequent Renewal Date for each subsequent Renewal Period unless terminated as provided in the Agreement.

4 MAINTENANCE SERVICE

- 4.1 Cyres agrees to provide the following services for the duration of the Agreement in respect of the Software installed at the Location during normal Working Days:
 - 4.1.1 Cyres will provide access to suitably skilled support staff via telephone, email or post to assist the Client to resolve Support Issues.
 - 4.1.2 Support Issues may only be notified by the Contact Person using the Designated Contact Details during Working Days.
 - 4.1.3 Where notification is by telephone, Cyres reserves the right to require that the notification be confirmed in detail in writing.
 - 4.1.4 Cyres will respond within four (4) hours of receipt of notification and will give the Contact Person an initial indication of how the matter will be dealt with. Thereafter, Cyres will, as soon as reasonably practicable, assign a priority status to the Support Issue and inform the Contact Person accordingly.
 - 4.1.5 If the Support Issue is such that the Client’s staff are completely unable to perform the duties they would normally undertake using the Software then Cyres will assign it the highest priority and will undertake the resolution of the Support Issue prior to any other support activities and as soon as appropriate resources are available.



- 4.1.6 If the Support Issue is apparent but is not such that the Client's staff are completely unable to perform the duties they would normally undertake using the Software then Cyres will undertake the resolution of the Support Issue as soon as reasonably practicable.
- 4.1.7 If the Support Issue is minor or trivial then Cyres will undertake its resolution at a mutually convenient time.
- 4.1.8 If the Support Issue cannot be resolved by remote computer access or, with the assistance of the Client's staff, by telephone or email, then Cyres will arrange for a member of its technical support staff to visit the Location to resolve it. The scheduling of the visit will reflect the priority assigned by Cyres to the Support Issue.
- 4.1.9 The priority status assigned to any Support Issue shall be at the sole discretion of Cyres' authorised technical staff.
- 4.2 Cyres will ensure that its support staff comply in all appropriate and relevant respects with Cyres' own standard "Code of Conduct for the Delivery of Professional Services" (available at www.cyres.co.uk)
- 4.3 The Client agrees:
 - 4.3.1 To provide whatever information, reports and data Cyres may reasonably require to enable the Support Issue to be investigated and resolved effectively.
 - 4.3.2 To carry out all reasonable instructions of Cyres' support staff in order to assist with the resolution of any Support Issue by the installation, testing and utilisation of software and otherwise.
 - 4.3.3 To ensure that the Contact Person, and any deputy performing that role, have received appropriate training in the operation of the Software.
 - 4.3.4 To install any revision of the Software (in accordance with Cyres' instructions) to correct the Support Issue within 30 days of receipt by the Client. If the Client is unable or unwilling to install the revision then it must notify Cyres accordingly in writing within ten (10) days of receipt and thereafter allow Cyres to make arrangements to install the revision at the Location. Such installation by Cyres shall be chargeable to the Client (in respect of time, travel, accommodation and subsistence) at Cyres' Prevailing Rates.
 - 4.3.5 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 on which the Software is installed.
- 4.4 Where a member of Cyres' technical staff ("the Representative") visits the Location to undertake the resolution of a Support Issue, the Client will ensure that:
 - 4.4.1 A member of staff is available to meet the Representative on arrival and to arrange parking (if necessary) at the Location.
 - 4.4.2 Within thirty (30) minutes of the Representative's arrival at the Location, the Representative is given such access to the Software on the Computers (and any other software and computers) as the Representative reasonably requires.
 - 4.4.3 The Representative is advised as to the means of escape in the event of fire and any other appropriate health and safety instructions.
 - 4.4.4 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.
 - 4.4.5 All assistance, software, computer equipment, presentation equipment and other facilities reasonably requested by the Representative shall be provided promptly and without cost.
- 4.5 Cyres reserves the right to insist that all revisions (as described in clause 4.3.3) and all Version Upgrades already issued to the Client are installed prior to Cyres responding to any new Support Issue.
- 4.6 The Contact Person may at any time nominate a deputy to act in their absence to perform the duties of the Contact Person for such period as they may notify. Such deputy must have received appropriate prior training in the operation of the Software. During that period the deputy shall be deemed to be the Contact Person and the original Contact Person shall not be treated as the Contact Person.
- 4.7 For the avoidance of doubt, no computer software other than the Software and no Software at any address other than the Location will be covered by this Agreement. Any additional computer software to be covered and any alternative



addresses can only be included in the Agreement by express written agreement by Cyres to include them within the scope of the Software and the Location as defined above.

- 4.8 The Agreement does not cover any Support Issue arising from or in connection with:
- 4.8.1 Any computer virus on the Client's computer systems.
 - 4.8.2 Installation of the Software on any computer or computer system unless carried out by, or at the direction of, Cyres.
 - 4.8.3 Any modification or alteration of the Software other than by, or at the direction of, Cyres.
 - 4.8.4 Operation of the Software on any computer operating system not previously approved by Cyres.
 - 4.8.5 Any failure or defect in the Client's internet, telecommunications or remote access systems.
 - 4.8.6 The alteration by the Client of any network settings, system settings or security permissions in relation to the Computers or the Location.
- 4.9 Where any support requirements notified to Cyres are investigated and subsequently identified by Cyres as not being covered by this Agreement then the Client shall be liable to pay for Cyres' time and expense incurred in investigating the issue at Cyres' Prevailing Rates.
- 4.10 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 4.3.

5 VERSION UPGRADES

- 5.1 Cyres agrees to supply the Client with:
- 5.1.1 The latest version of the Software as formally released from time to time as a Version Upgrade.
 - 5.1.2 One copy of the Documentation relevant to the Version Upgrade in electronic format.
- 5.2 Version Upgrades of the Software will be supplied on suitable media. Cyres reserves the right to charge for such media and relevant carriage charges at cost.
- 5.3 The Client agrees to install each Version Upgrade (in accordance with Cyres' instructions) within 30 days of receipt by the Client. If the Client is unable or unwilling to install a Version Upgrade then it must notify Cyres accordingly in writing within ten (10) days of receipt and thereafter allow Cyres to make arrangements to install the Version Upgrade at the Location. Such installation by Cyres shall be chargeable to the Client (in respect of time, travel, accommodation and subsistence) at Cyres' Prevailing Rates.
- 5.4 In respect of any Version Upgrade issued, 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 Version Upgrades and related Documentation as if those terms were incorporated herein and as if the Version Upgrade and related Documentation were the "Software" and "Documentation" referred to in those terms.

6 PAYMENT

- 6.1 In consideration of the services provided under the Agreement the Client agrees to pay (together with any applicable VAT):
- 6.1.1 In respect of the Initial Term, the price stated in the Proposal.
 - 6.1.2 In respect of any Renewal Period, the Cyres' support charge in accordance with the Prevailing Rates applicable to the Software as at the applicable Renewal Date.
- 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 If, as a result of anything the Client does or fails to do (which is not covered by clause 11) Cyres is prevented from or delayed in performing any of its obligations under the Agreement then the Client shall be liable to pay Cyres for any reasonable time costs, expenses or losses that Cyres has incurred as a result in accordance with the Prevailing Rates.

7 INTELLECTUAL PROPERTY RIGHTS

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

8 WARRANTIES AND LIABILITY

8.1 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.

8.2 No express warranties are made as to the fitness or suitability of the Software or Version Upgrades for any particular purpose or otherwise.

8.3 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.

8.4 Without prejudice to the foregoing provisions of clause 8, 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 Initial Term.

9 TERMINATION

9.1 Either party may terminate the Agreement at any time after the Initial Term on giving not less than three (3) calendar months notice to expire on or at any time after the end of the Initial Term.

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

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

9.2.2 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

9.3 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).

9.4 Upon termination of the Agreement the Client will remove the Software and any Version Upgrades from its computer systems and will return all copies of the Software, Version Upgrades and the Documentation to Cyres within 30 days or otherwise destroy or dispose of them as Cyres may direct.

9.5 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.

10 CONFIDENTIALITY

10.1 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.



10.2 Both parties shall ensure that their employees are aware of and comply with the provisions of clause 10.1. 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.

11 FORCE MAJEURE

11.1 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).

11.2 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.

12 WAIVER OF REMEDIES

12.1 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.

13 ASSIGNMENT

13.1 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.

14 NOTICES

14.1 With the exception of notification of Support Issues, 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).

15 LAW

15.1 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.

