

Non-Exclusive End-User Licence Terms

PARTIES:

- (1) **“Cyres”**: CYRES LIMITED whose registered office is at Mead Accounting, The Stables, Summer Road, Walsham-Le-Willows, Bury St. Edmunds, Suffolk, IP31 3AJ 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 grant the Client a licence to use the software defined below.

1 DEFINITIONS

“the Agreement”	means the contract between Cyres and the Client comprising the Proposal and these Terms.
“the Computers”	means only the computers specified in the Proposal. Where no such computers are specified or where they are referred to only by quantity, then it means the computers on which the Software is initially installed by Cyres at the Location.
“the Documentation”	means the user-manuals and other explanatory materials relating to the Software (whether in printed or electronic format) provided by Cyres to assist the Client in making use of the Software.
“Intended Use”	means the use for which the Software was designed and developed as stated in the Proposal and in the training and information provided at the time of installation.
“IPRs”	means all copyright, design rights, patents, registered designs, trade marks, service marks and any other intellectual property rights.
“the Location”	means the address at which the Software is installed as stated in the Proposal or such other address as may, at any time, be agreed in writing by Cyres. If no such address is specified, then the address of the Client at which the Software was originally installed by Cyres.
“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 Software”	means the computer program described or referred to in the Proposal (but not the media on which it is stored).

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 licensed software, 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 accepting the delivery of the Software.
- 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 GRANT OF LICENCE

- 3.1 The licence hereby granted is conditional upon a software maintenance agreement between the parties in respect of the Software at the Location remaining in force. Accordingly, the licence shall come into effect upon the commencement date of the initial support period specified in the software maintenance agreement and shall automatically terminate on the date on which support under the said agreement ends.
- 3.2 Subject to clause 3.1, Cyres grants the Client a non-exclusive licence to use the Software on the Computers at the Location subject to the following:
 - 3.2.1 The Client may only use the Software and the Documentation for its Intended Use and, subject thereto, for its own internal business purposes.
 - 3.2.2 The Client may not sell, lend, licence or otherwise dispose of the Software to any third party nor in any way permit any third party to use the Software or the Documentation nor shall it use the Software on behalf of any third party.
 - 3.2.3 The Client may make one copy of the Software for backup and security purposes and must notify Cyres of the whereabouts of such copy on written request.
 - 3.2.4 Subject to the foregoing term, the Client may not copy the Software or the Documentation.
 - 3.2.5 The Client may not use the Software anywhere other than the Location.
 - 3.2.6 The Client may not install the Software on any computer other than the Computers without Cyres' prior written consent.
 - 3.2.7 The Client may not adapt, modify or alter the Software in any way without Cyres' written consent.
 - 3.2.8 The Client will put in place and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person.
 - 3.2.9 In the event that the Software or any part of it comes into the hands of a third party through the action of the Client, or any current or former employee of the Client, then the Client shall immediately notify Cyres and shall be liable to pay the price which would at that time be chargeable to a third party for a licence to use the Software.
 - 3.2.10 The Client will follow Cyres' reasonable recommendations as to the operation of the Software and will be responsible for the transfer of all data for use with the Software and for using the Software in the course of its business.

4 SUPPLY OF SOFTWARE AND DOCUMENTATION

- 4.1 The Client agrees to provide Cyres promptly with any information which Cyres may reasonably require from time to time to enable Cyres to undertake the supply of the Software.
- 4.2 Subject to clause 4.1, Cyres will supply the Software to the Client on appropriate digital storage media
- 4.3 Cyres will provide the Client with one copy of the Documentation. Further copies may be ordered at Cyres' standard price applicable at the relevant time.
- 4.4 Cyres will make written recommendations to the Client as to the amount and type of initial user-training the Client's staff will require in order to ensure the effective use of the Software. The Client agrees to arrange and pay for such initial training as Cyres reasonably recommends (at the price stated in the Proposal) and thereafter will ensure that all operators and managers of the Software are adequately trained.



- 4.5 In the event of damage to or loss of the media on which the Software was supplied, Cyres will replace the media on payment by the Client of the cost of such replacement.

5 PAYMENT

- 5.1 In consideration of the licence hereby granted, the Client agrees to pay the price stated in the Proposal (together with any applicable VAT) in accordance with the payment terms set out in the Proposal. If no payment terms are stated then the full price will be payable within 14 days of the date of Cyres invoice. The Client shall pay all sums in full without any discount, deduction, set-off or abatement on any grounds.
- 5.2 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:
- 5.2.1 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
 - 5.2.2 Suspend performance of all or any of its outstanding obligations under the Agreement until full payment is made.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Cyres warrants that it owns all the IPRs in or relating to the Software and the Documentation or that Cyres is licensed to supply the same.
- 6.2 Cyres agrees to indemnify the Client and keep the Client 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 use or possession of the Software infringes the IPRs of any third party, subject to the following conditions:
- 6.2.1 The Client will promptly notify Cyres of any allegations of infringement of which it becomes aware and will not make any admissions without Cyres' prior written consent and
 - 6.2.2 At Cyres' request and expense the Client will allow Cyres to conduct and /or settle all negotiations and litigation resulting from such claim and
 - 6.2.3 At Cyres' request the Client will give Cyres all reasonable assistance in such negotiations or litigation. Cyres will reimburse the Client for any out of pocket expenses incurred in so doing.
- 6.3 The foregoing indemnity will not apply to any infringement arising out of:
- 6.3.1 The use of the Software or any part thereof in combination with any computer programs or equipment not supplied or approved by Cyres and
 - 6.3.2 Any modifications of the Software made by the Client or the Client's employees or agents.
- 6.4 If a court of competent jurisdiction holds (or Cyres is advised by its lawyers that it is likely) that the Client's use or possession of the Software is an infringement of any third party IPRs Cyres shall, at its own expense:
- 6.4.1 procure for the Client the right to continue to use and possess the Software or
 - 6.4.2 modify or replace the Software (without detracting from its overall performance) so as to avoid the infringement
 - 6.4.3 if neither of the foregoing can be accomplished on reasonable terms, then Cyres will remove the Software and refund the price paid by the Client in respect of the licence fee.
- 6.5 Subject to the foregoing, Cyres shall not have any further liability to the Client in respect of any infringement of any third party's IPRs.
- 6.6 The Client agrees that no IPRs of any kind in the Software or the Documentation shall pass to the Client by virtue of the Agreement.
- ## **7 SOURCE CODE DEPOSIT**
- 7.1 Cyres will deposit copies of all source code, original material and software upgrades as relate to the Software with its accountants and all such code and material will be made available to the Client in the event of Cyres ceasing to trade.





- 7.2 In the event of such code and material being released to the Client, the Client shall be entitled to use the source code for the maintenance, correction, enhancement or modification of the Software.
- 7.3 Address details of Cyres' accountants are available on the company website.



8 WARRANTIES AND LIABILITY

- 8.1 Provision for rectifying any defects in the Software is made in Cyres' standard Software Maintenance Terms. Accordingly, no warranty, whether express or implied, is made in connection with the Software as to freedom from defects, suitability or fitness for purpose or otherwise and all warranties implied by law are hereby excluded.
- 8.2 Any forecast, opinion, projection or recommendation contained in the Proposal relating to the achievement of any outcome or results is by way of general information only and is not to be taken as a representation or warranty of achievable results.
- 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 hereunder.

9 TERMINATION

- 9.1 Cyres may terminate the Agreement (without prejudice to any other rights or remedies Cyres may have) at any time if:
 - 9.1.1 Any sum payable under the Agreement remains unpaid 60 days after falling due or
 - 9.1.2 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
- 9.2 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).
- 9.3 Upon termination of the Agreement the Client will remove the Software from its computer systems and will return all copies of the Software and the Documentation to Cyres within 30 days or otherwise destroy or dispose of them as Cyres may direct.
- 9.4 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).



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. Cyres may freely assign or transfer any of its rights under the Agreement.

14 NOTICES

- 14.1 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).

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.