Application Development 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 development services to the Client

1   DEFINITIONS

"Acceptance Procedure"	means the procedure for Client testing and approval of the Application as set out in the Proposal. Where no such procedure is included in the Proposal the Acceptance Procedure shall be as set out in clause 6.
"the Agreement"	means the contract between Cyres and the Client comprising the Proposal and these Terms.
"the Application"	means the computer software application to be developed by Cyres and referred to in the Proposal (but not the media on which it is stored).
"Code of Conduct"	means Cyres' own standard "Code of Conduct for the Delivery of Professional Services" (available at www.cyres.co.uk).
"Errors"	means any features of the Application which (in the reasonable opinion of Cyres) do not function in accordance with the Specification.
"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 *mutatis mutandis.*
"the Services"	means the design, programming and development services, relating to the Application, described in the Proposal.
"the Specification"	means the detailed written functional specification for the Application as set out 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 software development 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.

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 Application and 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, having made known to Cyres it's full requirements and expectations as to the Services to be provided and having satisfied itself that the Specification sets out its complete requirements in relation to the functionality of the Application. Without prejudice to the generality of the foregoing, the Client acknowledges that it has satisfied itself that any programming languages, software operating environments, operating load limits and user assumptions described by Cyres in the Specification are reasonable and appropriate.

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 terminated as provided in the Agreement.

4 PROVISION OF DEVELOPMENT SERVICES

4.1 Cyres agrees to:

4.1.1 Design, develop, code and test the Application in accordance with the Specification.

4.1.2 Provide versions of the Application to the Client from time to time during the software development process for internal evaluation and testing purposes.

4.1.3 Provide the Client with technical assistance, as described in the Proposal, to install the Application on the Client's system. Where no such description is included in the Proposal, Cyres shall provide the Client with such technical assistance via telephone and/or email.

4.1.4 Follow the Acceptance Procedure.

4.1.5 Provide a final version of the Application (on appropriate media) on completion of the Acceptance Procedure.

4.2 Cyres agrees to provide the Services with reasonable skill and care and in accordance with the Code of Conduct. Where there is any conflict between these Terms and the Code of Conduct then these Terms will prevail. All computer programming will be undertaken in accordance with generally accepted standards and practice regarding the use of appropriate programming languages, conventions and code layout.

4.3 Unless otherwise agreed in writing by Cyres, the Services will be provided during normal Working Days.

4.4 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.

4.5 Any variation, refinement or extension of the scope or meaning of any part of the Specification beyond the literal meaning of that which is written in the Proposal and which necessitates additional work by Cyres shall be undertaken only at the absolute discretion of Cyres. Cyres reserves the right to charge for such additional work in accordance with the Prevailing Rates.

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 in accordance with Cyres' Prevailing Rates.

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5   SUPPLY OF DOCUMENTATION

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

6   ACCEPTANCE PROCEDURE

6.1   The Acceptance Procedure shall be as set out in the Proposal unless no such procedure is included in the Proposal, in which case the Acceptance Procedure shall be as follows:

   6.1.1   Cyres will provide the Client with the Application for approval together with appropriate installation and implementation instructions.

   6.1.2   The Client will carry out detailed testing of the Application and notify Cyres in writing of any Errors within 21 days of receipt.

   6.1.3   Cyres will correct the notified Errors and supply an updated version of the Application.

   6.1.4   These steps will be repeated until the Client confirms approval of the Application or until a period of 30 days has elapsed since the last updated version was sent and no further Errors have been notified (in which case the Client will be deemed to have confirmed approval).

7   PAYMENT

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

7.2   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.

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

7.4   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:

   7.4.1   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

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

7.5   The Client shall be liable to pay Cyres' additional charges in accordance with the Prevailing Rates in respect of any additional software development work which Cyres (in it's absolute discretion) agrees to undertake in the course of providing the Services, which is:

   7.5.1   Requested by the Client or

   7.5.2   Necessitated by changes requested, after the commencement of the Agreement, by the Client to the Specification or

   7.5.3   Necessitated by changes to the Client's software operating environment, operating load requirements or user requirements, made after the commencement of the Agreement, and not anticipated in the Proposal.

7.6   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 8.

8   CLIENT'S OBLIGATIONS

8.1   The Client agrees to provide promptly, and at any time, whatever information, reports and data Cyres may reasonably require to facilitate the provision of the Services.

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

8.3   The Client agrees to comply with the Acceptance Procedure.

8.4   Where the Services, or any part thereof, are to be provided at the Client's own premises, the Client will ensure that:

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

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

8.4.3   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.

8.4.4   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.

8.5   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 on which the Application is installed or tested.

8.6   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.

9   OWNERSHIP & INTELLECTUAL PROPERTY RIGHTS

9.1   No ownership, proprietary right, copyright, design right or other intellectual property right of any sort in the Application or any part thereof shall pass to the Client at any time.

9.2   Cyres grants the Client a non-exclusive licence to install and use the Application (including any prototype versions and components thereof) on the Client's own computers, until terminated in accordance with clause 9.3, on the following terms:

9.2.1   The Client may only use the Application for test, evaluation and approval purposes in connection with the Services under the Agreement.

9.2.2   The Client may not sell, lend, licence or otherwise dispose of the Application to any third party nor in any way permit any third party to use the Application nor shall it use the Application on behalf of any third party.

9.2.3   The Client may not copy, adapt, modify or alter the Application in any way without Cyres' written consent.

9.2.4   The Client may not install the Application on any computer other than the Client's own computers.

9.2.5   The Client will put in place and maintain adequate security measures to safeguard the Application from access or use by any unauthorised person.

9.2.6   In the event that the Application 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 Application.

9.3   Once the Acceptance Procedure is complete, or if the Agreement shall be terminated for any reason, then the licence granted above shall terminate forthwith.

9.4   Thereafter, unless otherwise agreed in writing by Cyres, the Client's further use of the Application shall be governed by the terms of Cyres' standard Non-Exclusive End-User Licence Terms and Software Maintenance Terms (available at www.cyres.co.uk) and, as provided in those terms, shall be conditional upon a Software Maintenance Agreement between Cyres and the Client remaining in force.

10   WARRANTIES AND LIABILITY

10.1   Except in respect of death or personal injury caused by the negligence of Cyres, it's 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.

10.2   Except as expressly stated in the Proposal, no express warranties are made as to the fitness or suitability of the Application or of any other software for any particular purpose or otherwise.

10.3   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.

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10.4   Without prejudice to the foregoing provisions of clause 10, 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.

10.5   Where the performance of the Services entails the Representative utilising the Client's computer equipment and computer software at the Client's premises, 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.

11   TERMINATION

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

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

11.1.2   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

11.2   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).

11.3   Upon termination of the Agreement the Client will remove the Application from its computer systems and will return all copies of the Application to Cyres within 30 days or otherwise destroy or dispose of it as Cyres may direct.

11.4   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.

12   CONFIDENTIALITY

12.1   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.

12.2   Both parties shall ensure that their employees are aware of and comply with the provisions of clause 12.1. 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.

13   FORCE MAJEURE

13.1   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).

13.2   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.

14   WAIVER OF REMEDIES

14.1   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.

15   ASSIGNMENT

15.1   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.

16   NOTICES

16.1   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).

17   LAW

17.1   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.

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