

## 1. Interpretation

1.1. In these Terms and Conditions of Supply of Service (the 'Conditions'):

'Client' means the person named in the Order Form for whom the Supplier has agreed to provide the Specified Service in accordance with these Conditions.

'Confirmation' means the letter sent out to the Client confirming the Specified Service as per the Order Form and includes a copy of these Terms and Conditions of Supply of Service.

'Contract' means the contract for the provision of the Specified Service.

'Document' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data.

'Input Material' means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service.

'Order Form' means the order form, joining form or request form, or any other form of request, whereby the Client has requested the provision of the Specified Service by the Supplier, and includes information provided verbally by telephone and recorded by the Supplier into its database.

'Output Material' means any Documents or other materials, and any data or other information provided by the Supplier relating to the Specified Service.

'Specified Service' means the service to be provided by the Supplier for the Client and referred to in the Order Form.

'Supplier' means Cybase Limited (registered in England under number 7654241).

'Supplier's Standard Charges' means the charges shown in the Supplier's brochure or other literature published from time to time relating to the Specified Service.

1.2. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Supply of the Specified Service

2.1. The Supplier shall provide the Specified Service to the Client subject to these Conditions and any

other conditions that may be referred to in the Order Form, or any brochure or other literature published from time to time relating to the Specified Service.

2.2. The Supplier shall send out a Confirmation to the Client promptly upon receipt of the Order Form. The Client must immediately advise the Supplier if the Specified Service is incorrect or if any term or terms of the Conditions of Supply of Service is or are not acceptable.

2.3. The Client shall at his own expense furnish the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

2.4. The Client shall at his own expense create and retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or the order of the Client.

2.5. The Specified Service shall be provided in accordance with the Order Form and otherwise in accordance with the Supplier's current brochure or other literature published from time to time relating to the Specified Service, subject to these Conditions.

2.6. Further details about the Specified Service and advice or recommendations about its provision or utilisation, which are not given in the Supplier's brochure or other promotional literature, may be made available upon the Client's written request to the Supplier.

2.7. The Supplier may correct any typographical or other errors or omissions in any brochure, promotional literature, quotations or other Document relating to the provision of the Specified Service, without any liability to the Client.

2.8. The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or statutory requirements, or which do not materially affect the nature or quality of the Specified Service.

2.9. The Supplier reserves the right to decline the supply of the Specified Service to any person or company which the Supplier, in its sole discretion, deems unsuitable.

## 3. Charges

3.1. Subject to any special terms agreed, the Client shall pay the Supplier's Standard Charges, and any additional sums which are agreed between the Supplier and the Client for the provision of the Specified Service or which, in the Supplier's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

3.2. The Supplier shall be entitled to vary the Supplier's Standard Charges from time to time by giving not less than 30 days written notice to the Client. The Supplier shall be entitled to increase the Supplier's monthly charge if utilisation of the Specified Service, including accesses to a Client's web site by any person, generates a level of accesses that, in the opinion of the Supplier, detrimentally affects the Supplier's service to other Clients in any way whatsoever. The Client will be consulted before any such increase is applied. The Supplier shall be entitled to suspend all or part of the Specified Service if the level of accesses seriously impedes the Supplier's ability to provide service to other Clients.

3.3. All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time, except for cases where the Value Added Tax inclusive price is specifically mentioned.

3.4. The Supplier shall be entitled to invoice the Client either monthly or annually (or such other period as agreed in writing with the Client), in advance of the month or year (or such other period) in which the Specified Service is provided, or at other times agreed in writing with the Client.

3.5. The Supplier's Standard Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within seven days of the Supplier's invoice.

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3.6. If payment is not made in accordance with paragraph 3.5, the Supplier shall be entitled, without prejudice to any other rights it might have:

3.6.1. To charge interest on the outstanding amount (both before and after any judgement at the rate of 3% above the base rate from time to time of Barclays Bank PLC from the due date until the outstanding amount is paid in full; and

3.6.2. To suspend the Specified Service until payment plus any interest or other charges is received in full in cleared funds.

### **4. Rights in Input and Output Material**

4.1. The property and any copyright or other intellectual property rights in any Input Material shall belong to the Client, subject only to the right of the Supplier to use the Input Material for the purposes of providing the Specified Service.

4.2. The property and any copyright or other intellectual property rights in any Output Material shall, unless otherwise agreed in writing between the Client and the Supplier, belong to the Supplier or any relevant third parties, subject only to the right of the Client to use the Output Material for the purposes of utilising the Specified Service. The Client shall respect third party copyright in software or other material provided by the Supplier to the Client, and shall at all times comply with the terms applicable to such software or other material.

4.3. The Client warrants that any Input Material and its use by the Supplier for the purposes of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.

4.4. Subject to paragraph 4.3, the Supplier warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the copyright or other rights of any third party, and the Supplier shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

4.5. Any Input Material or other information provided by the Client to the Supplier which is so designated by the Client shall be kept

confidential by the Supplier, and all Output Material or other information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Client; but the foregoing:

4.5.1. Shall not apply to any Documents or other materials, data or information which are public knowledge at the time when they are so provided by either party; and

4.5.2 Shall cease to apply if at any future time such Documents or other materials, data or information become public knowledge through no fault of either party.

### **5. Warranties and Liability**

5.1. The Supplier warrants to the Client that the Specified Service will be provided using reasonable care and skill and, so far as reasonably possible, in accordance with the specifications and at the intervals and within the times referred to in the Order Form. Where the Supplier supplies in connection with the provision of the Specified Service any goods (including Output Material) supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where appropriate and practicable, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier.

5.2. The Client warrants to the Supplier that he:

5.2.1. Will only utilise the Specified Service for lawful purposes and, in particular, shall not knowingly utilise the Specified Service to receive, transmit or create material that is obscene, threatening, menacing, racist, offensive, defamatory, in breach of confidence, in breach of any intellectual property right, or otherwise in breach of any law of any relevant jurisdiction; and

5.2.2. Will only permit the Specified Service to be used by the user or users specified in the Contract, and that he will not knowingly permit simultaneous access to the Specified Service under the same log-in details; and

5.2.3. Will at all times keep all relevant usernames and passwords secure and not disclose them to any unauthorised person, and in the event that any username or password becomes known to any

such unauthorised person, will inform the Supplier immediately.

5.3. The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, misleading, out of sequence or in the wrong form, or arising from their late arrival or non-arrival or any other fault on the part of the Client.

5.4. Except in respect of death or personal injury caused by the Supplier's negligence, or as expressly provided in these Conditions, the Supplier shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or its utilisation by the Client, or the termination of the Contract by the Supplier in accordance with paragraph 6 of the Conditions.

5.5. Subject to paragraph 5.3, the entire liability of the Supplier under or in connection with the Contract in respect of one event or a series of two or more connected events, shall not exceed a total sum equivalent to the Supplier's charges under the Contract for the provision of the Specified Service for one year.

5.6. The Supplier shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Specified Service, if the delay or failure:

5.6.1. Arose from the suspension of the Specified Service for routine repair, upgrade or maintenance work, such suspension having been previously notified to the Client by the Supplier; or

5.6.2. Was due to any cause beyond the Supplier's reasonable control.

### **6. Termination**

6.1. The Client shall be entitled to terminate the Contract at any time by giving 30 days written notice to the

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Supplier. A minimum contract period of 12 months shall apply to all Clients subject to the Supplier's Standard Charges.

6.2. Either party may terminate the Contract without prejudice to any other remedy, by giving 30 days written notice to the other if:

6.2.1. The other has committed any breach of these Conditions and (where capable of remedy) has failed to remedy the breach within 30 days of being required by written notice to do so; or

6.2.2. The other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary agreement with his or its creditors, or has a receiver or administrator appointed.

6.3. The Supplier shall further be entitled to terminate the Contract immediately and without notice to the Client if in the opinion of the Supplier the Client has misused, or made improper, inappropriate, unlawful or illegal use of the Specified Service, or the Client's use or misuse of the Specified Service is such that the Supplier's ability to provide service to other Clients is impaired in any way whatsoever.

6.4. In the event that the Supplier terminates the Contract, the Supplier shall not be obliged to refund any monies to the Client and shall have no liability to the Client resulting from the termination as specified in paragraph 5.4 of the Conditions.

### **7. General**

7.1. These Conditions, together with the terms (if any) set out in the Order Form and any brochures or published literature relating to the Specified Service, constitute the entire agreement between the parties, supersede any previous agreement or understanding, and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

7.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice, or as it may appear on the

Order Form, and may be either delivered personally or posted.

7.3. A posted notice in accordance with paragraph 7.2 shall be deemed served:

7.3.1.1. By hand delivery, on the day that the notice is left with the other;

7.3.1.2. By post, on the second working day after the day of posting by first class post, or on the fourth working day after the day of posting by second class post.

7.4. No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

7.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

7.6. English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English courts.