

# CYCLE TRAINING & SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into between Tryon Solutions, Inc., a North Carolina corporation, (hereinafter "Tryon") and the party ("Customer") identified in the corresponding Order referencing this Agreement, each of which may be referred to in the singular as a "Party" or collectively as the "Parties." If the person entering into this Agreement is doing so on behalf of a legal entity, such person represents that it has the legal authority to bind such legal entity to this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Definitions.

1.1. "**Effective Date**" shall mean the earlier of (a) date this Agreement or related Order is signed by the last party to sign it, (b) issuance of a purchase order by Customer, or (c) acceptance of Customer's payment by Tryon.

1.2. "**Order**" means the purchase order, invoice, estimate, or other document referencing this Agreement and causing it to be placed in effect.

1.3. "**Personnel**" shall mean employees, contractors, subcontractor employees, agents, or other individuals working for either Party.

1.4. "**Services**" shall mean the services to be performed by Tryon or its Personnel pursuant to this Agreement.

1.5. "**Software**" shall mean Tryon's Cycle software program.

1.6. "**Work Product**" shall mean any materials, enhancements, programs, scripts, tools, derivative work to the Software, configuration, or any other deliverable provided by Tryon to Customer as part of the Services.

## 2. Term and Termination.

2.1. **Term.** This Agreement shall commence upon the Effective Date and will continue until the earlier of (a) one (1) year from the Effective Date; (b) the conclusions of the Services contemplated herein; or (c) either party provides ten (10) days written notice to terminate to the other party.

## 3. Professional Services.

3.1. **Scope.** The Software is not custom software but is standard commercial software and the scope of the Services provided hereunder shall consist solely of classroom training and/or deployment assistance. Tryon shall render all Services to the best of its ability and in a timely and professional manner consistent with generally accepted industry standards. Any services requested by Customer outside the scope of this Agreement may be provided by Tryon under a separate agreement.

3.2. **Standard Classroom Training.** If the Order shall reference one of Tryon's standard classroom training offerings, Tryon shall provide standard classroom training at the location and rates set forth in the Order. Customer shall be billed on a fixed-fee basis that includes all materials, but does not include travel related expenses. If training is performed at a Customer's location, Customer shall provide a suitable classroom environment with a data projector, internet connections, dry erase board and markers. Customer shall provide a computer for each student, preloaded with the Software. The Software must be activated and appropriately licensed (under separate agreement) prior to the commencement of the Services.

3.3. **Deployment Assistance/Other Services.** If the Order specifies any Services, Tryon shall provide any other Services (such as deployment assistance, installation, configuration, or other consulting services) pursuant to the terms, rates, and location set forth in the Order.

## 4. Costs and Terms.

4.1. **Terms.** Customer will pay to Tryon (or Tryon's reseller or agent) the amounts due as indicated in the Order per the terms contained in the Order. Customer's obligation to pay any amounts due shall survive the termination of this Agreement.

4.2. **Services Costs.** Customer will pay to Tryon (or Tryon's reseller or agent) in full for the Services outlined in the Order.

4.3. **Expenses.** Unless otherwise excluded in the Order, Customer agrees to reimburse Tryon (or Tryon's reseller or agent) for all reasonable expenses incurred by Tryon in the performance of Tryon's duties under this Agreement, provided that all such expenses must be properly documented. These expenses shall include the cost of any materials, taxes, travel, lodging, communications, shipping charges, and out-of-pocket expenses incurred by Tryon in connection with providing the Services.

4.4. **Taxes.** Customer shall be responsible to pay all taxes and fees, however designated, that are levied or imposed by reason of the transactions contemplated by this Agreement, including without limitation all sales, value-added, use, transfer, privilege, excise and other taxes, duties, or fees, whether international, national, state or local, excluding, however, taxes based on Tryon's net income.

## 5. Intellectual Property.

5.1. **Ownership.** All Work Product provided hereunder to Customer by Tryon shall not constitute "works made for hire" and Customer acknowledges and agrees that Tryon and its licensors own and retain all rights to the Work Product, except as provided in this Section 5.

5.2. **License Grant.** Upon the Effective Date of this Agreement, and subject to any restrictions and other conditions defined in the Order and this Agreement, Tryon grants to Customer a non-exclusive, non-transferrable perpetual license to use the Work Product.

5.3. **Copies.** Customer shall receive one copy of the Work Product. Customer shall have the right to make a reasonable number of copies of the Work Product to be used internally for purposes consistent with this Agreement. All copies must contain proprietary markings or legends appearing on or contained within the Work Product.

## 6. Warranty/Limitation of Liability.

6.1. **Warranty.** To the maximum extent permitted by applicable law, the Services are provided "as is" without warranty of any kind. Tryon hereby disclaims any and all warranties, whether express, implied, statutory or otherwise, including without limitation, any warranty of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, and any warranty arising out of any course of performance, course of dealing or usage of trade. Not limiting the foregoing, Tryon does not warrant that the Services will meet Customer's needs or expectations or that the use of any Work Product will be error free.

6.2. **Limitation of Liability.** To the maximum extent permitted by applicable law, in no event will Tryon have any liability for indirect, special, incidental, consequential or punitive damages of any nature, including loss of data, lost profits, or cost of cover, however caused and on any theory of liability, whether for breach of warranty or

## CYCLE TRAINING AND SERVICES AGREEMENT

---

contractor, tort (including negligence), or otherwise, arising out of or related to this Agreement, even if Tryon has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy stated herein. In no event with Tryon's total cumulative liability exceed the amounts actually paid by Customer to Tryon for Services provided under this Agreement.

### 7. Miscellaneous.

**7.1. Entire Agreement.** This Agreement and all addendums or appendices executed pursuant hereto, constitutes the entire agreement between the parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the parties with respect to the subject matter hereof. No change or modification of this Agreement shall be valid unless it is in writing and signed by each of the parties hereto. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom the waiver is sought to be enforced. In the event of conflict between the terms and conditions contained in the Order and those contained in this Agreement, the terms and conditions contained in the Order shall control.

**7.2. Independent Contractor.** The Parties agree that Tryon will act as an independent contractor in the performance of its duties under this Agreement. The Parties recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties.

**7.3. Personnel Solicitation.** Customer acknowledges that Tryon's Personnel are valuable assets to Tryon, difficult to replace, and critical to servicing the customers of Tryon. Therefore, during the term of this Agreement and for a period of one (1) year thereafter, Customer shall not directly or indirectly employ, solicit or retain the services of any Personnel of Tryon for its own benefit or the benefit of another. This provision shall be limited to Tryon Personnel that have worked directly with Customer with respect to the Services provided under this Agreement. This Section 7.3 shall survive the termination of this Agreement.

**7.4. Survival.** The following provisions shall survive the termination of this Agreement: Costs and Terms (Section 4); Intellectual Property (Section 5); Warranty/Limitation of Liability (Section 6); and, Personnel Solicitation (Section 7.3).

**7.5. Severability.** If any provision, or portion thereof, of this Agreement is, or becomes, invalid under any applicable statute or rule of law, then such provision will be enforced to the maximum extent possible under applicable law so as to effect the intent of the parties and the other provisions of this Agreement will continue in full force and effect.

**7.6. Notice.** Notices to either Party shall be in writing and deemed effective when received. Notices to Tryon shall be sent to 801 Corporate Center Drive, Suite 118, Raleigh, NC 27607 USA. Notices to Customer shall be sent to the address indicated in the Order. Any Party may change its notice address upon notice to the other Party in accordance with this Section.

**7.7. Force Majeure.** Each Party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer of its obligation to pay fees owed under this Agreement.

**7.8. Fees and Costs.** If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, court cost and other collection expenses, in addition to any other relief it may be awarded.

**7.9. Governing Law and Forum.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of North Carolina, United States. Any legal proceeding related to this Agreement shall be conducted in the state and federal courts located in Wake County, North Carolina, United States.

**7.10. Assignment.** Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction.

**7.11. Headings.** The section and other headings contained in this Agreement are for reference purpose only and shall not in any way affect the meaning or interpretation of this Agreement.