

These terms are supplemental to the General Terms and Conditions of Software Hardware and Consultancy Supply (the "General Terms")

1. Agreement to Develop

- 1.1. We agree to develop the custom software referred to in the proposal at the price set out in it subject to the General Terms and these terms and conditions ("the development agreement")
- 1.2. You agree to provide us with reasonable assistance and (if set out in the proposal, facilities) for the development, testing and installation of the software and its associated data. *(Note: testing and development work may require down-time on your equipment. If this is the case, unless we have priced for out-of-hours development, we shall expect you to schedule for reasonable amounts of down-time during working hours).*

2. Definitions

- 2.1. "Software" means the custom software described in the proposal including any operator manuals relating to it, to be developed by us in accordance with this agreement.
- 2.2. "Equipment" means the computer hardware equipment specified in the proposal upon which the Software is to operate when complete.
- 2.3. "Specification" means the specification approved in accordance with clause 4 below.
- 2.4. "Development Work" means the development work required to produce the Software based upon the Specification.
- 2.5. "Development Timetable" means the timetable upon which the Development Work is proposed to take place which will accompany the Specification (or is amended

from time to time in accordance with the terms of this Agreement).

- 2.6. "Acceptance" or "Accepted" means acceptance of any part or the whole of the Software which has successfully passed the acceptance tests specified in the Specification.

3. Duration

- 3.1. This development agreement shall continue until the Software is Accepted unless either party gives to the other not less than [2] months' prior written notice, subject always to prior termination as specified in this agreement. Termination of the development agreement shall not affect termination of other elements of this agreement as set out in the proposal.

4. Preparation and Approval of Specification

- 4.1. Where the proposal requires that a detailed specification is drawn up:
 - 4.1.1. We will draw up the Specification for the Software in accordance with your requirements as stated in the outline specification referred to in the proposal ("the Outline Specification") and shall give it to you for approval.
 - 4.1.2. You will notify us of any amendments required within 21 days after you receive the Specification (or revised Specification, as the case may be). If you do not notify us of any amendments within the 21 day period, we may take it that the specification is approved and we will begin work on the Software as set out below
 - 4.1.3. If you notify us of any amendments within the 21 day period, we will amend the Specification in accordance with those amendments, but only to the extent that the amendments are within the Outline

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- Specification. We will then let you have the new Specification for your approval.
- 4.1.4. If your amendments to the Specification extend beyond the Outline Specification, we shall (if we agree to do that work) charge you at our normal current rate for doing so. We may also make any consequential changes to the Timetable.
- 4.2. Upon approval of the Specification, we will start the Development Work.
5. **Testing, Acceptance and Delivery of the Software**
- 5.1. Upon completion of the Development Work we will run the acceptance tests specified in the Specification.
- 5.2. Upon passing the acceptance tests, the Software or that part ("module") of it (if not the whole) shall be considered Accepted and we shall deliver it to you together with documentation sufficient to enable a reasonably skilled operator to install and use the Software on the Equipment.
- 5.3. Unless explicitly stated on the proposal, we do not agree to install or configure the Software.
- 5.4. Where we have agreed to install the Software:
- 5.4.1. You will ensure that you have taken a full backup of all programs and data on the Equipment before installation;
- 5.4.2. You will ensure that the Equipment (and, as or if appropriate, operating system and other support software) is of a suitable specification for the Software;
- 5.4.3. We do not agree to convert or input data unless explicitly agreed in the proposal in which case:
- 5.4.3.1. You agree to ensure that the data to be converted are in a suitable format to be converted as specified in the proposal;
- 5.4.3.2. You agree to check the integrity of data both before and after the conversion process;
- 5.4.3.3. You acknowledge that certain aspects of the data may not be amenable to conversion
- 5.5. We will use all reasonable endeavours to complete and deliver the Software in accordance with the Development Timetable, but we will not be liable for its failure so to do nor will it be in breach of this Agreement solely by reason of that failure.
- 5.6. If you fail to take delivery of any part, module or the whole of the Software in accordance with the terms of this Agreement or if either of us terminates this Agreement for whatever reason, you will be liable to pay to us all sums due for time spent and materials used to date, in addition to any and all costs and expenses incurred by us as a result of your default, termination or of rescheduling delivery to you at a later date.
6. **Cost of Development Work**
- 6.1. Unless otherwise agreed, any development work outside the Specification will be costed on a time and materials basis using our standard hourly charge-out rates in force at the time the work is done.
7. **Software Support and Enhancement**
- 7.1. This Agreement does not include support or enhancement of the Software unless specifically stated in the proposal, in which case our Standard Terms for the Supply of Software Support apply (a copy of which is available on request).
8. **Warranty**
- 8.1. We warrant to you that the Software, on delivery to you, will
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- conform substantially with the Specification.
- 8.2. We undertake to correct by patch or new release (at our option) that part of the Software which does not comply, so long as you notify us (with details) of the non-compliance within 90 days from the date of Acceptance, PROVIDED THAT the non-compliance has not been caused by any modification, variation or addition to the Software not performed by or authorised by us, or is caused by the incorrect use, abuse or corruption of the Software or by use of the Software on equipment other than the Equipment specified in the Specification. If you have a maintenance agreement covering the Software, the maintenance agreement takes precedence over this clause.
- 8.3. Except as otherwise provided in this clause, we make no other representations or warranties and expressly exclude them whether express, implied, statutory or otherwise especially as to quality or fitness of the Software for any particular purpose.
- 8.4. Although we do not warrant that the Software shall be free from all known viruses we have used commercially reasonable efforts to check for the most commonly known viruses prior to delivery but you are solely responsible for virus scanning the Software.
- 8.5. We do not warrant that the Software is error free, but warrant that it will function substantially in accordance with the Specification and agree to correct notified errors as set out above.
- 8.6. We warrant that the disabling devices (if any) in the Software are only intended to be used in the event that you are in breach of this Agreement.
- 8.7. We warrant that we are lawfully able to grant the rights purported to be granted by way of licence hereunder within the United Kingdom PROVIDED THAT
- 8.7.1 This warranty does not extend to anything which we have undertaken explicitly at your instruction.;
- 8.7.2 Unless agreed otherwise in writing, this warranty does not extend to registered intellectual property rights (for example patent, registered trademark and registered design) whether within the United Kingdom or elsewhere on the basis that we have not built into the price the cost of patent and equivalent searches and clearances prior to commencing work.
- 8.8 Prior to claiming under the warranty contained in clause 8.7 above, you agree to permit us a reasonable opportunity to remedy the breach by (at our option) obtaining a licence or settlement with any claimant or re-writing any part of the Software so that it no longer infringes (provided that such re-write does not cause the software to fall materially outside the specification).
- 9. Our Liability**
- 9.1. In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and we become liable for loss or damage that it may otherwise have been lawful to limit, such liability shall (unless otherwise agreed in writing) be limited to the cost of the Development Work.
- 9.2. We do not exclude liability for death or personal injury where that liability arises as a result of our negligence or negligence for which we are liable

10. Copyright, Patents, Trade Marks and Other Intellectual Property Rights

- 10.1. You agree that this agreement is not intended to transfer any intellectual property rights to you except by licence and you agree to accept and be bound by the terms of our standard form of Core Software Licence a copy of which is available on request.
- 10.2. You acknowledge that all copyright, trade marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the Software are and shall remain our sole property (or the property of their respective owners).
- 10.3. You agree that you will not, during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute our ownership of or right to use those intellectual property rights.
- 10.4. If new inventions, designs or processes evolve in performance of or as a result of this development agreement, you acknowledge that they shall be our property unless otherwise agreed in writing.
- 10.5. The Software may incorporate code or components which are licensed to us by third parties, or for which we procure a licence for you (for example, run-time modules). You agree to abide by the terms of such licences which shall, unless we have agreed otherwise at the outset, be royalty free. Except to the extent that it was commercially unreasonable for us to have used such third party code or components, we shall not be liable for and claim by a third party that use of such code or component.

11. Licensee's Obligations

- 11.1. You agree that you will keep up-to-date and accurate details of the location of all copies of the software.
- 11.2. You agree to keep details of any assignment of the software licence (and only to assign it in accordance with the licence) and to give us details of any assignee. Upon valid assignment of the software you agree to destroy all copies of the Software which remain in your possession or under your control.
- 11.3. You agree to ensure that our copyright notice is faithfully reproduced on all copies you make of all or any part of the Software.
- 11.4. You acknowledge that the Software is not (unless specified specifically in the proposal) designed for mission-critical or safety-related purposes and should not be used in any such context.

12. Parties to this contract

- 12.5. "We" and "us" means Darklake Developments Limited, The Senate, Southernhay Gardens, Exeter, Devon EX1 1UG (company registered in England, No 07301565, whose registered office is at 4 Old Vicarage Close, Ide, Exeter, Devon EX2 9RE).
- 12.6. "You" means the person (which includes a company or other business) contracting to obtain goods, software licences or services from us.