

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

**1. Agreement to Supply**

1.1. We agree to provide you with the consultancy ("consultancy") services detailed in the quotation at the price set out in "the consultancy agreement". The quotation will have appended to it and set of our terms of reference which define the scope of the consultancy.

**2. Standard of Care**

2.1. We agree to perform the consultancy with the care and skill to be expected of a competent consultant to carry out work of a nature similar to the consultancy, and in all the circumstances surrounding it.

2.2. Unless it explicitly states in the terms of reference that we are providing independent consultancy services, consultancy may involve advising on solutions provided by suppliers with whom we have a relationship. However, even where we are not providing independent consultancy services, our advice will take into account your needs and requirements (as you have told them to us).

**3. Charges**

3.1. Unless otherwise stated, our charges do not include hotel accommodation or travel costs for staff which we supply to you which will be charged to you (with the addition of VAT, if appropriate) at cost.

**4. Additional Services**

4.1. We may be prepared to carry out additional consultancy services for you but these will be carried out on a time and materials basis at our usual hourly rate.

**5. Intellectual Property**

5.1. Where we create any intellectual property at your request or pursuant to the provisions of this agreement, you are granted a limited licence to

use that intellectual property for your own internal purposes. In particular

5.1.1. You may not adapt or amend such intellectual property without our written permission (except to the extent permitted by law);

5.1.2. You may not re-use any part (as opposed to the whole) of such intellectual property or incorporate it into any other work without our permission;

5.1.3. The licence will terminate ~~on~~ immediately on notice from us if you are in breach of any of its terms;

5.1.4. If the Quotation has reference to other licence terms relating to any intellectual property created under this Agreement, the terms of that licence supersede the terms of the licence granted by this clause 5.

5.2. This agreement is not intended to transfer the title to any intellectual property to you and your licence to use any intellectual property as referred to in clause 5.1 above is:

5.2.1. dependent upon you having paid all outstanding sums due to us under this agreement or otherwise;

5.2.2. dependent upon you accepting an obligation to reproduce faithfully our copyright symbol or legend on all copies of the intellectual property which you make; and

5.2.3. not sole or exclusive.

**6. Provision of Assistance**

6.1. You agree to provide us with all reasonable assistance and facilities to enable us to carry out the consultancy, including:

6.1.1. (if the consultancy is to take place on your site) providing our staff with suitable office space and facilities;

6.1.2. (if the consultancy includes presentation), providing us with a suitable room to perform the consultancy, together with appropriate audio visual equipment and refreshments.

- 6.1.3. providing us with access to the hardware, software and data which we reasonably require to carry out the services;
- 6.1.4. carrying out our reasonable instructions relating to the installation, running and testing of any software on your computer equipment. *(note: it may be that the consultancy work requires downtime on your equipment. If this is the case, unless we have priced for out-of-hours consultancy, we shall expect you to schedule for reasonable amounts of down-time during working hours);*
- 6.1.5. providing us with information and access to your staff which we may reasonably require to carry out the services.

6.2. Unless specifically stated in the quotation, this agreement does not oblige us to install, configure, reinstall or reconfigure any software or to reinstate or reload any data and our obligation under it is limited to the terms of reference. You acknowledge that our activities may result in the corruption or erasure of software or data and you must therefore ensure that you keep careful, up-to-date verified backups of software and data using a rotation system and regularly replaced media.

6.3. You agree not to change the location where the consultancy is carried out without our written consent.

## 7. **Staff**

7.1. We do not guarantee that we can supply specific, named, staff to perform the consultancy work

7.2. We may sub-contract the work to such third parties as we consider appropriate. Where we have selected the third party in question, we remain responsible for the acts and omissions of the sub-contractor as if we had undertaken the work ourselves. Where you have

nominated the sub-contractor, you accept liability for their acts and defaults.

## 8. **Copyright**

8.1. You confirm that you have, and will throughout the subsistence of this consultancy agreement, continue to maintain, valid copyright and other intellectual property licences in relation to all third party computer programs, images, logos, trademarks or other items which are the subject of this consultancy agreement so that no one working under this consultancy agreement will infringe any third party copyright or other intellectual property right in carrying out the consultancy.

8.2. You agree to fully and effectively indemnify us against any loss which we may suffer arising from your breach of the above clause 8.1

## 9. **Termination**

9.1. In addition to the termination provisions set out in the General Terms, we may terminate this consultancy agreement by notice in the following circumstances:

9.1.1. If any sums you owe to us remain outstanding after they became due; or

9.1.2. In the event that you fail to provide the staff supplied to you under this agreement and working on your premises (or premises specified by you) with a safe system of work or require that that member of staff works in conditions or with equipment which are in any way unsafe or hazardous or if you otherwise act unreasonably so as to delay for a significant period of time our completion of the services.

9.2. You may terminate this consultancy agreement in the following circumstances:

9.2.1. If any of our staff fails to attend for a period of not less than four (4) consecutive working days unless you

authorise the absence in advance or it is due to sickness or injury;

- 9.2.2. If any of our staff commits any act of gross misconduct as defined in your reasonable site rules; or
- 9.2.3. If any of our staff proves in your reasonable opinion to be unsuitable to carry out work required under this consultancy agreement and we have been unable to provide a suitable replacement within 10 working days after you have notified us of their lack of suitability
- 9.3. PROVIDED THAT in the case of each of the cases referred to in clauses 9.2 above you may not terminate this Agreement unless and until the matter has been referred to the Grievance Procedure referred to in the General Terms and you have not found the outcome satisfactory.

10. **Liability**

- 10.1. Unless specifically stated otherwise in the quotation, we shall not be liable for any physical loss or damage to your hardware or software or other equipment nor for any loss (including loss of business profits), damages, claims or expenses of whatever nature whether direct or consequential arising directly or indirectly as a result of such physical loss or damage or of programming or other error by us in carrying out the consultancy or for any claim whether by you or your employees, agents or customers arising out of any of our acts or omissions or those of any of our staff caused by reason of negligence or breach of duty in excess of [the total amount paid by you to us under this agreement over the year immediately preceding such a claim].
11. "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).