

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

1. Agreement to Support

1.1. We agree to support the Software stated in the proposal as being subject to a support agreement subject to the General Terms and these terms and conditions ("the support agreement")

2. Assignment

2.1. We may by notice assign the whole of the benefit and burden of this support agreement (or all or any of the components referred to in clause 2.2 below) to any other person who in our reasonable opinion is capable of carrying out its terms.

2.2. We may sever the parts of this agreement which refer to:

2.2.1. Systems software

2.2.2. Application Software

2.2.3. Bespoke software

2.2.4. Software licensed or sub-licensed by us

2.3. Any assignment under this clause is without prejudice to any other contractual arrangement between us.

3. Support Provided under this Agreement shall Include

3.1. Support provided includes hotline support. We will respond within 4 working hours to problems telephoned or faxed to our Hotline which is available during our normal working hours – 9am to 5pm Monday to Friday (*which exclude public holidays and weekends*).

3.2. We prioritise support into urgent and non-urgent problems. An urgent problem is:

3.2.1. significant degradation or failure of the System,

3.2.2. defective Software distribution media, or

3.2.3. Software performance significantly inconsistent with documentation.

3.3. Any other problem is classified as a non-urgent problem.

3.4. Out of Hours Support. We shall, if specified in the proposal, provide out-of-hours support.

3.5. Our support staff will attempt to solve a problem as quickly as reasonably possible, taking into account that urgent problems have priority over non-urgent problems. When appropriate, we will try to give an estimate of how long a problem may take to resolve. We will keep you informed of the progress of problem resolution.

3.6. In the course of solving a problem we may issue you with a workaround which will enable you to continue working (albeit with possibly reduced functionality) which may cause your problem to be reclassified as a non-urgent problem.

3.7. Our ability to provide support for third party software is dependent upon the assistance of the supplier of that software. We will use all reasonable efforts to deal with software problems which are caused by third party software (provided that that software is covered by this agreement) but cannot guarantee to solve problems arising from third party software.

3.8. On-site support will only be provided if specified in the proposal and where appropriate in the event telephone support does not resolve the problem. Otherwise, we will make an additional charge.

3.9. We shall charge at our usual applicable hourly rates for any support other than support provided under this agreement.

3.10. This Agreement does not cover hardware maintenance

- 3.11. This Agreement does not oblige us to install, configure, reinstall or reconfigure any software or to reinstate or reload any data except to the extent that we shall load your last non-corrupt complete backup ("the last backup") and ensure that any subsequent software fixes which we have implemented pursuant to this agreement are implemented. It is your responsibility to re-key or re-enter any data entered since the last backup was taken.
- 3.12. **You acknowledge that diagnosis and support 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.**
- 3.13. We specifically do not provide a data recovery service under this agreement. We may be able to provide data recovery services (or subcontract them to third parties) under a separate agreement, but you are warned that data recovery costs are significantly more than you may have anticipated. **YOU MUST KEEP GOOD BACKUPS OF DATA AND SOFTWARE AND KEEP THEM OFF-SITE.**
- 3.14. If anything you owe us is overdue (whether under this Agreement or otherwise) we shall be entitled to withhold support until it is paid. You will still be required to pay support fees for the time the support is withheld.
4. **Your obligations**
- 4.1. You must submit sufficient material, information and assistance to enable our support staff to duplicate the problem. This includes providing sample data (including the data on the system when the problem was encountered).
- 4.2. Where the software is dependent for its operation on other software, or on specific hardware, we may decline to provide software support unless
- 4.2.1. you have a maintenance or support agreement with us in respect of that software or hardware (for which charges additional to those under this agreement may be levied); or
- 4.2.2. You have a maintenance or support agreement with a third party in respect of that software or hardware the terms and provider of which we have approved.
- 4.3. You agree to comply with the provisions of any software licence agreements applicable to the software covered by this agreement (the "Software Licence");
- 4.4. We may provide you with diagnostic or support software (the "Support Software") in which case you agree:
- 4.4.1. To install and use the Support software on our instructions;
- 4.4.2. not to copy the Support Software, other than for the purposes of back-up, nor otherwise to reproduce it;
- 4.4.3. not to translate, adapt, vary or modify the Support Software without our written consent;
- 4.4.4. to maintain accurate and up-to-date records of the number and location of all copies of the Support Software;
- 4.4.5. to supervise and control use of the Support Software in accordance with the terms of this Agreement and of the Software in accordance with the Software Licence;
- 4.4.6. to replace the current version of Support Software with the upgraded version forthwith upon receipt;
- 4.4.7. to reproduce and include the copyright notice contained in or on the Support Software on all and any copies made, whether in whole or in part, in any form, including partial

- copies or modifications of any software;
- 4.4.8. not to provide or otherwise make available the Support Software in whole or in part (including but not limited to program listings, object code, source program listings and source code), in any form to any person other than your employees or authorised contractors without our written consent
- 4.4.9. within 14 days after the date of expiry or termination of this support agreement for whatever reason give us a certificate, certifying that the main copy and all backup or other copies of all Support Software and related documentation (in whole and in part), in any form including partial copies or modifications of such software received from us or made in connection with this support agreement, have been destroyed, (unless we give you prior written authorisation to retain one copy of it and upon whatever conditions we may think fit).
- 4.4.10. except to the extent permitted by law not to use the software in conjunction with other software not authorised by us or its licensor or to manually alter registry settings or other configuration settings not authorised by us or its licensor or otherwise referred to in the software documentation.
- 4.5. You agree to assist us in solving problems including following straightforward instructions given to you over the telephone or by email or fax, and reporting to us the effects of different tests etc.
5. **Remote Support**
- 5.1. You will, where specified in the proposal, make available a modem or ISDN terminal adapter (and relevant telephone or ISDN connections) for on-line problem resolution. The modem will be of a specification and type we approve.
- 5.2. We may amend the specification of the modem or ISDN adapter from time to time (but no more than once every two years).
- 5.3. You will ensure that we have access to administrative or other passwords to enable us to carry out support. We undertake to take reasonable steps to keep such passwords confidential, but you are advised that you should employ a prudent password policy involving regular changes of passwords and the use of non-obvious or guessable passwords.
6. **Correction of Software Errors**
- 6.1. We may, at our sole discretion, correct software errors by patch or by new version, or we may replace software with different software of equivalent functionality.
- 6.2. Where it does not materially impact on the operation of the System, we may specify workarounds as solutions to specific problems.
7. **Support not Included**
- 7.1. The following are not covered by the support agreement (unless explicitly stated otherwise) and work carried out in respect of them will be charged for on a time and materials basis at our usual charge-out rates.
- 7.1.1. Support of other software, accessories, attachments, machines, systems or other devices not supplied by us or listed in the proposal as being subject to support (or otherwise covered by agreement).
- 7.1.2. Rectification of lost or corrupted data arising for any reason other than our own negligence.
- 7.1.3. Support made more difficult because of any changes, alterations, additions, modifications or variations to the software covered by this agreement, the System or operating environment and made without our

- written consent or at our instructions.
- 7.1.4. Dealing with faults caused by using the software or hardware outside design or other specifications or outside the provisions laid down in any instructions documentation or manual relating to the software or hardware.
- 7.1.5. Diagnosis and/or rectification of problems not associated with the software covered by this agreement.
8. **Duration**
- 8.1. This maintenance agreement shall subsist for one year from its date and from year to year thereafter provided that either of us may notify the other that it wishes to terminate to terminate on any anniversary of this maintenance agreement on 90 days' notice before the anniversary.
9. **Support Charges**
- 9.1. The support charges are as specified in the proposal or as notified to you from time to time under this Agreement ("Support Charges").
- 9.2. Support Charges are payable annually in advance upon receipt of our invoice unless otherwise we agree otherwise in writing (or it says otherwise in the proposal). No support will be provided until we have received payment. The proposal may specify that you are to pay by direct debit in which case we shall debit your account near the date of this agreement and each renewal date with the Support Charges which are in force at the time that the debit is made.
- 9.3. Support Charges are subject to review no more than once in each twelve-month period (excluding alterations and additions to software which are covered by this agreement). We will give you at least 90 days' notice before the new Support Charges take effect.
- 9.4. Within 30 days after you have been notified of amended Support Charges in accordance with clause 9.3 above you may, if the charges have been increased, notify us of your intention to terminate the Agreement in which case the agreement will terminate (and all support services will cease) on the day immediately before the increased charges were due to take effect. Termination of this support agreement shall not by itself cause any other agreement between us to terminate.
- 9.5. If you alter your hardware or software configuration from that contemplated in the proposal (or as accepted by us from time to time) or there is any other significant change in the software to be maintained you are required to notify us immediately in which case:
- 9.5.1. We will tell you what the amended Support Charges will be and you have 30 days in which to reject by notice the new charges, failing which you are considered to have accepted them.
- 9.5.2. If you reject the new charges notified to you in accordance with the preceding clause, you will be deemed to have served notice terminating the agreement in accordance with clause 9.1 above and the old support charges will remain in effect. However, in that case we shall not be required, for the remainder of the contractual period, to provide support services in excess of those we were required to supply before the changes. *For the avoidance of doubt, the 90 day notice period still applies. In other words, if you reject the new charges within 90 days of an anniversary of this agreement, the agreement will not terminate on that anniversary, but on the next one following it.*
- 9.6. [The parties agree that any sums due under this Agreement will be subject to interest where such sums remain outstanding for more than](#)

30 days subject to the statutory rate of interest applicable under the Late Payment of Commercial Debts (Interest) Act 1998 (irrespective of whether such act applies to this Agreement).

10. **Our Liability**

10.1. We shall not be liable to you for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this agreement, the Software, any Support Software, modem or other hardware, its use, the System or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded unless we have explicitly agreed to accept increased liability in the proposal.

10.2. Notwithstanding the generality of 10.1 above, we expressly exclude liability for consequential loss or damage which may arise in respect of the Software, any Support Software, any modem or other hardware, its use, the System or other equipment or property or for loss of profit, business, revenue, goodwill or anticipated savings unless we have explicitly agreed to accept increased liability in the proposal.

10.3. In the event that any exclusion or other provision contained in this agreement is held to be invalid for any reason and we become liable for loss or damage that could otherwise have been limited, that liability shall be limited to the amount you have actually paid us for software support services over the last year.

10.4. We do not exclude liability for death or personal injury which arises as a result of our negligence or the negligence of our employees, agents or customers representatives and for which we are responsible, or for fraud or wilful deceit.

11. **Termination**

11.1. Irrespective of whether either party is in breach of this Agreement we may terminate this Agreement if the supplier of the software fails to provide secondary support. In the event of termination under this clause we shall refund the support charges on a pro rata basis.

~~11.1.~~11.2. In addition to provisions for termination contained elsewhere in this agreement, we may, by notice to you, terminate it if you are in breach of it and fail to remedy the breach (if it is capable of remedy) within 30 days of having received notice of the breach from us.

~~11.2.~~11.3. Whether or not you are in breach of this agreement, either of us may terminate it on at least ~~90~~ 90 days' notice from one party to the other to expire on an anniversary of this agreement.

~~11.3.~~11.4. Upon termination, you will pay us all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the software or hardware, any Support Software or hardware, its support, this Agreement or otherwise and shall comply with your obligation undertaking specified in Clause 4.4.9 (*which requires you to certify you have destroyed the support software*) above.

~~11.4.~~11.5. Any remedies or rights which we have against you shall continue after termination for any reason.

~~11.5.~~11.6. Termination of this agreement shall not (by itself) terminate other agreements that there may be between us.

12. **Law**

This Agreement will be governed and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

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13. "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).
14. "You" means the person (which includes a company or other business) contracting to obtain goods, software licences or services from us
15. Where "you" means more than one person, each one of you is responsible, individually, for each of the obligations of all of you under this agreement.