

---

SUBCONTRACT AGREEMENT FOR THE PROVISION OF MAINTENANCE SERVICES

"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).

"You" means [Sub-contractor's name and address]

1. **Services**

- 1.1. You agree to provide, with skill and care, maintenance services as set out below to those of our customers set out in Appendix A at the price specified in Appendix B below and in accordance with the terms and conditions of this Agreement, and in particular, those obligations will include all obligations which we have undertaken to our customers in respect of support services and which are referred to in Appendix A.
- 1.2. Appendix A and Appendix B may be amended from time to time provided that those amendments are agreed by both of us in writing.
- 1.3. Upon the termination of any maintenance contract between us and a customer, for any reason, you shall no longer be required to provide maintenance services to that customer, and we shall not be required to pay anything to you in respect of that customer after the termination of their contract with us, whether by way of compensation or otherwise (except where our obligation to pay you in respect of that customer arose before the termination).

2. **The Agreement**

- 2.1. These terms and conditions (including documents specifically referred to in it) are the whole of the terms and conditions governing the agreement between us, unless we both agree to any amendments in writing.
- 2.2. Any rule of interpretation that is contrary to common sense does not apply to this contract. Any part of the contract in italics (*like this*) is not part of the contract, but is simply a comment.

2.3. The paragraph headings are merely a guide and are not intended to be a part of this Agreement (or any Agreement referred to in it).

3. **The Price**

- 3.1. The rates set out in Appendix B shall apply for one year from the date of this agreement and shall be subject to review not more than once in each year. You will notify us of reviewed rates and we shall have 30 days to accept, reject or negotiate them. If we have failed to reach agreement at the conclusion of those thirty days, the contract shall continue for a further 90 days and shall then terminate.
- 3.2. We will pay you within 14 days of the receipt by us of a valid invoice (together with VAT, if applicable). You will issue invoices in accordance with the terms of Appendix B.

4. **Call Centre and On-site staff**

- 4.1. If required by any contracts listed in Appendix A, you will provide an appropriate call centre with sufficiently well trained and resourced staff to fulfill your obligations under this agreement in relation to providing telephone support.
- 4.2. If required by any contracts listed in Appendix A, you will provide sufficiently well trained and resourced staff to fulfill your obligations under this agreement in relation to providing on-site maintenance.

5. **Hardware Replacement**

- 5.1. For the avoidance of doubt, your obligations include providing replacement hardware for faulty equipment. We shall not be charged

- for any replacement hardware.
6. **Work Outside Scope**
- 6.1. Where you have been asked to provide work for a customer which is outside the scope of their maintenance agreement, you must notify us and we will agree terms in good faith with you and the customer for the performance of that work.
- 6.2. We will not pay for any additional work outside the scope of this agreement except where it has been authorised under clause 6.1 above.
7. **Referrals, comments or complaints**
- 7.1. Where you receive any complaint or comment from a customer or any other form of customer feedback, you will immediately notify us of it.
- 7.2. If you identify any information from any customer which you consider may assist us with marketing our products to that customer, you will immediately notify us.
8. **Intellectual Property**
- 8.1. You acknowledge that any material of any nature which we provide you with, either under this agreement or otherwise (for example, proposals or other pre-contractual material) may contain intellectual property which is either our property or licensed to us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in this agreement is intended either
- 8.1.1. as a licence for you to use such intellectual property
- 8.1.2. or as a transfer of such intellectual property unless explicitly stated in writing.
- 8.2. You are responsible for ensuring that you are correctly and validly licensed in respect of all software which you use in the course of fulfilling your obligations under this agreement.

9. **Exclusivity**
- 9.1. Nothing in this agreement shall prevent us from engaging any other person to perform services of the type contemplated by this Agreement, whether for us or any of our clients.
- 9.2. Except as is specifically mentioned elsewhere in this agreement, you are not limited in any way from performing services of the type contemplated by this agreement for anyone else.
10. **Liability**
- 10.1. You agree fully and effectively to indemnify us against any claim, loss or expense whatever (including legal costs) arising from any act or omission of you or your servants, agents or sub-contractors and for which we are or may be liable.
- 10.2. The indemnity referred to in clause 10.1 above includes indemnifying us in respect of any such claim which we have settled on legal advice.
- 10.3. You acknowledge that you have had sight of our standard terms and conditions for the provision of hardware and software maintenance, and are aware of the level of liability you are accepting arising from it.
- 10.4. You acknowledge that your liability under this clause may arise other than out of contract.
- 10.5. Nothing in this clause prevents us from contracting to provide maintenance services on whatever terms we see fit, or amending or waiving any terms of any contract between us and our customers.
- 10.6. Nothing in this agreement is intended (and it shall not be construed) to limit or restrict in any way our liability for death or personal injury arising from our negligence or the negligence of our servants or agents.
- 10.7. [You agree to indemnify us fully and effectively against any liability which may arise by virtue of a claim that](#)

[an employee of yours has become an employee of ours or of a customer or another sub-contractor of ours by virtue of the Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(as amended\) or that there has been a failure to comply with any consultation provisions required by such regulations.](#)

**11. Renewal and Termination**

- 11.1. This Agreement shall continue until terminated in accordance with its terms or on 90 days' notice by either party to the other, where that notice expires on an anniversary of this agreement.
- 11.2. Either party may terminate this agreement where the other is in material breach of its terms, or, if the breach is capable of remedy the first party has served a notice specifying the breach and requiring the other to remedy it with 30 days and it has not been remedied.

**12. Provision of Information and Records**

- 12.1. We agree to provide you with reasonable information about the hardware and software which is covered by this sub-contract agreement.
- 12.2. You agree to provide us with information (in whichever form we may reasonably specify) relating to the provision of those services.
- 12.3. You agree to keep comprehensive and accurate records of all support calls made and detail your response and all subsequent communication with our client. You agree to let us look at, and make copies of, those records on request.

**13. Representation and passing off**

- 13.1. You agree at all times that you and your staff will adhere to the provisions contained in Appendix C.
- 13.2. You will not hold yourself out as an agent for or make any promises or representations which can be attributed to us.

- 13.3. Whilst on customer premises or whilst dealing with our customers or prospective customers on the telephone, you will ensure that your staff conduct themselves in a professional manner.

**14. Restrictions on contact with customers and employees**

- 14.1. For the duration of this agreement and for a period of two years thereafter (however the contract is terminated)
  - 14.1.1. you will not approach any customer of ours and of which you had dealings under this agreement with a view to offering them any form of hardware or software maintenance or any services which are in competition with the services which we provide
  - 14.1.2. neither of us will approach any employee of the other with a view to engaging that employee in any capacity whatever other than under the terms of this agreement
- 14.2. For the duration of this agreement you will not approach any customer of ours and of which you have had dealings with a view to offering them any services whatever except in accordance with and under the terms of this agreement

**15. Viruses**

- 15.1. You agree to use your best endeavours to ensure that you do not introduce any virus into any system of a customer.

**16. Notice**

- 16.1. Where any notice is required to be given under this Agreement (where the word "notify" is used it means "to give notice"), it shall be considered to have been validly given if in writing and sent by fax, email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as detailed on this agreement or in prior correspondence, or subsequently notified to the other party. Where sent by fax, the notice

is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within the UK), the fifth working day (if sent to an address with the EEA) or on the seventh working day (anywhere else in the world) (unless in each case within that period it was returned as undelivered).

**17. Confidentiality**

- 17.1. We may have given you, and may give you in the future, confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers' or related products, and any similar information relating to our customers). You agree that you will use confidential information solely for the purposes of this Agreement, and that you shall not disclose, whether directly or indirectly, to any third party confidential information other than as required to carry out the purposes of this Agreement. Before you make any such disclosure to a third party, you must obtain from them a duly binding agreement to maintain in confidence the information to be disclosed which is at least as effective as this obligation is on you.
- 17.2. The clause above shall not prevent the disclosure or use by you of any information:
- 17.2.1. which is or hereafter, through no fault of your own or of those to whom you have entrusted it, becomes public knowledge;
- 17.2.2. or to the extent permitted by law.

17.3. We agree to be bound by the obligations contained in the above clauses likewise in relation to any confidential information which you may give us.

**18. Termination on Insolvency**

- 18.1. If, in our reasonable opinion, it appears that you will be unable to meet your obligations under this agreement we may terminate this agreement without notice immediately.
- 18.2. For the avoidance of doubt, each of the following is a reasonable reason for termination under this clause:
- 18.2.1. the presentation of a bankruptcy or winding-up petition against you;
- 18.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets
- 18.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation)
- 18.2.4. the entry into or proposal of any form of arrangement or composition with your creditors
- 18.3. anything analogous to the above sub-sub-clauses in any jurisdiction.

**19. Law**

19.1. This agreement is subject in all respects to English Law [and the parties submit to the jurisdiction of the English courts.](#)

**20. Waiver**

20.1. If we fail to rely on our strict legal rights under this Agreement, that shall not prevent us from relying on those rights at any time in the future.

**21. Disputes**

21.1. If any dispute arises out of this agreement which cannot be settled by agreement between the parties (and does not arise out of a failure to pay sums properly due) before taking any other action we each agree to submit in good faith to a mediation procedure administered

by ADR Group of Bristol, or, failing that, such other similar organisation as the President for the time being of the Law Society of England and

Wales shall nominate. Unless we agree otherwise, the costs of the mediation shall be borne equally by each of us

**Appendix A**

**CUSTOMER DETAILS**

Name of Customer:

Site address:

Contact name:

Telephone:

**SERVICE PROVISION**

Support hours:

Support level:

**SERVICE LEVEL**

**CUSTOMER OBLIGATIONS**

**Appendix B:**  
**Maintenance Pricing**

## Appendix C

### Subcontract representations

*In some circumstances, the ADMIT member will want the sub-contractor to use the member's identity under licence to give the impression that the sub-contractor is part of the ADMIT member's organisation. In this case, there have to be specific procedures in place to make sure that the sub-contractor cannot incur liabilities on the part of the member.*

*Alternatively, the ADMIT member may want to be scrupulous that the sub-contractor is not holding himself out as part of the ADMIT member's organisation.*

**SIGNED:** \_\_\_\_\_

(Darklake Developments Limited)

\_\_\_\_\_  
(Sub-contractor)

**Date:** \_\_\_\_\_