

HiMARKS 2010 SUPPORT AGREEMENT

HiMARKS, LLC., an Iowa corporation, located at 2625 McGowan Boulevard, Marion, Iowa 52302 (hereinafter referred to as "HiMARKS") by signature agrees to grant, AND

Your Stable
Address
Phone

(hereinafter referred to as the "CUSTOMER") agrees to accept on the following terms and conditions, support services from HiMARKS for the Program Products licensed under the License Agreement for HiMARKS Program Products and listed in Attachment B to this Agreement. The Product in their maintained form and related materials are hereinafter referred to as the "Program Product".

SUPPORT TO THE PROGRAM PRODUCT LICENSED

HiMARKS shall furnish the Customer with Support as defined in the Inclusions and Exclusions below.

1. INCLUSIONS - Standard Support (8:00 A.M. – 6:00 P.M. CST, Monday - Friday)

Under the terms and conditions of this Agreement, HiMARKS will:

- A. Provide support services (8:00 A.M. – 6:00 P.M. CST, Monday - Friday), regarding use and function of the currently licensed Program Product and HiMARKS Program Product and updates.
- B. Provide after hours support regarding use and function of the currently licensed Program Product and HiMARKS Program Product and updates (8:00 A.M. through 5:00 P.M. CST, Saturday and Sunday) (6:00P.M. through 8:00 P.M. CST Monday – Friday) by scheduled appointment only.
- C. Provide training and implementation of systems over the telephone.
- D. Provide licensed operational materials.
- E. Provide telephone calls originating from HiMARKS.
- F. Provide telefaxes originating from HiMARKS.
- G. Provide operator time to create update media.
- H. Provide operator time while on modem.
- I. Provide postage and shipping charges originating from HiMARKS.
- J. Create queries to diagnose problems requiring immediate resolution.
- K. Provide Web based information related to Alerts, Memos and FAQ's.
- ~~K.L.~~ Provide Web based information related to updates and Call Reports.
- ~~L.M.~~ Provide ability to submit program enhancements over the Web.
- ~~M.N.~~ Prior program fixes to the most current release level.
- ~~N.O.~~ Provide HiMARK\$ Upgrade support, license, and data transfer.

2. EXCLUSIONS – Applies to Standard Support (NOTE: Services excluded here may be available outside this agreement. See 'Item 7. Other Fees – Premium Support'.

Specifically excluded from this Agreement are the costs to:

- A. After one year from original purchase of HiMARK\$ applications, program updates must be purchased annually and are not included in ESA Standard Support.
- B. Correct problems caused by Customer operator negligence.
- C. Correct problems caused by any customer media or data generated by other non-HiMARKS systems.
- D. Create queries or answer questions regarding creation of queries and updating of queries.
- E. Provide specialized Customer enhancements.
- F. Windows Operating System upgrades.
- G. Performance Tuning.
- H. Install, train and provide Support of any PC hardware, PC software or peripherals.
- I. Provide Support services when customer has not applied Program Product updates or product version is over 24 months old.
- J. Third party data and software evaluations.

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3. CUSTOMER RESPONSIBILITY

Although HiMARKS is not a web based application, in order to offer you, the customer, the most expedient and cost efficient product support with quick access to product 'fixes' as well as updates, some of our support is web based. If the customer wishes to have full access to all support made available through this agreement, then

- A. The Customer is required to provide Internet access from the main PC that the Program Product is installed on.
- B. The Customer is required to have an E-mail address. This e-mail address is used to alert the Customer of any special support notifications. Special support notifications will not be faxed.
- C. The Customer is required to have the ability to access HIMARKS web site so that updates can be downloaded and alerts and memos can be reviewed.
- D. The Customer is required to purchase Program Product updates within 24 months of original product purchase or 13 months from the last Extended Service Agreement expiration date. Failure to meet this requirement may subject the Customer to product warranty cancellation or penalty. (See paragraph 2, Exclusions, Item H.)

4. EFFECTIVE DATE AND TERMINATION

This Agreement is effective on the date Accepted By HIMARKS.

Prices are subject to change January 1st of each year. This Agreement is effective January 1st of each year, if Customer pays the Support Agreement invoice by December 31st of the same year. Program Products licensed during the year will be prorated and invoiced separately. If payment is not received by HIMARKS within 30 days from invoice date, that is considered to be notice of immediate termination of this Support Agreement by the Customer.

HIMARKS may terminate this Agreement upon thirty (30) days written notice if the Customer fails to comply with any of the terms and conditions of this Agreement or owes a balance to HIMARKS regarding any matter which is greater than 60 days, unless cured by Customer within the thirty (30) days notice period. Termination of this Agreement will not terminate any other agreements between the parties.

5. ON-SITE SUPPORT

If the Customer authorizes on-site Support to the Program Product, the Customer will be charged at current hourly Support Rate for all hours incurred plus travel, board and room.

6. SUPPORT FEE

The Standard Support fees are:

HiMARKS ESA –Single User Stations– Annual support fee includes telephone support, web ad and released updates and upgrades to package for 1 year. \$250

HiMARKS ESA –Multi User Stations– Annual support fee includes telephone support, web ad and released updates and upgrades to package for 1 year. \$500

All support related to "Exclusions", will be billed at the current hourly Support Rate at the time of service. \$65.00 per hour.

A late payment charge of 1.5% per month (or a lesser percentage if required by law) will be charged on any portion of the balance due remaining unpaid thirty (30) days after invoice date.

7. OTHER FEES – Premium Support

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- A. Under the terms and conditions of this Agreement, HIMARKS may with prescheduled appointment only, provide HiMARKS customers support services related to the following items 1 – 8. These services are a billable effort not included in the support purchased with this agreement. Premium Support rates begin @ \$75.00/hr labor only, the cost of any hardware or software will be additional. Rates may vary by area and service technician. On line support nationwide. On site support available in designated areas.
1. Hardware and Network Installation
 2. Correct problems caused by Customer operator negligence
 3. Correct problems caused by any customer media (tapes, diskettes, harddrives, etc.) or data generated by other non-HiMARKS systems.
 4. Provide specialized customer enhancements
 5. Windows Operating System Upgrades
 6. Performance Tuning
 7. Install, train and provide support of any PC hardware, PC software or peripherals.
 8. Third party data evaluations.
- B. If a problem occurs as a result of the Customer modifying the Product Internal Programming Code, the Customer will be billed 200% of the then current Support Rate for the time spent identifying the problem. The Customer acknowledges that HIMARKS cannot provide a prior estimate of fees to find and resolve the problem.

8. TAXES

Charges are exclusive of all federal, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future with the exception of taxes on HIMARKS's net income and, therefore, are subject to an increase equal in amount to any tax HIMARKS may be required to pay upon the license, sale or delivery of the product purchased.

9. TITLE

Title to and ownership of each Program Product and any portion thereof shall remain at all times with HIMARKS.

10. LIMITATION OF LIABILITY

HIMARKS's entire liability and the Customer's exclusive remedy shall be as follows:

- A. In all situations involving performance or nonperformance of the Program Product furnished under this agreement the Customer's remedy is;
- B. The correction by HIMARKS of the Program Product defects or if, after repeated efforts, HIMARKS is unable to make the Program Product operate as warranted; the Customer shall be entitled to recover actual damages to the limits set forth in this section.
- C. For any other claim concerning performance or nonperformance by HIMARKS pursuant to, or in any other way related to, the subject matter of this Agreement, and any Supplement hereto, the Customer shall be entitled to recover actual damages to the limits set forth in this section.
- D. HIMARKS's liability for damages to the Customer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the equivalent of one year's support charges for the particular Program Product(s) that caused the damage or that is the subject matter of or is directly related to the cause of action.
- E. In no event will HIMARKS be liable for any damages caused by the Customer's failure to perform the Customer's responsibilities, or any lost profits or other consequential damages, even if HIMARKS has been advised of the possibility of such damages, or for any claim against the Customer by any other party.
- F. No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than one year after the cause of action has occurred, except that an action for nonpayment may be brought within one year after the date of last payment.

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11. GENERAL

The Customer’s remedies in this Agreement are exclusive.

HIMARKS is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.

This Agreement is not assignable by Customer; and not any of the licenses granted hereunder, or any of the Program Product, or copies thereof, may be sublicensed, assigned or transferred by the Customer without the prior written consent of HIMARKS. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this Agreement is void. Customer may transfer its interest in this Agreement provided (a) it sells all of its assets to the transferee, and (b) receives written consent of HIMARKS, which consent will not be unreasonably withheld.

This Agreement will be governed, construed and interpreted according to the laws of the state of Iowa and any action construing or enforcing this agreement shall be filed in the state of Iowa.

THE CUSTOMER ACKNOWLEDGES THAT HE OR SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND FURTHER, AGREES THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS ORAL OR WRITTEN AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. NO AMMENDMENTS, MODIFICATIONS OR WAIVER OF ANY PROVISIONS SHALL BE BINDING ON THE PARTIES UNLESS AGREED TO IN WRITING.

Accepted by:

HiMARKS, LLC

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Accepted by:

«Company»

Signature: _____

Printed Name: _____

Title: _____

Date: _____