



www.helpkeyuk.com

Helpkey
19 Oval Mansions
Kennington Oval
London
SE11 5 SQ

HELPKEY

SUPPORT AGREEMENT

DATED: (date)

REVISION: 1

(CUSTOMER NAME)

BETWEEN:

1. **Marco Giolo T/A Helpkey** whose Registered Office is at 19 Oval Mansions, Kennington Oval, London, SE11 5SQ
2. **(Company Name)** whose Registered Office is **(Registered address)** (“Customer”).

WHEREAS:

1. At the request of the Customer, Helpkey agrees to provide the Customer with a software and hardware support service on the following terms and conditions; and
2. The Customer agrees to accept such service on those terms and conditions.

NOW IT IS AGREED as follows:

1 INTERPRETATION

In this Agreement (including any recitals thereto) except where the contrary intention appears:

“Additional Charges” means such additional charges as Helpkey may in its absolute discretion determine from time to time and as are set out in Schedule 3

“Basic Charge” means such charges as are set out in Schedule 3 and there defined.

“Commencement Date” means **(proposed commencement date)**

“Due Date” means the date Helpkey’s invoices are due for payment as set out under Clause 3, on an invoice by invoice basis.

“Equipment” means the computer hardware equipment and software owned by the Customer and, where appropriate, those products installed and/or serviced by Helpkey, including but not limited to personal computers, other IT equipment and computer software;

“Labour Charges” means such charges as are set out in Schedule 3 and there defined.

“Man Day” means a 6 hour day on which the Support Service will be provided by Helpkey to the Customer between Monday and Friday excluding public holidays and the term “Man Days” shall be construed accordingly;

“Office Hours” means the hours of 9am to 5pm from Monday to Friday (excluding public and bank holidays) or such other times as Helpkey and the Customer may jointly agree from time to time;

“Remote Support Activation Fee” means the fee referred to in Schedule 1 and set out in Schedule 3 where the Customer has opted for Remote Support.

“Site” means the location consisting of a single continuous area of occupation by the Customer at J the address set out in Schedule 2 where the Equipment is located;

“Support Charge” means Helpkey’s charges for the provision of the Support Service as may be notified in writing by Helpkey to the Customer from time to time and as set out in Schedule 3;

“Support Service” means the service provided for the Term by Helpkey to the Customer as set out below in Clause 2;

“Term” means the period from the Commencement Date to termination of the contract.

1.1 In this Agreement:

- 1.1.1 Headings are included for convenience only and do not affect the interpretation of this Agreement.
- 1.1.2 The singular includes the plural, and vice versa.

2 SUPPORT SERVICE

- 2.1 In consideration of the payment by the Customer to Helpkey of the Support Charge, Helpkey agrees to provide the Customer with the Support Service as set out in Schedule 1 subject to the restrictions therein listed for the Term. Such charges may be varied by Helpkey from time to time, on 1 month's notice to the Customer.
- 2.2 The Support Service is not intended to be a training facility for the Customer and training will not be given as part of the Support Service unless Helpkey deems it appropriate to do so in its absolute discretion.
- 2.3 Helpkey shall use its best endeavours to comply with the timescales set out in Schedule 1 but the parties agree that time shall not be of the essence in relation to response times and that Helpkey shall have no liability whatsoever for any failure to adhere to the proposed response times in Schedule 1.
- 2.4 The Customer has the right to request an estimate of the hours needed to solve an issue and Helpkey's Head Office shall provide such an estimate. However, such estimates are not quotes and such estimates may be exceeded. In this event, Helpkey shall inform the Customer at a sensible opportunity of a revised estimate.

3 PAYMENTS

- 3.1 Payment terms for the Support Service are as agreed between the Customer and Helpkey from time to time. Payment of the Basic Charge shall be made within 7 (seven) days of the date of the invoice therefore. Labour Charges, Additional Charges and Additional Expenses shall be payable by the Customer within 14 (fourteen) days of the date of the invoice therefore. Payment shall be a condition precedent to the continued performance by Helpkey of its obligations under this Agreement. The Customer's failure to fulfil its obligations under this provision shall be deemed to be a failure to comply with this Agreement and the monies owing on any outstanding invoice shall thereby become immediately due and payable and shall be recoverable by Helpkey as a liquidated debt.
- 3.2 Except as specified herein, each Basic Charge payable by the Customer at the completion of each year shall be paid within 7 (seven) days of the date of the invoice for the ensuing period. The Customer's failure to comply with this payment condition shall make the Support Service voidable at the option of Helpkey by giving written notice to the Customer. Such notice by Helpkey shall be without prejudice to Helpkey's rights to recover all monies owing to it by the Customer which shall thereupon become immediately due and payable and shall be recoverable by Helpkey as a liquidated debt.
- 3.3 Helpkey may, at its absolute discretion, require a deposit or full payment before commencing any work and shall have no obligation to provide any goods or services until payment of the aforementioned deposit or full payment.
- 3.4 Helpkey will respond to oral or written requests for goods or services. However, Helpkey reserves the right to request a written order from the Customer for the provision of goods or services whether under this agreement or any other and, where requested, the Customer shall provide such a written order prior to work commencing or goods or services being provided.
- 3.5 Helpkey shall have the right to vary the Support Charge and the terms and conditions of the Support Service under this Agreement from time to time in Helpkey's absolute discretion but only on 1 month's notice to the Customer.
- 3.6 The Support Charge shall include the cost of the travelling time as set out in Schedule 2, on a site by site basis.

- 3.7 Where sundry purchases are required urgently, Helpkey will attempt to purchase these local to the Customer's site, or return to Helpkey's Head Office to collect them. All time spent doing so shall be chargeable as part of the Support Service and form part of Third Line Support.
- 3.8 Helpkey reserves the right to charge the Customer interest on all overdue amounts at the rate of 4% above the base rate of LloydsTSB Bank Plc in force from time to time calculated on a daily basis.
- 3.9 Helpkey reserves the right to increase the hourly rate to the Customer for any Support Services provided in accordance with the Customer's request where such Support Service is provided outside Office Hours.
- 3.10 All goods provided under this or any other agreement between the Customer and Helpkey remain the property of Helpkey until paid for in full.

4 RIGHT TO SUSPEND PERFORMANCE FOR NON-PAYMENT

- 4.1 Where the Customer serves notice to withhold payment with reasonable grounds within 14 days of the invoice date, Helpkey has the right to suspend - performance of their obligations under the contract to the Customer provided they act in accordance with Clause's 4.3 and 4.4 below. This right to suspend performance shall cease when the dispute is resolved either by the Customer making payment in full of the amount due, or a credit note being issued by Helpkey and the Customer making payment of any remaining balance due.
- 4.2 In the event that the Customer does not serve notice to withhold payment with reasonable grounds within 14 days of the invoice date and any sum due under this Contract or any sum owing by the Customer to Helpkey in respect of any outstanding invoice for any goods or services provided, whether or not related to this contract, is not paid in full when due for payment, Helpkey has the right (without prejudice to any other right or remedy) to suspend performance of their obligations under the contract to the Customer provided they act in accordance with Clause's 4.3 and 4.4 below.
- 4.3 In order for Helpkey to exercise the right in Clause 4.1 it shall give to the Customer written notice of its intention to suspend performance stating the ground or grounds on which it is intended to suspend performance. This notice may be given with immediate effect.
- 4.4 The right to suspend performance under Clause 4.2 above ceases when the Customer makes payment in full of the amount due.
- 4.5 Whilst time is not of the essence with regard to the provision of service, as set out in Clause 2.3 above, any period during which performance is suspended in pursuance of this Clause 4 shall be disregarded in computing for the purposes of any contractual time limit taken, by Helpkey or by a third party, to complete any work directly or indirectly affected by the exercise of the right.
- 4.6 Where the contractual time limit is set by reference to a date rather than a period, the date shall be adjusted accordingly.

5 VAT AND OTHER IMPOSTS

- 5.1 Except as specified herein, all amounts in this Agreement are exclusive of VAT or like taxes, imposts and surcharges payable in respect of the Support Service.
- 5.2 The Customer shall pay any additional amounts due to Helpkey in respect of the said VAT and like taxes, imposts and surcharges (including customs duty, excise and stamp duty) imposed in connection with this Agreement.

6 COMPUTERS AND OTHER FACILITIES

- 6.1 The Customer shall make available to Helpkey free of charge such use of the Equipment as shall be reasonably required by Helpkey to provide the Support Service and the Customer hereby agrees to allow Helpkey unhindered access to such Equipment including but not limited to the ability for Helpkey to turn off and/or restart the Customer's server where appropriate.
- 6.2 The Customer shall provide the free use of a telephone for Helpkey's engineers for all reasonable purposes, including, but not limited to, dialup to the internet, providing Helpkey's Head Office with progress reports and contacting third party suppliers.
- 6.3 The Customer shall notify Helpkey of all security and other office procedures implemented at the Site and shall provide Helpkey with its health and safety policy prior to the commencement of the Term. Helpkey shall comply with all such security and office procedures at all times during the provision of the Support Service.
- 6.4 The Customer shall provide the Customer's software licence codes and disks when required by Helpkey. At no time shall the Customer ask Helpkey to behave illegally by using unlicensed software.

7 ASSIGNMENT

- 7.1 The rights and obligations arising under this Agreement may not be assigned by the Customer without the prior written consent of Helpkey which Helpkey may, in its absolute discretion, refuse.

8 LIMITATION OF LIABILITY

- 8.1 Neither party shall be liable to the other or any person claiming through the other for any loss of profit, damages or expense, or for any consequential loss or damage of any kind whatsoever arising out of the provision of the Support Service save as otherwise provided in this Agreement. Each party hereby indemnifies the other against all claims made in respect thereof. In any event Helpkey's total liability under any claim whatsoever (except in the case of death or personal injury resulting from Helpkey's negligence) shall not exceed 3 x the Telephone Support Fee paid under this Agreement.
- 8.2 Helpkey shall use its best endeavours to maintain data protection and security but the parties hereby agree that Helpkey will have no liability whatsoever for any failure to backup data, failure in backups of data or for any breaches of security to the Customer's Equipment, loss or corruption of data or any delays in the provision of the service for any reason whatsoever, unless resulting from the negligence of Helpkey or its employees agents or subcontractors.
- 8.3 Helpkey shall not be liable for any of the Customer's goods, Equipment or property if removed from site by an engineer, unless the Customer has requested and obtained a written receipt in respect of that item signed by the Engineer. In any event, the item must be insured by the Customer and Helpkey accepts no responsibility for its loss or damage unless caused by the negligence of Helpkey or its employees, agents or sub-contractors.

9 FORCE MAJEUR

- 9.1 Helpkey shall not be liable for failure to perform its obligations under this contract if such failure results from circumstances beyond the party's reasonable control.

10 AMENDMENTS

- 10.1 The Customer may not make any amendments to this Agreement without the prior written consent of Helpkey.
- 10.2 Helpkey may not make any amendments to this Agreement without giving prior written notice to the Customer.

11 TERMINATION

- 11.1 This service will commence from the date hereof for the Term unless terminated by either party under this Clause 11.
- 11.2 Helpkey reserves the right to terminate this Agreement for any reason whatsoever by giving not less than 1 month's written notice to the Customer.
- 11.3 At any time after **proposed end date**, the Customer may terminate this agreement for any reason whatsoever by not less than 1 month's written notice to Helpkey.
- 11.4 If the Customer fails to comply with any of the provisions of this Agreement and does not rectify such non-compliance within 14 days of Helpkey's written notice thereof Helpkey may, without prejudice to any other of its rights or remedies it may have and without being liable to the Customer for any loss or damage which may be occasioned, give written notice to the Customer terminating this Agreement with immediate effect, but such notice shall be without prejudice to Helpkey's right to recover all monies owing under this Agreement.
- 11.5 Helpkey may terminate this Agreement forthwith by notice in writing to the Customer if the Customer is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of Helpkey means that the Customer may be unable to pay its debts.
- 11.6 There shall be no refund for any part of the Support Charge in the event of termination of the contract.

12 NON-SOLICITATION

- 12.1 Neither party shall during the period of this Agreement or for a period of 12 months thereafter either directly or indirectly solicit or offer employment or any form of engagement whatsoever to any member of the other's staff.
- 12.2 Neither party shall during the period of this Agreement or for a period of 12 months thereafter be engaged or concerned in any business which competes directly with the business of the other party.

13 CONFIDENTIALITY

- 13.1 Each of the parties undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other or that of any associated companies, that it shall have obtained or received as a result of entering into of this agreement save that which is:
- 13.1.1 trivial or obvious;

- 13.1.2 already in its possession other than as a result of a breach of this clause;
- 13.1.3 in the public domain other than as a result of a breach of this clause; or
- 13.1.4 Where the withholding of such information would cause either party to act illegally, or where a legal or professional duty arises whereby information must be - disclosed.

13.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 13.1 above by its employee's agents and sub-contractors.

14 NOTICES

14.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid post, facsimile transmission or comparable means of communication) to the other party at the address as notified by them from time to time.

15 WHOLE AGREEMENT

15.1 This Agreement constitutes the entire Agreement between Helpkey and the Customer as to the Support Service and supersedes all prior communications, representations, and agreements either written or oral between the parties relating to the subject matter of this Agreement.

16 SEVERABILITY

16.1 In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of the same are received by either party hereto from any relevant competent authority, Helpkey shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or at Helpkey's discretion such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

17 THIRD PARTIES

17.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any remedy or right of any third party which exists or is available apart from that Act.

18 GOVERNING LAW

18.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

SIGNED for and on behalf of
Marco Giolo T/A Helpkey

) SIGNED for and on behalf of
) **CUSTOMER**

Signature.....

Signature.....

Name.....
Director

Name.....
Director

Schedule 1

Service Levels

Helpkey will provide a support service in Helpkey's standard office hours to discuss your issues and agree an action plan.

❖ **First line - telephone support**

Helpkey will attempt to solve each reported issue by talking by telephone to the contact nominated from time to time by the Customer.

❖ **Second line - remote support**

When a Remote Support Activation Fee has been paid, then if first line support fails to solve the issue Helpkey will attempt to solve the issue using remote control software.

❖ **Third line - on-site support**

If the issue is not solved through First and Second line support, then Helpkey will evaluate the problem and assign it a level of severity and an engineer shall visit the Customer's site in accordance with the appropriate response time determined from the following:

Severity	Fault	Time to first visit
Critical	Server or network failure affecting all users.	Instant, with a maximum of 4 hours.
Major	Internet, email or database failures affecting all users. Loss of accounting or payroll software. Three or more consecutive backup failures. Virus infection. No printing possible.	Instant with a maximum of two working days.
Important	Intermittent server faults, out of date AV definitions, intermittent backup failures, minor printing problems affecting all users. One user unable to use PC.	As soon as possible with a maximum of five working days.
Minor	Problems affecting one user.	When resources permit. No more than five working days.

❖ **Fourth line - external expertise support**

Where appropriate, Helpkey may use external expertise in order to resolve the issue including, where appropriate, telephone support and specialist contractors.

Schedule 2

Address

Unit 3 Curo Park
Frogmore
St Albans
Herts
AL2 2DD

Schedule 3

Support Charge

The Support Charge comprises four elements:

1. Basic Charge for Fixed Price Support:

The basic charge covers reactive maintenance of the existing computer system.

Contract Fee: £300 per month paid in advance, which includes ½ day on-site support per month, unlimited telephone and remote support of the existing IT system.

Remote Support Activation Fee: £100 per annum paid in advance.

Initial System Audit (1/2 day on-site & 1/2 day writing report) Fee: £200 paid in advance, only applicable to new customers.

As defined in Schedule 1.

2. Labour Charge for Additional Works:

The labour charge will apply for installation and configuration of additional equipment and services.

Total Chargeable Hours x £50

Additional Work hours are calculated by the actual time onsite subject to a minimum time of 1 hour per visit. Where Additional Work hours exceed 6 hours in any one calendar day, then a minimum time of 1 Man Day shall be charged.

3. Additional Charges:

In relation to Fourth Line Support, where external expertise is hired, Helpkey shall be entitled to charge the Customer for third party services, and this may include telephone support where applicable. Such charges shall be determined by Helpkey in its absolute discretion (usually in accordance with an action plan devised by Helpkey for that purpose). These Additional Charges must be advised to and agreed by the Customer prior to their being incurred on the Customer's behalf.

4. Additional Expenses:

The support charge above is inclusive of all petrol, subsistence and other minor expenses (including, but not limited to the costs of parking, petrol and train fares), but excludes Additional Expenses (including but not limited to the costs of flights or overnight stays). These Additional Expenses must be advised to and agreed by the Customer prior to their being incurred on the Customer's behalf.