

# IntervalZero Support Agreement

## **IMPORTANT: READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY.**

This Support Agreement (the “Agreement”) contains the terms under which IntervalZero, Inc. (“IntervalZero”) provides Technical Support for its family of software products, which comprise RTX, RTX64, and KINGSTAR (each individually, the “Software”). Except to the extent otherwise expressly agreed to in a written agreement with IntervalZero, the following terms apply to sales of Support.

### **1. Introduction**

1. IntervalZero and you (the “Customer”) have entered into either an End User License Agreement or an OEM License and Distribution Agreement (either, the “License Agreement”) pursuant to which Customer is licensing the Software. The terms of this Agreement are in addition to the terms contained in the License Agreement and in the event of a conflict or inconsistency between the terms of this Agreement and the License Agreement; the terms of this Agreement will govern with respect to the subject matter herein.
2. Customer desires to obtain certain Support for the Software.
3. IntervalZero is willing to provide Customer with Support per the terms and conditions of this Agreement.

### **2. Periods of Support; Applicable Annual Fees**

1. Depending on where the purchased Software falls in IntervalZero’s Product Release Lifecycle, Support shall be provided to Customer for one-year terms for which Customer purchases such services. The applicable annual fee for Support shall be paid annually in advance. IntervalZero (or an authorized distributor) will send Customer an invoice for the applicable annual fee. IntervalZero may provide Support through an authorized distributor or contractor, and may arrange for such distributor or contractor to bill for and collect the annual fee.
2. The initial annual fee shall be set forth on the applicable purchase order.
3. Should Support lapse, IntervalZero reserves the right to charge the then current reinstatement fee as a condition for restoration of the applicable services.

### **3. Payment Terms**

1. Fees set forth on any applicable purchase order exclude any taxes, duties, fees, excises or tariffs imposed on any of Customer’s activities in connection with this Agreement. Such taxes, duties, fees, excises or tariffs, if any, shall be paid by Customer

2. The annual fee above shall be due and payable to IntervalZero each year, in advance. The initial fee shall be due within thirty (30) days of the date of the applicable purchase order.
3. Thereafter, IntervalZero shall submit a written invoice to Customer for the annual fee at least thirty (30) days prior to the anniversary of the date that Support first commenced.
4. The annual fee set forth on the initial purchase order is the current annual fee as of the date Customer orders either Support. IntervalZero may change the annual fee at any time and without notice.
5. IntervalZero's payment terms are thirty (30) days from the date of the invoice. A one percent (1%) monthly finance charge will be assessed on all amounts that past due.
6. Unless agreed otherwise in writing by IntervalZero, the terms and conditions of this Agreement shall take precedence over any accompanying purchase orders, checks or other document sent by Customer.

#### **4. Support**

1. While Customer is covered by Support and upon receipt of Customer's written request in each case of an issue, IntervalZero agrees to provide to Customer corrected or modified versions of the Software in the form of service packs, product updates, or engineering updates, that resolve a Customer issue covered by Support.
2. IntervalZero reserves the right to charge an additional fee for new versions in which platform upgrades, substantial additional functionality or substantially improved performance is provided. IntervalZero shall determine, in its discretion, whether a release includes substantial additional functionality or substantially improved performance.
3. IntervalZero may require Customer to install upgrades of the Software provided by IntervalZero to Customer as a condition of Support if (a) the Customer is using Software more than two (2) releases prior to the current version, or (b) if the Software is more than two (2) years from its release date or the Software runs on operating system software that is no longer supported by its manufacturer. IntervalZero reserves the right to discontinue Support for obsolete or superseded versions of the Software pursuant to the schedule outlined in its Product Release Lifecycle Policy, which is published on the IntervalZero website.
4. All such version and release modifications, when delivered and installed, shall become part of the Software and shall otherwise be subject to all of the terms of the License Agreement.

#### **5. IntervalZero Response to Support Incidents**

1. For Support, an “Incident” is defined as any request by Customer for IntervalZero to investigate, diagnose or attempt to correct any single support issue in the Software. A single support issue is a problem that cannot be broken down into subordinate problems. If a problem consists of subordinate problems, each subordinate problem shall be considered to be an Incident.
2. Customer may make a request to IntervalZero to respond to an Incident via the Customer Support Portal, which can be accessed 24/7. Support personnel are available to respond to Incidents:
  - In the United States – Monday through Friday, 8:30 am – 5:30 pm US Eastern Time (GMT-5), excluding holidays
  - In Taiwan – Monday through Friday, 9:00 am – 5:00 pm Taipei standard Time (GMT+8), excluding holidays

When IntervalZero’s staff is unavailable, IntervalZero will provide voice mail and email access that will be checked during normal business hours.

3. IntervalZero shall determine, in its sole discretion, whether a particular issue raised by Customer shall be deemed to be an Incident or whether it shall be deemed to be multiple Incidents.
4. While Customer is covered by Support, IntervalZero shall use commercially reasonable efforts to respond to the number of Incidents per year as is set forth in the invoice for Support and/or in the Support Acknowledgement Letter that will be sent to Customer. If no number of Incidents is specified in the invoice and/or in the Support Acknowledgement Letter, then such number of Incidents per year shall be deemed to be twelve (12). If IntervalZero deems it necessary, IntervalZero shall also use commercially reasonable efforts to correct or provide a usable work-around solution for any reproducible material error in the Software, within a reasonable period of time.
5. If IntervalZero, in its discretion, requests written verification of an error or malfunction discovered by Customer, Customer shall promptly provide such verification, by creating an Incident via the Customer Support Portal setting forth in reasonable detail the respects in which the Software fails to perform.
6. In certain cases, IntervalZero may request that, or Customer may determine that it is necessary for Customer to provide IntervalZero with software and/or hardware owned or licensed by Customer in order to assist IntervalZero in reproducing, diagnosing and attempting to fix errors in the Software. In such a case, Customer represents and warrants that it has all rights necessary to provide IntervalZero with such software and/or hardware, and Customer will indemnify, defend and hold IntervalZero harmless from or in connection with damages, liabilities, costs and expenses (including reasonable attorneys' fees) incurred on account of

any and all third-party claim, suit, demand, or proceeding arising from or alleged to arise from the provision of such software and/or hardware to IntervalZero. In addition, IntervalZero is not responsible for any loss or damage to the software and/or hardware provided by Customer, and Customer releases IntervalZero, its officer, directors, employees and agents from any liability for any such loss or damage to the software and/or hardware provided by Customer unless such loss or damage is caused by IntervalZero's gross negligence or willful misconduct

7. IntervalZero may fix errors that are immaterial in future releases of the Software, at IntervalZero's discretion. Immaterial errors are those that do not significantly impact use of the Software as used by Customer.
8. IntervalZero is only obligated to respond to up to the number of Incidents for each annual Support period as is specified in the manner described in Section 5-4. ("Annual Number of Incidents"). If Customer desires to have IntervalZero respond to additional Incidents beyond the Annual Number of Incidents to which Customer is entitled, Customer may do so through the Customer Support Portal. IntervalZero may then, in its discretion, provide fees and terms under which it may be willing to respond to such additional Incidents.
9. IntervalZero is not obligated to perform investigation and/or correction of defects found by IntervalZero to be (i) in other than a current, unaltered release of the Software; or (ii) caused by negligence or modification of the Software or use of the Software in combination with software not authorized by IntervalZero; or (iii) related to use of the Software that may result in bodily injury or death; or (iv) caused by improper or unauthorized use of the Software; or (v) due to external causes such as, but not limited to, power failure or electric power surges.

## **6. Request for Modification of the Software**

If Customer has purchased Support, Customer may at any time request that IntervalZero make custom modifications or enhancements to the Software to add functions or improve performance. IntervalZero may, in its discretion respond to a request for such work with the terms on which it may be willing to undertake and/or support or maintain such work.

## **7. Delivery**

IntervalZero may use physical or electronic forms of delivery to provide Support. At its option, IntervalZero may email to Customer corrected Software or updates, modifications error corrections, fixes, or releases to the Software or may make such patches or fixes available via download from IntervalZero's Customer Support Portal.

## **8. Intellectual Property**

Any modifications, upgrades, changes and releases of the Software, including all intellectual property rights associated therewith, that may be made or provided by

IntervalZero pursuant to this Agreement, whether alone or with any contribution from Customer or its personnel, shall be owned exclusively by IntervalZero and its licensors.

## **9. Limited Warranty; Disclaimers**

1. a. IntervalZero warrants that it will render Support in a professional manner. As IntervalZero's sole responsibility and Customer's exclusive remedy in the event of any material failure to meet such standard, IntervalZero shall, at its sole discretion, either (i) make a reasonable effort to remedy any resulting discrepancies; or (ii) cease Support and terminate this Agreement and provide Customer with a refund for the then current Annual Support Fee already paid by Customer. Any claim based on the foregoing warranty must be submitted in writing in accordance with IntervalZero's standard procedures within ninety (90) days after delivery or the date of required delivery of such service.
- b. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IntervalZero AND ITS SUPPLIERS MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ITS SERVICES, ANY PROGRAMMING, OR ANY RESULT OF SOFTWARE USE. IntervalZero AND ITS SUPPLIERS SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **10. Limitation of Liability**

The aggregate liability of IntervalZero (including its subcontractors and suppliers) for all claims, whether in contract, tort (including negligence and product liability), or otherwise shall not exceed the fees allocable to the service that gave rise to the claim. In no event shall IntervalZero or its licensors be liable for any incidental, consequential, indirect, or special damages, including, without limitation, damages for loss of revenue, cost of capital, claims of customers for service interruptions or failure of supply, and any costs and expenses incurred in connection with alternate repairs and correction services.

## **11. Time and Materials**

Where Customer is required to pay for additional time and materials for services not provided under standard Support, such charge shall be billable to Customer at IntervalZero's then current hourly or per diem rates.

## **12. Additional Payment Matters**

1. Customer agrees to pay when due (or, if necessary, reimburse IntervalZero for) any applicable sales, use, property, excise, VAT, and other similar taxes due with regard to any services, and additional purchased license under this Agreement.
2. If Customer purchases a license from IntervalZero for additional software or major upgrades or other products, IntervalZero reserves the right to

increase the annual Support fee by twenty percent (20%) of the amount paid for such additional license, subject to adjustments yearly as stated above. Such additional amount shall be payable in advance. So that all Support fees will fall due at the same time, IntervalZero may charge, for the first period of such increase, the applicable additional Support fee for a portion of the year, and may pro rate the amount of the first payment accordingly.

3. IntervalZero reserves the right to discontinue Support for obsolete or superseded versions of the Software pursuant to the schedule outlined in its Product Release Lifecycle Policy, which is published on the IntervalZero website.

### **13. On-Site Services**

Support does not include on-site service at Customer's locations. Site visits may be arranged at IntervalZero's discretion, and any site visits will be chargeable at IntervalZero's then current consulting terms and payment rates.

### **14. Miscellaneous**

IntervalZero shall not be responsible for any delay or failure in performance resulting from acts beyond its control. Such acts shall include but not be limited to: an act of God; an act of war; a riot; an epidemic, fire, flood or other disaster; an act of government; and a strike or lockout. Customer may not assign, sublicense or otherwise transfer this Agreement or any portion of this Agreement. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure by IntervalZero to enforce any provision of this Agreement does not constitute and shall not be construed as a waiver of such provision or of the right to enforce such provision. Any notices to either party under this Agreement may be sent to the addresses set forth above or to such other person or address as a party may designate in writing. This Agreement and the relationship of the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the United States without regard to its choice of law or conflict of law provisions. IntervalZero and Customer agree and give consent that jurisdiction and venue for all matters relating to this Agreement or the relationship of the parties will be exclusively in the federal and state courts within Middlesex and Suffolk County in the Commonwealth of Massachusetts. This Agreement is the complete contract of the parties and supersedes all prior writings, agreements, discussions and statements on the subject matter. No amendment or modification of this Agreement shall be effective unless made in writing and signed by IntervalZero and Customer.