

KINGSTAR Support and Maintenance Agreement

TERMS AND CONDITIONS

This Support and Maintenance Agreement (the “Agreement”) contains the terms under which KINGSTAR provides technical Support and Maintenance for its software products, KINGSTAR I/O and KINGSTAR Motion (each individually, the “Software”). Except to the extent otherwise expressly agreed to in a written agreement with KINGSTAR, the following terms apply to sales of Support and Maintenance.

1. Introduction

1. KINGSTAR 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 and Maintenance for the Software.
3. KINGSTAR is willing to provide Customer with Support and Maintenance per the terms and conditions of this Agreement.

2. Periods of Support and Maintenance Applicable Annual Fees

1. Depending on where the purchased Software falls in KINGSTAR’s Product Release Lifecycle, Support and Maintenance shall be provided to Customer for one-year terms for which Customer purchases such services. The applicable annual fee for Support and Maintenance shall be paid annually in advance. KINGSTAR (or an authorized distributor) will send Customer an invoice for the applicable annual fee. KINGSTAR may provide Support and Maintenance 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 and Maintenance lapse, KINGSTAR 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 KINGSTAR each year, in advance. The initial fee shall be due within thirty (30) days of the date of the applicable purchase order.
3. Thereafter, KINGSTAR 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 and Maintenance first commenced.
4. The annual fee set forth on the initial purchase order is the current annual fee as of the date Customer orders Support and Maintenance. KINGSTAR may change the annual fee at any time and without notice.
5. KINGSTAR'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 are past due.
6. Unless agreed otherwise in writing by KINGSTAR, the terms and conditions of this Agreement shall take precedence over any accompanying purchase orders, checks or other document sent by Customer.

4. Support and Maintenance

1. While Customer is covered by Support and Maintenance, KINGSTAR agrees to provide to Customer corrected or modified versions of the Software in the form of service packs, product updates, engineering updates, versions with minor functionality additions, and further releases that KINGSTAR makes generally available to other end users covered by Support and Maintenance.
2. KINGSTAR reserves the right to charge an additional fee for new versions in which platform upgrades, substantial additional functionality or substantially improved performance is provided. KINGSTAR shall determine, in its discretion, whether a release includes substantial additional functionality or substantially improved performance.

3. KINGSTAR may require Customer to install upgrades of the Software provided by KINGSTAR to Customer as a condition of Support and Maintenance if (a) the Customer is using Software more than one (1) release prior to the current version, or (b) if the Software is more than two (2) years from its release date. KINGSTAR reserves the right to discontinue Support and Maintenance for obsolete or superseded versions of the Software pursuant to the schedule outlined in its Product Release Lifecycle Policy.
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. Response to Support and Maintenance Incidents

1. For Support and Maintenance, an “Incident” is defined as any request by Customer for KINGSTAR 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 notify KINGSTAR of an Incident and make a request to respond to the Incident by completing a Support Request Form at <http://www.KINGSTAR.com/support/support-request>. KINGSTAR support personnel are available to respond to Incidents during the hours of 8:30 a.m. to 5:30 p.m. Taiwan time on weekdays (exclusive of holidays).
3. KINGSTAR 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 and Maintenance, KINGSTAR shall use commercially reasonable efforts to respond to the number of Incidents per year as is set forth in the invoice for the Support and Maintenance and/or in the Support and Maintenance 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 KINGSTAR deems it necessary, KINGSTAR 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. In certain cases, KINGSTAR may request that, or Customer may determine that it is necessary for Customer to provide KINGSTAR with software and/or hardware owned or licensed by Customer in order to assist KINGSTAR 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 KINGSTAR with such software and/or hardware, and Customer will indemnify, defend and hold KINGSTAR 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 KINGSTAR. In addition, KINGSTAR is not responsible for any loss or damage to the software and/or hardware provided by Customer, and Customer releases KINGSTAR, its parent company IntervalZero, Inc. and all the officers, directors, employees and agents of both companies 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 KINGSTAR's gross negligence or willful misconduct.
6. KINGSTAR may fix errors that are immaterial in future releases of the Software, at KINGSTAR's discretion. Immaterial errors are those that do not significantly impact use of the Software as used by Customer.
7. KINGSTAR is only obligated to respond to up to the number of Incidents for each annual Support and Maintenance period as is specified in the manner described in Section 4. If Customer desires to have KINGSTAR respond to additional Incidents beyond the Annual Number of Incidents to which Customer is entitled, Customer may do so through a written or email request to KINGSTAR. KINGSTAR may then, in its discretion, provide fees and terms under which it may be willing to respond to such additional Incidents.
8. KINGSTAR is not obligated to perform investigation and/or correction of defects found by KINGSTAR 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 KINGSTAR; 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.

7. Request for Modification of the Software

If Customer has purchased Support and Maintenance, Customer may at any time request that KINGSTAR make custom modifications or enhancements to the Software to add functions or improve performance. KINGSTAR 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.

8. Delivery

KINGSTAR may use physical or electronic forms of delivery to provide Support and Maintenance. At its option, KINGSTAR 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 KINGSTAR's website.

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

10. Limited Warranty; Disclaimers

1. a. KINGSTAR warrants that it will render Support and Maintenance in a professional manner. As KINGSTAR's sole responsibility and Customer's exclusive remedy in the event of any material failure to meet such standard, KINGSTAR shall, at its sole discretion, either (i) make a reasonable effort to remedy any resulting discrepancies; or (ii) cease Support and Maintenance and terminate this Agreement and provide Customer with a refund for the then current Annual Maintenance Fee already paid by Customer. Any claim based on the foregoing warranty must be submitted in writing in accordance with KINGSTAR's standard procedures within ninety (90) days after delivery or the date of required delivery of such service.
2. b. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, KINGSTAR 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.

11. Limitation of Liability

The aggregate liability of KINGSTAR (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 KINGSTAR 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.

12. Time and Materials

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

13. Additional Payment Matters

1. Customer agrees to pay when due (or, if necessary, reimburse KINGSTAR 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 KINGSTAR for additional software or major upgrades or other products, KINGSTAR reserves the right to increase the annual Support and Maintenance 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 and Maintenance fees will fall due at the same time, KINGSTAR may charge, for the first period of such increase, the applicable additional Support and Maintenance fee for a portion of the year, and may pro rate the amount of the first payment accordingly.
3. KINGSTAR reserves the right to discontinue Support and Maintenance for obsolete or superseded versions of the Software pursuant to the schedule outlined in its Product Release Lifecycle Policy.

14. On-Site Services

Support and Maintenance does not include on-site service at Customer's locations.

Site visits may be arranged at KINGSTAR's discretion, and any site visits will be chargeable at KINGSTAR's then current consulting terms and payment rates.

15. Miscellaneous

KINGSTAR 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 KINGSTAR 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. KINGSTAR 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 KINGSTAR and Customer.