

IntervalZero SDK Upgrade Agreement

IMPORTANT: READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY.

This SDK Upgrade Agreement (the “Agreement”) contains the terms under which IntervalZero, Inc. (“IntervalZero”) provides SDK Upgrade Rights 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 SDK Upgrade Rights.

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 SDK Upgrade Rights for the Software.
3. IntervalZero is willing to provide Customer with SDK Upgrade Rights per the terms and conditions of this Agreement.

2. Periods of SDK Upgrade Rights; Applicable Annual Fees

1. Depending on where the purchased Software falls in IntervalZero’s Product Release Lifecycle, SDK Upgrade Rights shall be provided to Customer for one-year terms for which Customer purchases such services. The applicable annual fee for SDK Upgrade Rights shall be paid annually in advance. IntervalZero (or an authorized distributor) will send Customer an invoice for the applicable annual fee. IntervalZero may provide SDK Upgrade Rights 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 SDK Upgrade Rights 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 SDK Upgrade Rights 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 SDK Upgrade Rights. 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. SDK Upgrade Rights

1. While Customer is covered by SDK Upgrade Rights and upon receipt of Customer's written request in each case, IntervalZero agrees to provide to Customer supported versions of the Software in the form of Major and minor versions, service packs, product updates, engineering updates, and further releases that IntervalZero makes generally available to other end users covered by SDK Upgrade Rights.
2. IntervalZero reserves the right to discontinue SDK Upgrade Rights 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.
3. 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. Delivery

IntervalZero may use physical or electronic forms of delivery to provide Software. 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 the Customer Center.

6. 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.

7. Limited Warranty; Disclaimers

1. a. IntervalZero warrants that it will render SDK Upgrade Rights 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 SDK Upgrade Rights and terminate this Agreement and provide Customer with a refund for the then current Annual SDK Upgrade 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.

8. 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.

9. 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 SDK Upgrade 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 SDK Upgrade fees will fall due at the same time, IntervalZero may charge, for the first period of such increase, the applicable additional SDK

Upgrade 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 SDK Upgrade Rights 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.

10. 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.