

# SUPPORT AGREEMENT

This SUPPORT AGREEMENT (the "Agreement") is executed between: INTECK IT P.O Box 611 Moorebank NSW 1875 And \_\_\_\_\_ The ("Customer"); collectively referred to as "Parties".

## RECITALS

- A. The Customer wishes INTECK IT to supply arrange of IT infrastructure and/or services as described in the Proposal attached to this agreement. ("SLA");
- B This Agreement sets out the terms on which INTECK IT is to provide the SLA to the Customer. The conditions and procedures shall continually be subject to changes as a result of mutually agreed improvement actions. Mutually agreed actions will be documented by INTECK IT and may be grounds to issue a new version of this agreement.

### THE PARTIES HAVE AGREED AS FOLLOWS:

#### 1. Definitions

- 1.1 Trading Terms are as defined in Appendix A
- 1.2 Base Support Fee means the minimum monthly recurring charge specified in the Proposal, including where listed, charges for maintenance, administration, support credits, managed services software, hardware and infrastructure
- 1.3 Service Level Target means a timeframe to meet a response or resolution commitment as defined in the proposal.

#### 2. Term

- 2.1 This Agreement commences on the earlier of; a). The Effective Date listed in Appendix A; or, B. The Date the Customer requests INTECK IT to commence provision of any of the SLA:
- 2.2 The Minimum Term of this Support agreement is 24 months unless otherwise specified in the Proposal.
- 2.3 Following the minimum term, this Agreement will automatically renew for consecutive 12-month periods, unless terminated via the Termination Provisions in section 14 below, or otherwise extended in accordance with this Agreement
- 2.4. A once off probation period of three months will apply to this contract where this contract can be adjusted However, after this period either the adjusted contract or this initial contract will apply.

#### 3. Interpretation

- In this Agreement, unless otherwise specified:
- 3.1 Words denoting persons shall include all legal entities;
  - 3.2 Any reference to a clause, appendix, or attachment is a reference to that item as it relates to this Agreement and as may be subsequently amended. The recitals, appendices, and attachments to this Agreement form an integral part of this Agreement.
  - 3.3 References to a Party to this agreement include references to the successor or permitted assigns (immediate or otherwise) of the party;
  - 3.4 Words denoting the singular include the plural and vice versa.
  - 3.5 if there is inconsistency between any of the documents that form a part of this agreement, Those documents will be interpreted with the following order of priority to the extent of any inconsistency(A)The appendices to this Agreement(B)This Agreement(C)other documents incorporated by reference in this agreement.
  - 3.6 The table of contents and headings are provided for convenience only and shall have no legal effect.

#### 4 Safeguarding of Data: confidentiality

- 4.1 Subject and without prejudice to the provisions below, ownership of all pre-existing Intellectual Property Rights ("IPR") in the services and SLA supplied under this Agreement ("Background IPR") by one Party (the "Transmitting Party") to the other Party (the "Receiving Party") shall remain with the Transmitting Party, but the Receiving Party shall be deemed to have a worldwide, non-exclusive, royalty-free license to use the IPR solely for the performance of this Agreement. Such license shall not include any right to grant sublicenses.
- 4.2 Unauthorized copying of any item shall be strictly prohibited; however, each Party shall be entitled to make a reasonable number of back-up copies of software
- 4.3 INTECK IT Will retain exclusive ownership of all IPR Developed in the course of this agreement (Developed IPR") and will own all intellectual property rights. Title and interest in any ideas, concepts, know how, documentation or techniques developed under these Terms. INTECK IT hereby grants the customer a worldwide, non-exclusive, perpetual, royalty free non transferrable right and license, solely for the customer's internal use

#### 5. Service levels

- 5.1 The service level Agreement ("SLA") to be complied with by INTECK IT is as specified in the proposal
- 5.2 in the order to receive a service level credit for a breach of the SLA the customer must notify INTECK IT in writing, Specifying the Date(s) and time(S) of the breach, and a description of the breach. Notifications must be received by INTECK IT within 30 Days of the Breach. If the breach is confirmed by INTECK IT, any applicable service level credits will be applied to the customer's next invoice.
- 5.4 Unless otherwise specified in the Proposal, the maximum Amount at Risk is 25% of the Base Support Fee
- 5.5. If INTECK IT substantially fails to meet the Service Levels described in the Proposal, two or more months in any rolling three-month period or three or more months in any rolling six-month period, then INTECK IT shall; a. Investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a Root Cause Analysis of the problem; b. Advise the Customer of the status of remedial efforts being undertaken with respect to such problem; c. Minimize the impact of and correct the problem and begin meeting the Service Level; d. Make appropriate preventive measures so that the problem does not recur.

#### 6 Facilities

- 6.1. Services may be provided by INTECK IT, at INTECK IT' discretion on-site at the Customer's premises, via the INTECK IT Service desks, or via any appropriate remote access technology.

- 6.2. The Customer shall provide any reasonable desk space, software licenses, warehouse space, or other reasonable work environment as may be required for the proper delivery of the services.

#### **7 Non-solicitations of Employees**

- 7.1. Neither Party shall directly or indirectly solicit or seek to procure (other than by general advertising), without the prior written consent or instruction of the other Party, the employment of the other Party's and its Affiliates' employees and contractors engaged in the provision of the Deliverables during the Term of this agreement and for 6 months thereafter.

#### **8. Liability**

- 8.1. Waiver: In no event, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), shall a party be liable for indirect or consequential, exemplary, punitive or special damages (including lost profit, lost revenue, lost business opportunity, lost data and loss of use) even if such party has been advised of the possibility of such damages in advance.
- 8.2. Limitation of Liability: Each party's total aggregate liability to the other for all claims under this Agreement, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to an amount equal to 1 Month's Base Support Fee.

#### **9. Governing Law**

- 9.1. This Agreement and performance under it shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- 9.2. If any provision or part of a provision of these Terms shall be, or shall be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect.

#### **10. Business Hours**

- 10.1. Business Hours are 08:30 to 17:00 (Australian Eastern Standard) Time on business days.

#### **11 Pricing and financial provisions**

- 11.1. The baseline prices and volumes per the commencement date are as described in the Proposal attached to this Agreement. Any changes to Baseline volumes may result in corresponding changes to the Base Support Fee.
- 11.2. During the Term of this Agreement, Pricing will be revised on each anniversary date in line with increase in CPI (the Consumer Price Index –All Groups; for Sydney published by the Australian Bureau of Statistics). Revised pricing will apply from the month following each anniversary date.
- 11.3. Base Support Fees will be invoiced monthly in advance
- 11.4. Should the Customer wish to dispute an invoice, the customer must notify INTECK IT in writing within the Trading Terms (Dispute Notice), otherwise the invoice will be deemed payable in full.
- 11.5. Dispute Notices must describe the invoice number, disputed amount, and reason for the disputed amount.
- 11.6. In the event of a disputed invoice, duly appointed representatives of each party must make a reasonably good faith effort to resolve the dispute within 30 days of the notification of the dispute. If an agreement cannot be reached within this timeframe, INTECK IT reserves the right to appoint a third-party debt collection agency to collect invoiced amounts plus any applicable penalties.
- 11.7. INTECK IT reserves the right to enforce penalties of 2% per month for late payments and these rights may be transferred to a third-party debt collection agency. Should any costs be incurred in debt recovery action for overdue accounts, these costs will be passed to the client in full
- 11.8. Any undisputed amounts must be paid within Trading Terms to avoid late payment penalties.
- 11.9. Invoices greater than 6 months old are incontestable. Similarly, INTECK IT shall not invoice for any work performed more than 6 months prior to invoice date.
- 11.10. INTECK IT reserves the right to suspend services to a customer where an invoice remains unpaid after the Trading Terms

#### **12. Privacy Act**

- 12.1. The Customer consents to INTECK IT obtaining a credit report for the purpose of assessment by INTECK IT of an application by the Customer for credit and/or for the purpose of the collection by INTECK IT of payments which are overdue. The Customer further authorises and consents to INTECK IT disclose information about its credit worthiness to credit reporting agencies or Collection Agencies (including identity particulars and details of overdue payments)

#### **13. Termination**

- 13.1. Either party may terminate this agreement for any reason following the minimum term by providing the other party with 60 days written notice.
- 13.2. The Customer may terminate this agreement for any reason prior to the end of term by providing INTECK IT Technologies with 60 days' notice and paying an Early Termination Fee.
- 13.3. The Early Termination Fee is equivalent to three times the Base Support Fee and is payable in addition to Base Support fees due for any month this agreement is active. The customer acknowledges that the early termination fee is a genuine estimate of INTECK IT Technologies' loss for early termination.
- 13.4. INTECK IT Technologies may terminate this agreement for any reason prior to the Minimum Term, by providing the Customer with no less than 90 days advance notice.
- 13.5. Upon Termination of this agreement, the Customer agrees to pay all outstanding balances to INTECK IT Technologies in full, including the Early Termination Fee. Upon receipt of payment, INTECK IT Technologies shall provide the customer with all customer owned information and materials including documentation, media, license keys and other information in its possession, and shall work reasonably with the Customer to facilitate a transition to a new IT supplier or staff member at the Customer's request.

#### **14 Notices**

- 14.1. All notices under this Agreement will be in writing and signed by the Parties. A notice will be validly sent if addressed

- as provided below, transmitted by one of the following methods, and deemed received:
- 14.2. Upon receipt, if hand delivered, or sent by express courier service;
  - 14.3. On the date received when sent by email as indicated by return receipt;
  - 14.5. Notices are to be addressed per the table below:

Title: INTECK IT P/L  
Address: P.O Box 611 Moorebank NSW 1875  
Tel: 1300 39 65 65  
Email: Support@inteckit.com.au

Company Name:  
Address:  
Tel:  
Fax:  
Email: