

## SOFTWARE SUPPORT AGREEMENT

This Software Support Agreement is made effective the date set out in Part I of Schedule 1,  
by and between WorkTech Inc., a corporation duly incorporated  
under the laws of the Province of Ontario and carrying on business as WorkTech (“WorkTech”),  
a subsidiary of StarDyne Technologies Inc.  
and The Town of Niagara-On-The-Lake (“Customer”)

WHEREAS WorkTech desires to provide to Customer and Customer desires to purchase from WorkTech, the products, materials and services described herein.

NOW THEREFORE, WorkTech and Customer agree as follows:

### 1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

- (1) “Agreement” means this Software Support Agreement together with the following Schedules, which are attached to and form part of this Agreement:  
Schedule 1 – Support Details  
Schedule 2 – Support Fees
- (2) “Billing Period” means the time period for which the Customer shall be invoiced for Support Services, as set forth in Part II of Schedule 1.
- (3) “License Agreement” means the License Agreement in force between the parties on the effective date of this Agreement.
- (4) “Support Fees” means the fees payable by the Customer to WorkTech for all Support Services provided by WorkTech under this Agreement other than the provision of Updates, as more particularly described in Schedule 2 attached.
- (5) “Support Services” means the services to be provided by WorkTech to Customer pursuant to this Agreement, but shall exclude any service for which Additional Fees (as described in Section 10) are paid.
- (6) “Update Fees” means the fees payable by the Customer to WorkTech for the provision of Updates, as more particularly described in Section 3. (2).

### 2. TERM

This Agreement shall commence on the Commencement Date set forth in Part IV of Schedule 1 and shall remain in effect up to and including the Initial Renewal Date set forth in Part V of Schedule 1 and shall be subject to automatic renewal for further 12 month terms as long as the Customer continues to use the Software. This Agreement may be terminated by written notice by either party to the other party at least 60 days prior to the Renewal Date. If this Agreement is terminated for any reason, WorkTech shall have no further responsibility to provide Support Services to the Customer (including, without limitation, the provision of updates) and shall have no liability in connection with any use of the Software by the Customer thereafter.

### 3. SUPPORT PROVIDED

This Agreement entitles the Customer to the following:

- (1) Diligent effort by WorkTech to attempt to correct program errors respecting any software provided to the Customer by WorkTech;

- (2) Updates to existing Software provided to the Customer by WorkTech;
- (3) Manuals, Technical bulletins, checklists, update memos and newsletters produced by WorkTech;
- (4) Custom programming at the rates for labour, travel, material and expenses as set out and published by WorkTech at that time. The decision to work at the Customer's site shall be at the Customer's discretion and expense;
- (5) Training:
  - (a) Training in new feature procedures is to be provided to the Customer by WorkTech at no additional cost over the telephone, and on-site training or seminar training is to be provided to the Customer at the rates for labour, travel, materials and expenses as set out and published by WorkTech at that time; and,
  - (b) Retraining in areas already learned by previous users and training new employees of the Customer will be provided at the rates for labour, travel, material and expenses as set out and published by WorkTech at that time. The decision to work at the Customer's site will be at the Customer's discretion and expense;
- (6) Updates to the manuals, Technical bulletins, checklists, update memos and newsletters produced by WorkTech will be provided by mail at no additional charge to the Customer.

#### 4. ADD-ON SOFTWARE

All add-on software and upgrades acquired by the Customer from WorkTech will be subject to this Agreement, whether or not identified in Part III of Exhibit "A" to the License Agreement or any amendment to this Agreement or to the License Agreement, and shall be subject to the renewal term set forth herein, except that the Customer shall pay any additional Support Fees and Update Fees to WorkTech that may be payable in connection with such add-on software and upgrades.

#### 5. SERVICE LIMITATIONS

Some or all of the Support Services may not be provided as part of this Agreement, where:

- (1) Proper backup procedures were not followed;
- (2) Equipment problems exist and the equipment was not supplied by WorkTech;
- (3) Software problems exist with WorkTech-supplied products which are caused by equipment not approved by WorkTech;
- (4) Additional software programs have been added by a party other than WorkTech which alter the settings required for the Software or do anything else to alter the working environment required for the Software;
- (5) Problems resulting from improper use, neglect or abuse by the Customer including, but not limited to, failure to provide a proper operating environment, or water, flood, fire, or wilful damage by any person other than WorkTech;
- (6) The Software is used for purposes other than for which it was designed and intended;
- (7) The Software has been modified by personnel not specifically authorized by WorkTech to perform the said modification;
- (8) Data has been modified by personnel not specifically authorized by WorkTech to perform the said modification;

- (9) The Software is operated in a manner inconsistent with the procedures described in the Documentation;
- (10) A phone is not provided beside the Customer's computer or where the phone beside the computer is not used for support or is not available for use;
- (11) All Updates were not acquired and installed by the Customer promptly upon their becoming available.

For greater certainty, the Customer shall not be relieved of its obligation to pay the fees payable by the Customer under this Agreement in any of the circumstances described in this Section 5.

## 6. PERIODS OF MAINTENANCE

WorkTech will provide telephone support in accordance with this Agreement during WorkTech's regular support hours of 8:30 am to 4:40 pm Eastern Standard Time, except on the following WorkTech recognized holidays: NEW YEAR'S DAY, FAMILY DAY, GOOD FRIDAY, EASTER MONDAY, VICTORIA DAY, CANADA DAY, CIVIC DAY, LABOUR DAY, THANKSIVING DAY, CHRISTMAS DAY and BOXING DAY.

## 7. RESPONSE TIME TO SUPPORT REQUESTS

WorkTech's policy is to respond by email to a support request within a reasonable time based on the severity of the issue.

The call will be assigned a severity level as agreed upon by the Customer and WorkTech as defined in Part VI of Schedule 1. A resolution to the issue depending on the severity level can be expected as follows:

- (1) Critical Severity: within one (1) business day.
- (2) Priority Severity: within two (2) business days.
- (3) Standard Severity: within three (3) business days.
- (4) Low Severity: within four (4) business days.

## 8. CUSTOMER RESPONSIBILITIES

- (1) The Customer shall notify WorkTech promptly of all perceived Software Defects and malfunctions and provide all details as WorkTech may reasonably require.
- (2) The Customer shall not make any attempt to correct any such malfunctions or Defects either to the Software or data directly or give authorization to any other party to do so without the prior written consent of WorkTech, which shall be provided forthwith if necessary.
- (3) The Customer will, at its expense, promptly and duly execute and deliver to WorkTech such further documents and assurances and take such further action as WorkTech may from time to time request in order to more effectively carry out the intent and purpose of this Agreement.

## 9. TERMINATION

### 9.1 In the event that:

- (a) any amount payable by the Customer under to this Agreement remains unpaid for a period of thirty days or more after becoming due;
- (b) the Customer is otherwise in default of this Agreement and fails to correct such breach within thirty days of receiving written notice thereof; or
- (c) the License Agreement is terminated for any reason,

WorkTech may terminate this Agreement by giving thirty (30) days written notice to that effect and effective immediately upon the passing of thirty (30) days from receipt or deemed receipt of such notice by the Customer, without any liability, cost or penalty to WorkTech. In the event that this Agreement is terminated under paragraph 9.1(a) or 9.1(b), the Customer shall be obligated to pay to WorkTech any outstanding amounts owing to WorkTech under this Agreement up to and including the date of Termination. In addition to the foregoing the customer shall pay to WorkTech a termination fee equivalent to two months of the annual Support Fee in effect on the date of the termination.

9.2 In the event that the Customer is not satisfied with the services provided by WorkTech under this agreement, the Customer may terminate this Agreement by giving thirty (30) days written notice to that effect and effective immediately upon the passing of thirty (30) days from receipt or deemed receipt of such notice by the Customer, without any liability, cost or penalty to the Customer.

**Upon the termination of this Agreement for any reason, Sections 10 (to the extent that any amounts are owing on termination), 12, 13, 14 and 15 shall survive such termination.**

## 10. CHARGES, INVOICES AND PAYMENTS

The Support Fees set forth in Schedule 2 shall be payable by the Customer to WorkTech in advance beginning on the Commencement Date set forth in Part IV of Schedule 1 for the first Billing Period and on the first day of each subsequent Billing Period. Fees for add-ons or special modifications beyond the Updates provided by WorkTech as part of the Support Services (“Additional Fees”) shall be charged at WorkTech’s rates for labour, travel and material as set out and published by WorkTech at that time. Additional Fees shall be invoiced upon the completion of the applicable service. All labour charges shall be billed at a thirty minute minimum and shall be computed to the nearest fifteen minutes over the thirty minute minimum for services performed in addition to Support Services. Any invoices not paid within thirty (30) days from the date of the invoice shall incur interest at the rate of 2% per month from the date of the invoice until paid.

## 11. RATE CHANGES

WorkTech reserves the right to make adjustments to the rates for Support Fees, Update Fees and Additional Fees from time to time.

## 12. TAXES

The fees payable under this Agreement are exclusive of any taxes, duties, customs or levies. The Customer shall pay or reimburse WorkTech for all federal, provincial, local, sales, use, or any similar amount, based on the fees payable under this Agreement or based on any service provided hereunder, whether such taxes are now or hereafter imposed under the authority of any federal, provincial, local or other taxing jurisdiction.

## 13. LIMITATION OF LIABILITY

WorkTech shall exercise all reasonable efforts in performing its obligations hereunder, but shall not be liable for delay or failure to provide services hereunder due to causes beyond the reasonable control of WorkTech, including but not limited to, causes due to acts of God, government and delays due to weather.

The sole and exclusive remedy for any breach of this Agreement by WorkTech, with respect to WorkTech's obligations under this Agreement shall be limited to monies actually paid by the Customer to WorkTech for the services provided hereunder.

**IN NO EVENT SHALL WORKTECH BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, THAT ARE NOT CAUSED DIRECTLY OR INDIRECTLY BY WORKTECH INCLUDING WITHOUT LIMITATION, ANY LOST REVENUE, FAILURE**

TO REALIZE EXPECTED PROFITS OR SAVINGS.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

#### 14. ARBITRATION

All disputes of every kind and nature between the parties arising out of or in connection with this Agreement shall be submitted to binding arbitration in accordance with the provisions of Section 10 of the License Agreement.

#### 15. OTHER

- (1) The Customer agrees that all Software (including, without limitation, all Updates, special add-ons and custom programming performed by WorkTech) shall be subject to Section 4.1 of the License Agreement and that the Customer shall take all appropriate steps in order to ensure that WorkTech's intellectual property rights and copyright in connection with all such Software are protected.
- (2) This Agreement shall be governed by and construed in accordance with the laws of the province in which the Customer is located as set forth in Part III of Schedule 1 as of the effective date of this Agreement, and the laws of Canada applicable therein.
- (3) This Agreement together with the Schedules hereto constitute the complete and exclusive statement of the Agreement between WorkTech and the Customer with respect to the maintenance and support of the Software licensed pursuant to the License Agreement, and all previous representations, discussions, and writings, with respect to the support and maintenance, are merged in and superseded by this Agreement. No modifications, amendments, or supplement to this Agreement shall be effective for any purpose unless in writing and signed by WorkTech and the Customer. Only an officer or Director of WorkTech by written agreement has the power and authority to amend this Agreement on behalf of WorkTech.
- (4) Amendments to the Schedules to this Agreement may be made at any time and shall be made in writing with the consent of both parties.
- (5) This Agreement shall endure to the benefit of and be binding upon the successors and assigns of WorkTech and the successors and permitted assigns of the Customer.
- (6) Any provision of this Agreement which is unenforceable in any jurisdiction shall be ineffective to the extent of such unenforceability in the jurisdiction without invalidating the remaining provisions hereof, and any such unenforceability in that jurisdiction shall not render unenforceable such provision in any other jurisdiction.
- (7) In the event WorkTech obtains judgment against the Customer and the laws of the jurisdiction in which judgment is obtained permit, the amount of such judgment shall bear interest at the rate which is the lesser of the rate described in Section 10 and the maximum permitted by law.
- (8) This Agreement or any part thereof may not be assigned by either WORKTECH or the CUSTOMER without the prior written consent of the other party.
- (9) WorkTech reserves the right to appoint in its sole discretion representatives to be responsible for the provision of all or any part of the Support Services.
- (10) If either party should waive any breach or default of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach or default of the same or any other provision hereof; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that

has or may have hereunder operate as a waiver of any breach or default by the other party.

(11) The section headings in this Agreement are intended solely for convenience; they are not part of this Agreement and shall not affect its construction.

IN WITNESS WHEREOF, the undersigned intending to be legally bound, have duly executed this Agreement to become effective as of the date first below written.

The Town of Niagara-On-The-Lake

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

I have the authority to bind the corporation.

WorkTech Inc.

By: \_\_\_\_\_

Name: Michelle Rogers

Title: Controller

Date: \_\_\_\_\_

I have the authority to bind the Corporation.

## Schedule 1

### *Support Details*

Part I – Effective Date: February 15/2013

Part II – Billing Period: One year – except the initial billing period shall be from February 15, 2013 to December 31, 2013 (and the amounts listed in Schedule 2 shall be reduced proportionately).

Part III – Customer Address:

The Town of Niagara-On-The-Lake

1593 Four Mile Creek Road

P.O. Box 100

Virgil, Ontario L0S 1T0

bgarrett@notl.org

Part IV – Commencement Date: February /15/2013

Part V – Initial Renewal Date: March/15/2014

Part VI – Call Severity Level Definitions

- (1) Critical Severity – The material function of a licensed product is (i) Inoperable and cannot be restarted and/or (ii) Subject to intermittent failures occurring so frequently they render the function inoperable and/or (iii) Having a substantial effect on business operations, with no workaround available.
- (2) Priority Severity – Issue does not have an immediate effect on business operations. A workaround may be available, which may be labour-intensive or cost-prohibitive over a long period of time, but could be an acceptable short-term solution.
- (3) Standard Severity – Issue does not require immediate attention to maintain system operation such as: (i) a program is not working but a workaround is available that is acceptable in the short term
- (4) Low Severity - Issue does not require immediate attention to maintain system operation such as: (i) clarification or guidance is needed on how to use the documentation or online help and/or (ii) the issue occurs in a test environment.

**Schedule 2**

*Support Specifications and Fees*

Annual Maintenance and Support: 20% of software list price

Total Software List Price	<b>\$ 11,500</b>
Maintenance and Support (20%)	<b>\$ 2,300</b>