**CONSULTANCY AGREEMENT**

**EFFECTIVE DATE:**

**BETWEEN:**

**The Client: Please insert Institution (including Department) or Company name, VAT number and full address**

**and**

**CUTS: Cambridge University Technical Services Limited,** No 5749230**,** whose registered office is at The Old Schools, Trinity Lane, Cambridge CB2 1TS.

**It is agreed as follows:-**

**1. DEFINITIONS**

1.1 For the purposes of this Agreement the following shall apply:-

|  |  |
| --- | --- |
| Term | Meaning |
| **Case Number** |  |
| **The Services:** | Ensuring that the Client may download any new release of an Update of the Software that is made available via the ICM+ website: <http://www.neurosurg.cam.ac.uk/pages/ICM/> from time to time, together with any relevant download instructions as necessary.In addition, providing up to 1 day off-site support services (i.e. from Cambridge) for the Software by providing technical advice by telephone, email, facsimile transmission or mail as requested about the Client’s difficulties/queries in using the Software (during the working hours (9-5) with 1 working day consisting of seven (7) hours excluding lunch). For the avoidance of doubt, this does not include any new software development to the Client’s special requirements (e.g. module development). |
| **The Deliverables:** | Updates and oral or written technical advice provided during the provision of the Services |
| **The Consultant:** | Dr Peter Smielewski of the Department of Neurosurgery at the University.  |
| **The Fee** | £770 (seven hundred and seventy pounds sterling) subject to clause 4.3 |
| **Renewal** | This Agreement may be renewed for additional 2 year periods at CUTS’ absolute discretion, whether or not this Agreement has expired formally. If the request is made within 2 years of the End Date a single Fee shall apply but the period of the renewal shall be 2 years beginning on the day after the End Date. If more than 2 years have expired since the End Date the renewal will begin on a date to be agreed subject to (a) the payment of the Fee and (b) a premium normally consisting in the payment of an amount equal to the Fee.  |
| **Payment Terms** | An invoice will be provided to the Client for the Fee on the Effective Date.The Client shall pay to CUTS the amount set out in the invoice together with any applicable taxes including VAT. |
| **Start Date** | The Effective Date |
| **End Date** | 2 years beginning on the Effective Date or in the case of Renewal the beginning of the Renewal period. |
| **The University** | The Chancellor, Masters and Scholars of the University of Cambridge |
| **The Software** | The ICM+ (intensive care monitor) software as defined in the Licence Agreement |
| **Licence Agreement** | The licence between Cambridge Enterprise Ltd. and the Client which covers use of the Software with the Client’s specified equipment  |
| **The University** | The Chancellor, Masters and Scholars of the University of Cambridge |
| **Updates** | Each subsequent version release of the Software that CUTS in its absolute discretion makes available to the Client |

**2. DUTIES AND LICENCE**

2.1 Subject to the terms of this Agreement the Client engages CUTS to carry out the Services andprovide the Deliverables in consideration for the Fee. CUTS will fulfil its obligations through its sub-contractor, the Consultant.

2.2 For the avoidance of doubt, CUTS has no obligation to provide Services to the Client:

(a)    where the Client has failed to use the Software in accordance with user instructions given to the Client

(b) where the Client is using the Software and Updates outside the scope of, or in breach of, the Licence Agreement, including but not limited to:

(i) installation, modifications or enhancements of the Software provided by any person other than by CUTS or the Consultant,

### (ii)    user error or incorrect use of the Software;

### (iii) any fault in any hardware

### (iv)    use of the Software on or with equipment not recommended or approved by CUTS or the Consultant

2.3 CUTS grants to the Client a non-exclusive, perpetual licence to use Updates provided under this Agreement for internal research purposes only subject to the standard terms and conditions of the Licence Agreement.

1. **DURATION**

3.1 This Agreement shall be deemed to have come into effect on the Start Date and shall terminate on the End Date.

3.2 This Agreement may be terminated by either party on

1. failure by the other party to remedy a material breach after being given 30 days notice to do so
2. either party ceasing to trade or becoming insolvent

**4. FEE**

4.1 CUTS shall invoice the Client for the Fee (together with any VAT due), in accordance with the Payment Terms. Payment shall be due in full within 30 days of the date of invoice. CUTS shall be entitled to charge interest at 4% above the Base Lending Rate for Barclays Bank Plc should payment not be received by the due date, and may at its option suspend provision of the Services until payment is made in full.

* 1. The Client shall additionally reimburse to CUTS all reasonable travelling and other out of pocket expenses properly incurred by the Consultant in the performance of the Services for the Client.
	2. CUTS may adjust the Fee annually beginning on the second anniversary of the Start Date by the percentage change if any between CPI published in the month immediately preceding such anniversary and the month immediately preceding the Start Date. CPI means the Consumer Prices Index published monthly by the U.K. Office for National Statistics or such other index as may be published in substitution.

**5. THE ROLE OF THE CLIENT**

* 1. The Client shall:
		1. ensure that it has and maintains from the Start Date until six years after the End Date public liability insurance product liability insurance and all risks property damage insurance that adequately covers the activities and property of CUTS and the Consultant while on the Client’s premises;
		2. advise CUTS and the Consultant of any health and safety hazards, handling and storage requirements known to the Client regarding any materials, goods and samples supplied by the Client to CUTS, or the Consultant;
		3. make available all reasonable assistance, information and appropriate personnel to liaise with CUTS or the Consultant as they may reasonably require; and
		4. be responsible for the safety and integrity of their data at all times
1. **INTELLECTUAL PROPERTY RIGHTS**

6.1 There shall be no transfer of intellectual property rights under this Agreement.

6.2 CUTS and the Consultant shall have the right to use the skill acquired in the course of providing the Services for the purposes of providing similar services to any other client and to use the Deliverables for the purposes of academic research.

1. **CONFIDENTIALITY**

7.1 No confidential information disclosed by one party to the other party may be disclosed by the recipient to any person without the written consent of the other party except:

(a) employees or subcontractors of CUTS, the University or the Client who require such information for the purposes of this Agreement; or

1. if required to do so by law.

7.2 No such confidential information may be used by the recipient for any purpose other than the performance of this Agreement.

7.3 Confidential information shall not include information which is or comes into the public domain or is independently and lawfully developed or received by the recipient.

7.4 The provisions of this paragraph will survive the expiry or earlier termination (for whatever reason) of this Agreement for a period of three years.

**8. LIABILITY**

8.1 No representation or warranty, express or implied, regarding the Services or the Deliverables is given and all such representations and warranties are excluded to the maximum extent permitted by law.

8.2 Nothing in this Agreement excludes or restricts liability for any fraudulent misrepresentation or death or personal injury caused directly by negligence.

8.3 Subject to Clause 8.2 and 8.4,

(a) any liability of CUTS, the University or its employees for direct loss in contract, tort or otherwise arising out of or in connection with this Agreement is limited for one incident or a series of incidents to the total amount of the fee actually received by CUTS from the Client for the Services provided under this Agreement.

(b) the Client’s exclusive remedy and CUTS sole obligation and entire liability for any failure to provide the Services shall be limited, at CUTS option, to either re-perform the Services at no additional charge or refund the Fee.

8.4 Subject to Clause 8.2, in no circumstances will either party be liable to the other, nor the University or its employees be liable for any loss of profits, revenue, goodwill, business opportunity or any indirect, consequential, financial or economic loss or damage, costs or expenses whether in contract, tort, negligence, breach of statutory duty or otherwise whatsoever or howsoever arising out of or in connection with this Agreement.

* 1. The Client shall indemnify CUTS, the University and its employees in full against all direct, indirect, incidental, consequential or special liability, loss, damages, costs or expenses, which are awarded or incurred by them as a result of any claim or threatened claim by any third party arising out of or in connection with the Client’s use of the Deliverables.

**9. GOVERNING LAW AND WAIVER**

9.1 This Agreement shall be governed by the laws of England and Wales and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts. Any waiver or variation of the rights and obligations under this Agreement shall be in writing and signed by both the Client and CUTS.

1. **NOTICES AND COMMUNICATION**

10.1 All notices served under this Agreement shall be in writing and served by pre-paid registered post to the party. All such notices shall be deemed served within (two) 2 working days (in the UK) after being sent if the address of the recipient is in the UK or 5 working days (in the UK) if not.

10.2 For the purposes of notices and other communications between the parties, their contact details are as follows:-

 **The Client**: To its address as stated on page 1 marked for the attention of the customer as stated in the Licence Agreement or other such address as may be intimated from time to time in writing by the Client to CUTS

 **CUTS**: The Director of Cambridge Enterprise Ltd

 Hauser Forum,

3 Charles Babbage Road,

 Cambridge CB3 0GT

 Tel: 01223 760339

 e-mail: cuts@enterprise.cam.ac.uk

 For the attention of: Head of Consultancy Services

 **All notices to CUTS shall be copied to the Consultant (and vice versa)**

 **The Consultant:** Dr Peter Smielewski

 Tel: 01223 331763

 e-mail: ps10011@cam.ac.uk

|  |  |  |
| --- | --- | --- |
| For and on behalf of**CUTS** |  | For and on behalf of**CLIENT** |
|  Signed |  |  Signed |
|  Print name |  |  Print name |
|  Title |  |  Title |
|  Date |  |  Date |