

K2 Medical Systems™ Ltd

PERINATAL TRAINING PROGRAMME (PTP) END-USER SOFTWARE LICENSE AGREEMENT

This End-User Software License Agreement (the "Agreement") is entered into between XXXXXXX Trust and K2 Medical Systems Ltd, The Apex, Derriford Business Park, Brest Road, Plymouth, Devon, PL6 5FL, United Kingdom ("K2MS"), for the use of the K2MS Perinatal Training Programme incorporating the new Simulator 2.0 ("Product"). **This License Agreement supersedes all previous License Agreements.** By installing or otherwise using the Product, the Licensee agrees to be bound by the terms of this Agreement. If the Licensee does not agree to the terms of this Agreement, do not install or use the Product or continue to use the Product if already installed. In this event the Licensee should contact K2MS.

1. DEFINITIONS

- 1.1 **PRODUCT** means all components of the Perinatal Training Programme supplied by K2MS together with any updates and/or revisions provided, and may include associated media or printed materials.
- 1.2 **LICENSE** means the rights to use the Product as described in Schedule A during the term of this agreement
- 1.3 **LICENSEE** means XXXXX Hospital
- 1.4 **EFFECTIVE DATE** means the date of original supply of the Product to the Licensee this being XXDATEXX
- 1.5 **INITIAL PERIOD** means that the Licensee is initially contracted to pay the **Annual Service Fee for 3 years from the Effective Date.**
- 1.6 **SERVICE** means the Licensee's right to receive Product support in accordance with the service detail provided in Schedule A
- 1.7 **ANNUAL SERVICE FEE** means the fee paid by the Licensee of £AMOUNT to K2MS for the software License and the right to the availability of Service for one year.

2. RIGHTS AND LIMITATIONS.

- 2.1 Subject to the terms and conditions of this Agreement, K2MS grants the Licensee a non-exclusive, non-assignable License to use the Product during the term of this Agreement (as referred to in Section 5).
- 2.2 This Agreement further grants the Licensee the right to receive Service during the term of this Agreement
- 2.3 The extent of this License to permit software use on multiple installations is defined within Schedule A
- 2.4 Notwithstanding anything else contained in this Agreement, K2MS retains (i) all title to, and, except as expressly and unambiguously Licensed herein, all rights to the Product, and all related documentation and materials, (ii) all of their service marks, trademarks, trade names or any other designations and (iii) all copyrights, patent rights, trade secret rights and other proprietary rights in the Product.

3. LICENSEE'S OBLIGATIONS.

The Licensee agrees:

- 3.1 Not to reverse assemble, de-compile, or otherwise attempt to derive source code (or the underlying ideas, algorithms, structure or organization) from the Product or from any other information, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

- 3.2 To keep the copy of the Product in the possession of the Licensee, and not to attempt to prepare any further copies.
- 3.3 Not to sell, give, lend, give access to, or otherwise transfer the Product or copies of the Product to anyone that is not an employee or consultant of the Licensee, or to anyone that is not bound to all of the terms and conditions of this Agreement.
- 3.4 Not to allow others or third parties to use the Product.
- 3.5 Not to remove from any copy of the Product any Product identification, copyright or other notices.
- 3.6 Not to modify, incorporate into or with other software, or create a derivative work of any part of the Product.
- 3.7 To pay the Annual Service Fee in advance of the anniversary of the Effective Date for the Service to be provided in the subsequent year of the Agreement.
- 3.8 The Licensee shall not assign, sub-License, sub-contract, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of K2MS.

4. TERMINATION

- 4.1 Without prejudice to any other rights, K2MS may immediately terminate the License if the Licensee fails to comply with any of the terms and conditions of this Agreement. In such an event, the Licensee must cease usage of the Product and must return all copies of the Product and all of its component parts.
- 4.2 All of the terms and conditions of this Agreement shall survive termination with the exception of the License as defined in Sections 1.2 and Sections 2.1; 2.2; 2.3 Termination is not an exclusive remedy and all other remedies will be available to Licensor whether or not the License is terminated.

5. TERM & RENEWAL

- 5.1 This Agreement incorporates a License to use the Product from the Effective Date for one year and to receive Service for one year. **This Agreement will automatically renew for a further year on each anniversary of the Effective Date. The Licensee may cancel such automatic renewal by giving 12 months notice in writing to K2MS. Upon the anniversary of the Effective Date, such cancellation will cancel the Licensed right to use the Product and the right to receive Service. Such cancellation can only be implemented after 3 years from the Effective Date.**
- 5.2 Renewal of the Agreement each year is conditional upon the payment by the Licensee of the Annual Service Fee in advance of the anniversary of the Effective Date for the Service to be provided in the subsequent year.

6. PAYMENT TERMS

- 6.1 In line with the European Late Payment Directive 2011/7/EU, the following will apply:-
 - a. The Licensee shall indemnify K2MS and will be responsible for payment of any reasonable recovery costs (included but not limited to legal and other professional costs) incurred by K2MS as a result of late payment. Late payments will incur an interest charge of 8% per annum.

- b. The licensee will be responsible for payment of any reasonable recovery costs incurred by K2 Medical Systems as a result of late payment.

7. GOVERNING LAW

This Agreement will be governed by and shall be construed in accordance with the substantive laws in force: (a) in the courts of Australia, if a License to the Software is obtained when you are in Australia; or (b) in New Zealand, if a License to the Software is obtained when you are in New Zealand, (c) England, if a License to the Software is purchased when you are in any other jurisdiction not described above. The respective courts of Australia, when Australian law applies, New Zealand, when New Zealand law applies and the competent courts of England & Wales, when the law of England & Wales applies, shall submit to the exclusive jurisdiction over all disputes relating to this Agreement.

8. LIMITED WARRANTY AND DISCLAIMER

- 8.1 The Licensed Product is complex computer software. Product may vary depending upon hardware platform and software interactions. Licensee therefore accepts the responsibility of satisfying itself that the Product is suitable for use within its own system.
- 8.2 The function of the Product is limited to the provision of advice that may or may not be accepted by clinicians. It is the Product users' full and exclusive responsibility to determine whether or not to accept such advice and whether to take any specific action as a result, within the context of the full clinical environment.
- 8.3 K2MS warrants that for a period of ninety (90) days following the Effective Date the Product will materially conform to K2MS's then current operational specifications. The foregoing warranties cover only problems reported to K2MS during the warranty period. Except as determined by applicable law and subject to clause 6A any liability of K2MS with respect to the software or the performance thereof or defects therein under any warranty, negligence, strict liability or other theory will be limited exclusively to Product replacement or, if K2MS determines, in its sole discretion, that replacement is inadequate as a remedy or impractical, to refund of the License fees paid by the Licensee and termination of the License.
- 8.4 To the maximum extent permitted by applicable law, K2MS, its suppliers, distributors and resellers disclaim all other warranties, either expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with regard to the Product.

9. LIABILITY FOR CONSEQUENTIAL DAMAGES

Except as determined by applicable law in no event will K2MS its parents or subsidiaries or any of the licensors, directors, officers, employees or affiliates of any of the foregoing be liable for any consequential, incidental, indirect, or special damages, loss, injury, death or other consequences including the corruption or loss of any data arising from the use of the Product in any way.

10. DATA PROTECTION

K2 Medical Systems agrees to use the information supplied by the licensee in accordance with the General Data Protection Regulation (EU) 2016/679), Commonwealth of Australia Privacy Act, 1988 and the New Zealand Privacy Act, 1993 and only for the purpose of providing the agreed reports and product support for the Licensee. K2MS will not hold the records for longer than is necessary and will not share them with or distribute them to any other party without prior approval from the Licensee and Data Subjects. K2MS will not process or use the records in any other way and for

any other purpose than to create and provide the agreed reports and product support to the Licensee.

Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the data protection legislation.

11. CUSTOMER REMEDIES.

K2MS entire liability and the Licensee's exclusive remedy shall not exceed the License fees paid for the Product.

12. IMPORTANT NOTE

If this license is not returned within 14 days [PUT DATE OF EMAIL IN] and the Product continues to be used, it will be deemed that you have accepted the terms and conditions of this Agreement and you are contracted with K2MS on said terms and conditions.

SCHEDULE A

- The Licensee's rights to use the K2MS Products under this Agreement are limited to all components of the Perinatal Training Programme software packages, and may include associated media or printed materials. This License further permits reproduction of such media or printed materials for the use of the Licensee's staff only to further the effective use of the K2MS Products.
- The Licensee's rights to use the K2MS Perinatal Training Programme is limited to use by the employees of the Licensee
Such use may be achieved via internet access requiring Internet Explorer Version 11 or above, or any other web browser.
- Service - the Licensee's right to receive Product support will include at least the following:
 - Software updates and revisions as released.
 - 5 new real-life cases for the simulator every six months.
 - Certification: All users who complete the training package will receive a certificate of completion.
 - Optional Six monthly analysis of all user progress through the course.
 - Optional Six monthly staff user feedback report.
 - Use of Group Simulation Software provided a valid License is held.
 - Full technical support desk during normal office hours 09:00 - 17:00.

Signed for K2 Medical Systems Ltd
Name:
Date:
Signed for XXXXXXXXX
Name:
Date:

Please sign and return one copy to K2 Medical Systems Ltd and keep one for your records.