

## KITWARE STANDARD CUSTOM CONSULTING SUPPORT AGREEMENT

This Agreement (the "Agreement") is made as of this 12 day of April, 2011 ("Effective Date") by and between Kitware Inc., ("KITWARE"), a New York corporation having a place of business at 28 Corporate Drive, Clifton Park, NY 12065, and Nicholas Draper ("CUSTOMER"), an individual or single business entity of Tessella plc, having a place of residence/business at 26 The Quadrant, Abingdon Science Park, Abingdon Oxfordshire, United Kingdom.

### **1. The Services.**

- 1.1 KITWARE's services and work shall include 25 hours of custom consulting development and support to be used within one calendar year from the Effective Date. All unused hours are forfeited after this time period.
- 1.2 The CUSTOMER shall communicate development requests, technical questions, and bugs to the KITWARE support team via email sent to support@kitware.com. The KITWARE support team shall respond to the CUSTOMER's request within one business day with either a solution or, in the case of complex issues or lengthy development, an estimate of the completion date.
- 1.3 The CUSTOMER may request a meeting at a location of the CUSTOMER'S choosing. KITWARE will work with the CUSTOMER to schedule the meeting at a mutually agreeable time. KITWARE will provide the CUSTOMER with an estimate in advance of travel costs, including estimates for transportation, lodging, meals, and hours of consulting services required to cover the meeting preparation time, travel time, and meeting time. The CUSTOMER must ensure that the CUSTOMER'S balance of hours on their support contract is sufficient to cover the required hours before KITWARE will confirm the meeting. KITWARE will invoice the CUSTOMER for actual travel costs once the trip has concluded. The CUSTOMER agrees to pay this invoice within the NET 30 terms.

### **2. Fee**

- 2.1 The CUSTOMER shall pay KITWARE \$5,000 US for the custom consulting described in this Agreement. Kitware will invoice the CUSTOMER for \$5,000 upon receipt of this signed agreement. The terms of the invoice are Net-30. Payments that are more than 15 days late will incur a 1.5% monthly penalty.
- 2.2 The CUSTOMER may elect to extend this Agreement by purchasing additional custom consulting hours, at the price then quoted on the Kitware web site (www.kitware.com). If additional blocks of consulting hours are purchased by the CUSTOMER, these consulting hours are subject to the terms and conditions set forth in this contract, and expire one (1) year from the purchase date.

### **3. KITWARE Responsibilities.**

- 3.1 KITWARE represents that it will provide the work and services in good faith and use its best efforts to complete the services in accordance with this Agreement.

- 3.2 KITWARE represents it shall have appropriate agreements with its employees to enable it to comply with its obligations under this Agreement.
- 3.3 In the event that a KITWARE employee providing the services and work under this Agreement is unable to complete the task (for example, due to sickness or resignation from KITWARE), KITWARE shall use its best efforts to provide another employee of similar experience to fulfill the contract.

**4. CUSTOMER Responsibilities.**

The CUSTOMER agrees that its personnel will respond in a timely manner to inquiries from KITWARE employees relative to the Services to be performed under this contract.

**5. Term and Termination.**

- 5.1 This Agreement shall commence on the Effective Date and shall continue until terminated by either party by giving 30 days notice.
- 5.2 This Agreement may be terminated by either party immediately and without notice in the event that the other commits a material breach of any of its provisions and fails to cure any such breach within 30 days of receiving written notice from the other specifying the breach.
- 5.3 The termination of this Agreement for any reason shall not affect any rights or obligations of either party that have accrued prior to such termination, and the provisions of Sections 6, 7, 8, 9, 10, and 12, shall survive termination of this Agreement.

**6. Intellectual Property.**

- 6.1 "Intellectual Property" means all patents, trademarks, copyrights, inventions, discoveries, and methods, ideas, hardware, firmware or software, know-how, techniques and other technology owned or possessed by either party.
- 6.2 Except as specifically provided in this Agreement, each party shall retain all right, title, and interest in their respective Intellectual Property that has been or is developed separately by such party. Neither party shall have or acquire rights in the other party's separately developed Intellectual Property except as specifically provided for in this Agreement.

Exclusively KITWARE shall own any bug fixes and minor modifications made by KITWARE in one of the open source projects listed below in completing this contract:

The Visualization Toolkit (VTK)  
The Insight Segmentation and Registration Toolkit  
(ITK) CMake  
ParaView  
KW Widgets  
The Image Guided Surgery Toolkit (IGSTK)

- 6.3 Exclusively the CUSTOMER shall own any new classes or significant extensions developed by KITWARE in completing this contract. The CUSTOMER may decide via email communication with KITWARE to contribute such extensions to an open source project hosted by Kitware. Even if the customer wishes to contribute a developed feature to an open source project, the final decision on whether or not the feature is added to the project rests with Kitware and whatever committee or board governs such decisions for each open source project.
- 6.4 All Intellectual Property made, created, developed, written, conceived, or first reduced to practice solely by personnel of the CUSTOMER or its affiliates as a result of work performed pursuant to this Agreement shall be owned exclusively by the CUSTOMER.

**7. Confidentiality.**

- 7.1 The parties agree not to permit access to or to disclose the other party's Confidential Information except to its authorized employees, contractors and personnel of affiliated companies with a need to know and agree to be subject to the same or similar terms as contained in this Agreement. KITWARE will only use Proprietary Information (hereinafter referred to as "Information") received from the CUSTOMER for the specific purpose of performing its duties for the sole benefit of the CUSTOMER as described in this Agreement. "Proprietary Information" may include but not be limited to: business plans, marketing plans, and operational financial or personnel information, project/product/service concepts, illustrations, architectures, specifications, designs prototypes, and/or processes; computer programs, models, drawings and/or architectures; affiliations, associations and/or agreements with other parties.
- 7.2 If the disclosing party claims that Information furnished is proprietary, the receiving party agrees to preserve and protect such proprietary information from disclosure, inadvertent or otherwise, to any person or persons, through an exercise of care equivalent to the degree of care it uses to preserve and protect its own proprietary information and, in any event, with no less than a reasonable standard of care for protection. The foregoing restriction shall not apply to any portion of the information that:
- Is or becomes part of the public domain without breach of this Agreement;
  - Is subsequently received from a third party who did not obtain or disclose it in violations of any rights of the disclosing party;
  - Is already known to a party as evidenced by tangible documentation;
  - Was independently developed by the receiving party without resort to the Information disclosed hereunder;
  - Was disclosed in a non-written form and was not identified as proprietary at the time of disclosure and/or was not reduced to written form in accordance with the terms herein;
  - The receiving party is compelled to disclose pursuant to a judicial order issued by a court of competent jurisdiction to which the receiving party shall provide formal notice to the disclosing party, and all reasonable assistance in opposing such disclosure order.
- 7.3 Proprietary Information may be disclosed in either a verbal or a tangible form; and shall, if disclosed verbally be identified as Proprietary and Confidential in nature; and shall, if disclosed in writing, be conspicuously marked as being "Proprietary", "Confidential" or by any other appropriate legend clearly indicating the proprietary nature of the information. All Confidential Information is and shall remain the property of the disclosing party. All Confidential Information, and any copies thereof, shall be promptly returned to the disclosing party upon termination of this Agreement or written demand of the disclosing party. Termination shall not, however, affect the rights and obligations contained herein with respect to Information supplied hereunder prior to termination. Such restriction on disclosure shall apply from the time of receipt of said Information through a period of 5 years after termination of this agreement.

**8. Infringement**

- 8.1 The CUSTOMER shall defend, indemnify and hold harmless KITWARE from and against any claim, demand, suit, proceeding, damage, cost and expense, including, without limitation, attorneys' fees, that arise or result from the use or distribution of the CUSTOMER's products with any work performed under this contract embedded in such products.



**9. Disclaimer of Implied Warranties.**

9.1 THE CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE CUSTOMER'S USE OF WORK PERFORMED UNDER THIS CONTRACT IS AT THE CUSTOMER'S SOLE RISK. THIS WORK AND RELATED DOCUMENTATION ARE PROVIDED "AS IS", "WITH ALL FAULTS," WITHOUT WARRANTY OF ANY KIND. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. KITWARE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

**10. Liability.**

10.1 Limitation. THE CUSTOMER AGREES THAT KITWARE'S MAXIMUM LIABILITY TO THE CUSTOMER SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER TO KITWARE AND IN NO EVENT SHALL KITWARE BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES HEREUNDER, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA OR INFORMATION OF ANY KIND, HOWEVER CAUSED.

**11. Disputes.**

Prior to either party commencing any legal action under this Agreement, the parties agree to try, in good faith, to settle the dispute amicably between them. If after 60 days, the dispute has not been settled to the satisfaction of both parties, then the parties agree to engage a third party mediator, i.e. ADR (Alternative Dispute Resolution) to help settle the matter. The mediation will be held at a location convenient to both parties and each party will be responsible for their own costs and expenses, except that the costs of the mediation will be shared equally between them.

**12. General.**

12.1 Governing Law and Language. This agreement shall be governed and construed in all respects by the internal laws of the State of New York without regard to its choice of law principles. Both parties agree to submit to the jurisdiction of the courts of the State of New York (or United States federal courts) when a dispute arises that the parties are unable to settle amicably or through ADR (see Section 11). Any action by either party must be commenced within one (1) year after the cause of action arises. Furthermore, the prevailing party shall be entitled to receive reasonable attorney's fees and costs as part of the judgement.

12.2 Notices. Whenever under the terms of or in connection with this Agreement any notice, consent, approval, authorization or other information is required to be given by either party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or made by facsimile, personal delivery, reputable overnight courier or registered or certified mail, return receipt requested and with all postage prepaid, to the other party at its address as follows:

If to the CUSTOMER, to:

\_\_\_ Tessella plc \_\_\_\_\_  
\_\_\_ Abingdon Science Park \_\_\_\_\_  
\_\_\_ Abingdon, OX14 3YS \_\_\_\_\_  
\_\_\_ United Kingdom \_\_\_\_\_

If to KITWARE, to:

Kitware Inc.  
28 Corporate Drive  
Clifton Park, NY 12065 USA

Either party may change its address for notice by notice given in accordance with this Section. Notices shall be deemed received on the date of receipt or the date on which receipt is refused. In the event notice is given by facsimile, a copy of such facsimile shall be sent to the recipient thereof in accordance with the provisions hereof (other than by facsimile) within two days after such facsimile was transmitted.

- 12.3 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The amount to be paid to KITWARE pursuant to this Agreement shall not be considered salary, and KITWARE shall not be entitled to participate in any of the CUSTOMER's benefit plans. KITWARE shall be solely responsible for the payment of all federal, state and local taxes, social security benefits, unemployment compensation and worker's compensation insurance. This Agreement or the creation of the Work creates no employer-employee relationship.
- 12.4 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.
- 12.5 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself unless approved in writing by the parties.
- 12.6 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such un-enforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole.
- 12.7 No Hiring of Employees. During the term of this Agreement and for a period of one year after KITWARE has completed its Services hereunder, neither party may, without the prior written consent of the other, solicit for employment any employee of the other party who is involved in the provision of Services connected with this Agreement
- 12.8 ASSIGNMENT. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that the CUSTOMER may assign or transfer this Agreement to any of its affiliates without the consent of KITWARE. Except as specifically authorized in this Section, any attempted assignment or delegation without such prior written consent shall be void.
- 12.9 Entire Agreement. This Agreement supersedes all previous agreements with respect to the subject matter hereof between KITWARE and the CUSTOMER. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

IN WITNESS WHEREOF, the CUSTOMER and KITWARE have caused this Agreement to be executed by their authorized representatives.

The CUSTOMER

By:   
[Authorized Signature]

Name: Nicholas Draper  
[Please Print]

Title: Project Manager

Address: Tessella plc , Abingdon Science Park  
Abingdon, OX14 3YS, UK

Phone: 01235555511

Facsimile: 01235553301

Kitware Inc.

By:   
[Authorized Signature]

Name: Lisa Avila

Title: Vice President

Address: 28 Corporate Drive  
Clifton Park, NY 12065 USA

Phone: 518-371-3971

Facsimile: 518-371-3971