

## JiveX Software License Conditions

Note relating to the Medical Devices Act (Medizinproduktegesetz): VISUS expressly points out that the present License Conditions may also have a bearing on software falling under the Medical Devices Act. To meet the currently applicable provisions of said Act VISUS urgently recommends that a Software Maintenance Agreement be entered into (see Section 11 of these terms).

### Section 1 Definitions

Definitions within the meaning of these Software License Conditions:

1. Software denotes the machine-readable form (the object code) of the programs and modules of the JiveX Software of VISUS.
2. Third-party software is a term relating to programs not produced by VISUS which are used in connection with the contractual services provided by VISUS.
3. The product documentation is the written documentation pertaining to software and third-party software. This shall include, inter alia, installation prerequisites, product descriptions, product specifications (DICOM Conformance Statements etc.), instructions and manuals as well as certificates and permits to the extent available and required.
4. The agreed scope denotes for each module the number of licenses and/or work stations specified in the accepted offer as well as the range of functions indicated in the product documentation.
5. Licensee is the party procuring the right to utilize the software for a consideration. In case VISUS makes it possible for other persons to utilize the software without a consideration being paid the covenants laid down in these License Conditions shall apply analogously, with the liability disclaimer stipulated in Section 2, Subsections 2 and 3 being applicable.
6. Seller is the party entering into the agreement to be concluded with the Licensee for the ceded software. This may either be an authorized reseller or VISUS itself.
7. License denotes the unalienable, non-exclusive, perpetual right of use of the software exclusively in the framework of what has been stipulated in this agreement and all other provisions that may apply in this context.
8. Licensor within the meaning of these terms shall be VISUS.
9. VISUS and Licensee agree that the software shall be exclusively used according to the number of licenses specified in the parts list for the Licensee's own use and operational purposes.
10. Updates mean updated versions of the relevant software version status which contain minor improvements, including structural improvements, and corrections and which require the signing of a separate software maintenance agreement.
11. Upgrades mean significant software improvements that exceed the scope of updates and may - at the Licensor's reasonable discretion - include an extension of software functionality. The supply of upgrades also calls for an additional agreement to be signed, for instance, as part of a separate software maintenance deal.
12. A Fault ("Bug") – or defect – within the meaning of these Software License Conditions, which gives rise exclusively to claims against VISUS, is only an incorrectness of the software. So-called updates and upgrades do not come under this category. Faults or bugs within the meaning of this provision are remedied by "Bugfixes". Bugfixes serve to rectify system-incompatible anomalies in the software architecture and/or functionality.

## **Section 2      Application/Use**

1. These terms shall govern the use of the JiveX software developed by VISUS (own product) as well as pertinent issues/matters arising in this connection.
2. Rights within the scope of the following terms may only be claimed by Licensees that have paid a user fee for the JiveX software, unless other statutory provisions prescribe liability as being compulsory in the event the software has been ceded free of charge. In any such case, claims against VISUS can only be raised to the extent provided for in these other, compulsory liability provisions.
3. Any use of the „JiveX DICOM Viewer Personal Edition“ software for medical purposes in the connection with the treatment of patients and diagnostic appraisals is impermissible. Neither must this software be used for applications that in consequence fall under the Medical Devices Act.

## **Section 3      Legal Relationships**

1. The Licensee has accepted an offer and thus entered into an agreement with the Seller by means of which Licensee procures the right of using the software as provided for under Section 1, Subsection 1 of these terms. By entering into the respective covenant a license agreement shall be deemed to have been concluded between the Licensee and VISUS as defined under the present terms.
2. In the event the Seller is not VISUS itself such reseller - through a separate reseller agreement - shall be expressly authorized to enter on behalf of VISUS into the agreement named hereinbefore.
3. To the extent the provisions stipulated in these terms have a bearing on the Seller's relationship with the Licensee, Seller shall make its assertions to the Licensee also on its own behalf and shall accept the JiveX License Conditions as set forth herein.

## **Section 4      Object of these Conditions and Pertinent Rights of Use**

1. These provisions shall govern the software usage and application conditions as well as the relevant rights accruing to both Licensee and VISUS.
2. Upon conclusion of the license agreement and payment of the remuneration thus due the Licensee will be granted the unalienable, non-exclusive, perpetual right of using the software to the extent stipulated. The aforementioned right of use will only take effect after the owed remuneration has been duly paid.
3. VISUS will continue to be the exclusive owner of all non-assigned rights ensuing from the copyright and intellectual property rights ownership.
4. With regard to the use of the software the Licensee may and is permitted to employ only such hardware as has been specified in the installation and system requirements section applicable to the software. The Licensee is responsible for the provision and maintenance of this hardware including upgrading needs and for this purpose may also avail itself of third-party assistance. A separate agreement must be drawn up if VISUS is requested to render services.
5. Should VISUS perform obligations on behalf of the Seller fulfillment of such obligations through Seller shall have been achieved upon VISUS having rendered or completed the respective services.
6. VISUS cedes the respective software including documentation to the Licensee to the extent specified in the accepted offer.
7. The software must not be used, whether directly or indirectly, by third parties nor must it be disposed of otherwise by way of selling or transferring it by other means unless the express prior approval by VISUS has been obtained. However, the above restrictions shall not apply to activities/operations of third parties the Licensee processes by means of and in agreement with the intended purpose of the software.

8. In the event the Licensee changes the hardware it shall be obliged to completely delete the installed software from the hardware employed hitherto. The simultaneous storage, provision or use of the software on more than one computer per purchased license is prohibited unless said license is an appropriate volume license or company-wide license (campus license).
9. One back-up copy may be produced per license with such copy not being permitted for use in parallel to the backed-up software (that is the acquired software proper). VISUS shall be informed in writing about any and all back-up copies produced as well as the use thereof.
10. Changes made to the software by the Licensee as well as the removal of individual components and/or parts thereof are impermissible. Interventions are in particular prohibited as VISUS counts among its duties to see to it that all provisions of the German Medical Devices Act are adhered to.
11. Any inadmissible intervention immediately entails any and all performance, liability and warranty claims becoming forfeited in the event that such intervention may result in the obligations to be fulfilled by VISUS becoming aggravated or modified. The burden of proof that the modifications/interventions implemented by the Licensee do not represent an obstacle or modification within the meaning of the preceding sentence lies with the Licensee.
12. Any extension of the right of use agreed between Licensee and Seller must be laid down in a written agreement, such further stipulations being subject to the provisions set out in the present license agreement directly and without any additional references being required.
13. Any utilization in excess of what has been laid down in the accepted offer constitutes a violation of the agreement. The Licensee is obliged to inform the Seller without delay of any over-utilization and pay the remuneration for a regular right of use granted by VISUS. Should the Licensee fail to report such over-utilization within one month after commencement a penalty amounting to three times the usual price quoted by VISUS shall become due (applicable to the period during which over-utilization took place). Further claims for damages will be raised as deemed appropriate.
14. The Licensee is obliged to visit the VISUS website (<http://www.visus.com>) at least once a month to familiarize itself with any relevant information and implement/make use of the information so retrieved.

## **Section 5      Supply of the Software**

1. The software will be supplied in executable form unless deviating arrangements have been decided on in consultation with VISUS.
2. Source codes of the software are not subject matter of these conditions and will not form part of the supply. Any right of inspection/examination shall be excluded.
3. At the sole discretion of VISUS the software will be delivered or made available to the Licensee by means of a separate data carrier or via internet download routine.
4. Together with the software VISUS will supply the pertinent, customary-in-trade documentation in electronic, printable form. Printouts (single hardcopy) containing basic information and installation instructions will be included in the supply upon request.
5. Delivery channel, delivery terms as well as payment terms will be separately agreed between Seller and Licensee unless a special arrangement has been directly made with VISUS in this respect.

## Section 6 Rights of the Licensee

1. Faults (“Bugs”)/defects: If the software contains faults within the meaning of Section 1, Subsection 12 of these license conditions the relevant services VISUS is responsible to perform for the Licensee paying remuneration shall be directly rendered as soon as the Licensee has been registered at VISUS in the framework of the licensing process. In the event immediate help through VISUS via telephone has not produced satisfactory results the Licensee at the request of VISUS must submit to VISUS a complete characterization by facsimile or e-mail under the address support@visus.com. In the event the Licensee has been allowed to utilize the software free of charge it shall not be entitled - unless there are coercive standards governing this case - to claim remedial action or warranty rights or damages of whatever kind and VISUS shall not be obligated to render services.
2. Complaints of registered Licensees will be addressed during the normal working hours of VISUS after the report has been received. VISUS makes all reasonable efforts to have any defects remedied, if not otherwise possible also by way of seeking a preliminary alternative solution (workaround). Warranted performance/service qualities can be determined by concluding separate agreements (SLA).
3. Supplementary performance: VISUS shall be entitled to realize any supplementary performance at its sole discretion either by rectification of defects or by making replacements. Within a reasonable period of time Licensee may demand that replacements be made or remedial actions taken if it cannot be reasonably expected to accept either one or the other way of supplementary performance.
4. VISUS’s directions of how to cure a reported defect must in any case be followed. Should interventions be necessary that involve the hardware the Licensee shall order a specialist company or its own qualified personnel to make such interventions at the expense of the Licensee. In the event hardware defects are involved the Licensee shall not be entitled to raise claims under the warranty against VISUS, unless such defects of the hardware have been caused by the software. Since according to current knowledge hardware defects are as a rule not caused by the software the Licensee shall be obliged to provide evidence to the effect that the defect in the hardware has originated from the software.
5. If as a result of a change of the Licensee’s location or software location VISUS incurs additional expenditure due to the programs not being used properly or at a place other than contractually agreed upon the Licensee shall bear all costs that VISUS incurs in this respect. Warranty and liability claims may not be raised against VISUS in the event that the performance of the software may have been affected by such a domicile move or change of location. The Licensee must furnish evidence to the effect that this has not been the case.
6. If it turns out that a defect the Licensee has reported does in fact not exist or cannot be attributed to VISUS, VISUS shall be entitled to charge the Licensee the expenditure VISUS has incurred at the cost usually charged by VISUS. This applies as well if the Licensee in reporting such a defect has acted willfully or grossly negligent or in the event that a non-existing defect has by mistake been repeatedly reported as fault. Costs shall at any rate be borne if the Licensee has interfered/tampered with the software or if the defect is based on a faulty use/operation on the part of the Licensee.
7. VISUS expressly reserves the right – at its own reasonable discretion – to remedy defects or faults also by giving relevant instructions to the Licensee over the telephone, in writing or electronically.
8. Upon delivery of the software the Licensee shall examine it for completeness and faults/defects, if any, and inform VISUS of any complaints without delay. The provisions stipulated in Section 10, Subsection 1 (also with respect to allowable defects notification period) shall apply analogously. Any violation of these obligations by Licensee shall cause Licensee’s warranty claims with respect to such material defects to become forfeited as such defects would have been easily perceived during a properly performed initial inspection. This shall apply analogously to the documentation and all other instructions and directives issued by VISUS.

9. Reduction of Remuneration or Rescission:

- a. If VISUS fails to complete supplementary performance within a reasonable period of time during which at least two remedial action attempts are allowable, the Licensee shall be entitled to grant VISUS a reasonable final extension period during which at least two remedial action attempts are permissible. In the event said performance by VISUS is not successful within this final extension period Licensee shall be entitled to a reduction of the remuneration due to Seller or rescind from the agreement concluded with the Seller.
- b. Licensee shall not be obliged to wait until time limits and deadlines have expired if this is no longer deemed reasonable, especially if VISUS has finally and permanently refused to carry out supplementary performance steps. Supplementary performance shall not be regarded as having failed with the second remedial action attempt. In fact, during the extension periods VISUS shall be free to make use of the aforementioned number of remedial action attempts.

10. Damages, Reimbursement of Expenses and Compensation:

- a. Aside from rescission and reduction of remuneration in case VISUS or Seller is in default the Licensee shall be entitled to claim damages in lieu of performance or claim reimbursement of expenses, with the other provisions of this agreement to be taken into account as well.
  - b. The right to rescind from the agreement and/or claim damages instead of the entire performance shall only be available in the event of substantial defects.
  - c. In case of justified rescission, VISUS shall be entitled to demand a reasonable compensation for benefits the Licensee has gained from the use of the applied software until the date of such rescission and the fulfillment of its legal consequences. Said usage compensation shall be determined on the basis of a three-year total period of software use with a reasonable deduction to be made for the impairment of the programs caused by the defect that has led to the rescission.
11. Both parties expressly declare that guarantee statements, an extension of the contractual rights of the Licensee or similar contractual representations have neither been made in the framework of these software license conditions nor elsewhere.
  12. The Licensee shall only be entitled to setoff rights if uncontested or enforceable claims have been established for the benefit of the Licensee. This applies analogously if a right of retention is claimed.
  13. Warranty claims/rights of having defects eliminated shall become void if the respective system environment is changed, i.e. as of the date of purchase or in the case installation is effected by VISUS or a company commissioned by VISUS as of the date of the installation. The Licensee shall be at liberty to prove that a change of the system environment has had no influence whatsoever on the fault/defect situation. Licensee shall be obligated to furnish proof to this effect.
  14. Should cases of contributory negligence arise in the context of the aforementioned provisions, claims against VISUS shall only be permissible to the extent that a contributory fault can be attributed to VISUS. Similarly, an exclusion - reduction - of liability shall take effect if due to the use of prior programs no flawless installation conditions exist or problems are encountered in the course of the period of use.
  15. The assignment of rights of the Licensee to third parties is impermissible.

## **Section 7 Third-Party Intellectual Property Rights**

1. If a third party raises a claim against the Licensee to the effect that intellectual property rights have been violated by the software, its designation or its documentation, Licensee shall inform VISUS of this without delay and make sure that immediate communication takes place. Defense against any such claims will be sought by VISUS to the extent possible. In such a case the Licensee shall assist VISUS to the extent reasonable and, in particular, will furnish, if possible in writing, all the information necessary that relates to the application and possible processing of the software, and furthermore make available all the required documents in this respect.
2. In the event of justified claims raised by third parties VISUS shall hold the Licensee harmless against all relevant costs, provided leadership in this matter has been assigned to VISUS. Licensee shall be obliged to cooperate in this context and also mandate on its own behalf legal counsel as named by VISUS. VISUS will control the respective proceedings and decide internally on approaches to be taken, and also shall bear further costs.
3. To the extent that third-party rights have been violated VISUS, at its own discretion, may take remedial action in that VISUS either
  - a. procures for the benefit of the Licensee a right of use that suffices the purposes of this agreement; or
  - b. modifies the intellectual property violating software without impairing its functions or with effects on its functions that are acceptable to the Licensee; or
  - c. supplies a new software version the Licensee can be reasonably expected to accept and that does not violate the intellectual property rights of third parties when used as contractually foreseen.
4. Furthermore, the provisions governing the rights of the Licensee (Section 6 hereinbefore) shall apply analogously.
5. As a basis for its own services and to the extent it is technically required and usual practice within the trade VISUS will also make use of third-party software within the meaning of Section 1, Subsection 2. This will be brought about by procuring additional third-party software and the respective licenses. VISUS in this case checks such third-party software according to the state of the art and takes steps to integrate it into its own software. VISUS in this case maintains all intellectual property rights. As regards the software procured from third parties VISUS accepts liability according to the Product Liability Act for the correct selection and the integration as intended. In case it has come to the attention of VISUS that the relevant third-party software does not function properly information to this effect will be relayed to the Licensee. Any further liability shall be excluded.

## **Section 8 Liability Covering the Software License**

VISUS shall be liable to the Licensee only as stipulated hereinafter.

1. Personal injury: In case of damage resulting from bodily injury or impairment of health the liability shall be unlimited in amount even in the event of a slightly negligent violation of obligations by VISUS or a legal representative or assistant/vicarious agent of the company.
2. Organizational culpability and guarantee: The liability shall also be unlimited in amount in case of damage attributable to serious organizational culpability on the part of VISUS as well as damage caused by lack of characteristics or properties warranted by VISUS.
3. Violation of material contractual obligations: In case of a violation of material contractual obligations VISUS, regardless of other liability provisions and limitations, shall be liable in an amount limited to typically foreseeable contract-specific damage which is unavoidable for the Licensee.

4. Intention, gross negligence and perceptibility: Regarding damage or disadvantages to property or objects caused by the contractual software, VISUS shall exclusively be held liable if said damage or disadvantages have been caused willfully or as a result of gross negligence. Liability in this case shall be limited to foreseeable damage.
5. Liability disclaimer: Any further liability for damages shall be excluded unless absolutely prescribed by law; therefore, any liability without fault shall also be excluded, for example.
6. Medical Devices Act and Product Liability Act: Coercive liability as a result of statutory provisions according to the Product Liability Act or coercive liability according to the Medical Devices Act shall not be affected by the stipulations hereinbefore.
7. In case of damage causing contributory fault on the part of the Licensee the liability quota will be determined in relation to the relevant share of fault attributable to each party. Moreover, the Licensee shall be obliged to mitigation of the damage.

## **Section 9 Backup of Data**

1. If software or third-party software in the sense of Section 1 or the data prepared or modified with it be subject to the data protection provisions issued by the Deutsche Röntgenverordnung (German Radiological Protection Directive) it shall be the Licensee's sole responsibility to observe and meet the relevant requirements including the scope of such provisions. In any case the due diligence requirements customary in the trade with respect to data storage/backup shall apply to and be appropriately observed by the Licensee.
2. In the event the loss of data is culpably attributable to the software supplied by VISUS, VISUS shall exclusively liable for the cost of restoring the data by means of the daily data backup routine to be effected by the Licensee; any further liability on the part of VISUS shall be excluded.
3. The licensee is expressly advised of its obligation to carry out an adequate and reliable data backup routine and its relevant obligation to strictly adhere to the requirements laid down in the Medical Devices Act and Deutsche Röntgenverordnung (German Radiological Protection Directive) and meet its pertinent duties, in particular its archiving obligations. Archiving is the responsibility of the Licensee unless a deviating agreement has been concluded with VISUS.

## **Section 10 Obligation to Cooperate**

1. Upon receipt and during the period of use of the software the Licensee must immediately report to VISUS any defects or faults it has detected to initiate the relevant fault elimination (bugfixes) in the interest of software rectification. In this context the reporting and defects notification periods stipulated in Sections 377, 378 HGB (German Commercial Code) shall apply as appropriate. A report/notification in this respect may initially be given verbally/by telephone and must be repeated in writing, per e-mail or per fax on the following work day.
2. The obligation of the Licensee to cooperate includes the on-time completion of preparation work and furnishing of the required documents and information as well as providing further information on the local conditions and making available all necessary tangible objects and means important to provide the services aimed at ensuring the proper operation of the software. The requirements stipulated in the product documentation have to be implemented in this context.
3. The technical equipment and systems including computing times and access to communication systems shall be made available by the Licensee free of charge.
4. Accordingly, VISUS shall not be obliged to verify whether the legal obligation stipulated hereinbefore has been met. The Licensee shall be responsible for the correctness, completeness, unambiguity and on-time availability of all pertinent information.

5. In the event deviations in Seller's performance arise due to the delayed or inappropriate cooperation of the Licensee any extra cost and resulting disadvantages arising or caused on these grounds shall be borne by the Licensee.
6. In the interest of Licensee to achieve and maintain an appropriate product standard the Licensee shall notify VISUS as early as possible about any events that may lead to so-called „incidents“ or „near incidents“ within the meaning stipulated in the Medical Devices Act, irrespective of whether and to what an extent such a notification has to be given to the respective public authority at a later date. As regards giving notifications to VISUS the provisions laid down in Section 6, Subsection 1 shall apply as appropriate.
7. For quality assurance reasons and to meet statutory notification and reporting provisions laid down in the Medical Devices Act the Licensee during the first year of software licensing shall only be allowed to make available the software to a third party if VISUS has been expressly informed in full of all facts of such a transfer of title, with a correct and proper installation also being a prerequisite for such a transfer. Moreover, the above prescribed notification duty towards VISUS shall also be imposed on the transferees as a requirement for such a transfer of title to take effect. Due to quality assurance reasons such a transfer shall be impermissible after a one-year period has expired unless a Software Maintenance Agreement has been concluded with the Seller.

## **Section 11      Software Maintenance**

1. Tending and maintenance work shall not be performed as a result of this agreement; such work will only be carried out if a written service agreement to this effect has been concluded.
2. The Licensee is duly advised that the procurement of a software license from VISUS is always linked with the proposition of entering into an agreement covering software maintenance. VISUS, therefore, urgently recommends that such an agreement be concluded in view of the Licensee's obligations as called for by the Medical Devices Act and other statutory provisions governing the operation of medical equipment, systems and appliances requiring the respective owner to make sure that such equipment and systems always reflect current state-of-the-art technology. The Licensee will thus act at its own risk if it fails to conclude such a software maintenance agreement.
3. Regarding bugfixes and restrictions in the event a maintenance agreement has not been entered into the provision set forth in Section 1, Subsection 12 above with respect to bugfixes shall exclusively apply. VISUS at its sole discretion may also take remedial action by providing an update or upgrade instead of furnishing bugfixes.

## **Section 12      Period of Use**

1. The authorization to use the license shall not be limited in time.
2. Should the Licensee choose not enter into an agreement with the Seller covering software maintenance the Licensee's rights and all its liability claims shall only be valid and effective for a period of 12 months after the software has been made available to the Licensee for use, and it shall be clearly understood in this context that VISUS shall in no way be held responsible for faults of whatever nature that may arise and be reported thereafter.
3. Both parties shall be entitled to terminate the agreement without giving notice.
4. The rights stipulated hereunder shall not change the remuneration obligation ensuing from a Software Maintenance Agreement that may have been concluded additionally.

### **Section 13 Final Provisions**

1. The performance of VISUS's obligations under these conditions may be assigned to authorized third parties in whole or part.
2. The legal relationship established between Licensee and VISUS shall exclusively be subject to German law. In the event the provisions of the German international private law may constitute a reference (renvoi au second degré) to foreign law, this shall be excluded herewith. Likewise, the UN Convention on Contracts for the International Sale of Goods shall not apply/be excluded.
3. Should any provisions of this agreement be or become ineffective this shall in no way affect the validity of the remaining provisions. In case a provision is or has become ineffective it shall be replaced by one that, to the extent permissible by law, meets the desired objectives in the best possible way.
4. Bochum shall be the place of jurisdiction with regard to all disputes that may arise out of or in connection with this agreement. The above provision shall exclusively apply to those Licensees that are merchants or communal special funds. Otherwise, the legal provisions applicable to the place of jurisdiction shall apply.
5. Any modifications and amendments of the legal obligations of the parties shall only be effective if made in writing and duly signed by both parties and with reference being made to these conditions. A waiver of the above written form requirement shall also be laid down in writing.

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VISUS GmbH, Bochum