

# JIVEX LICENSE AGREEMENT

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## JiveX License Agreement

Note on Medical Device Regulations: VISUS expressly points out that the present License Agreement may also affect software subject to Medical Device Regulation (MDR). To comply with the current requirements of the regulation as may be valid from time to time, VISUS strongly recommends the conclusion of a software maintenance contract (in this respect refer to Section 11 of this License Agreement).

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## § 1 Definitions

### Definitions within the meaning of this Software License Agreement:

1. **JiveX** means the software developed by VISUS. **Software** means the machine-readable format (object code) of the programs, applications and modules.
2. **Third-Party Software** is a term used for those programs that have not been created by VISUS and are used in connection with the contractual services of VISUS.
3. **Hardware** means all technical and physical parts of a data processing system, including the operating system and system-related components, such as antivirus programs, virtualization programs, etc., within the meaning of **system environment** of the JiveX software.
4. **Product Documentation** means the written documentation regarding the JiveX software and any Third-Party Software. It includes, without limitation, installation requirements, product descriptions, product specifications (DICOM Conformance Statements, etc.), instructions and manuals as well as certificates and approvals, to the extent available and required.
5. **License** means the inalienable, non-exclusive, perpetual right to use the software exclusively within the scope of the provisions of the present agreement and all provisions relating thereto.
6. **Agreed Scope** means the contractually agreed number of licenses or workstations per module as well as the range of functions specified in the Product Documentation.
7. **Licensee** means the person acquiring the right to use the software against payment. To the extent, VISUS enables other persons to use the software without payment, the provisions of this License Agreement apply in appropriate application, however with the exclusion of liability under Section 2 (2) and (3) applying.
8. **Seller** means the person concluding the contract about licensing the software with the Licensee. It may be either an authorized reseller or VISUS themselves.
9. **Licensor** within the meaning of this License Agreement means VISUS.
10. A **Bug** – also referred to as a defect – within the meaning of software maintenance, which alone triggers claims against VISUS, shall only mean a mistake in the JiveX software. Bugs within the meaning of the previous sentence are corrected by **Bug Fixes**. This means the correction of anomalies in the structure or function of the software negatively affecting the system.
11. **Updates** are updated versions of the respective version status and licensed range of functions of the software containing minor improvements – including structural improvements as well as corrections – and requiring an agreement on **software maintenance**.
12. **Upgrades** represent significant improvements which go beyond updates, as well as technical updates of the respective version status and licensed range of functions of the software. The provision of upgrades also requires an agreement on software maintenance.

## § 2 Field of Application

1. This License Agreement shall govern the use of the JiveX software from VISUS' own development and any associated processes.
2. Only such Licensee may assert rights within the meaning of the provisions below who has paid a fee for using the JiveX software, unless other legal provisions mandatorily require liability in case of licensing free of charge. In such cases, claims against VISUS shall be possible only to the extent of such other mandatory liability provisions.
3. Regarding the „JiveX DICOM Viewer Personal Edition“ software, any medically oriented use in connection with treatment of patients and diagnosis shall not be permitted. Any applications of this software which, as a consequence, fall under the Medical Device Regulation shall be prohibited.
4. If the Licensee makes use of services of VISUS, also the General Terms and Conditions of the VISUS Group shall apply subordinately, unless such application has been excluded.

### § 3 Legal Relationships

1. The Licensee has accepted an offer and, hence, concluded an agreement with the Seller under which he acquires from him the right to use the JiveX software within the meaning of Section 1 of this License Agreement. The agreement constitutes a license agreement between the Licensee and VISUS subject to the provision contained herein.
2. If the Seller is not VISUS themselves, he shall be expressly authorized – by means of a separate reseller agreement – to conclude the above agreement on behalf of VISUS.
3. To the extent, the provisions listed herein concern the Seller in his relationship with the Licensee, the Seller shall make the statement also in his own name towards to the Licensee and consent to the present JiveX License Agreement.

### § 4 Subject-Matter of These Agreement and the Associated Rights of Use

1. These provisions set out the conditions for the use and handling of the JiveX software and relating claims between the Licensee and VISUS.
2. Upon conclusion of the **license agreement** and payment of the owed remuneration to this end, the Licensee shall be granted the inalienable, non-exclusive, perpetual right to use the JiveX software within the Agreed Scope. If the JiveX software is made available within the framework of a **managed service** agreement, the right of use shall be limited to the term of such agreement. The right of use described above shall not become effective until after payment of the relevant remuneration owed has been made.
3. VISUS shall solely continue be entitled to any rights resulting from ownership of copyrights and intellectual property rights not having been transferred.
4. The Licensee may and shall use only such hardware for the use of the JiveX software, which is specified in the installation and system requirements for the software. The provision and maintenance of such hardware, including its upgrades, shall be the task of the Licensee who may also involve third parties to this end. Services by VISUS shall require a separate agreement.
5. To the extent, VISUS assumes obligations for the Seller, performance shall occur to his favor also if VISUS causes the relevant services be provided.
6. VISUS shall license to the Licensee the designated JiveX software together with the documentation to the extent indicated in the accepted offer.
7. The use of the JiveX software shall not be directly or indirectly ceded to any third party nor shall it be disposed of by way of a sale or any other transfer, unless the express consent of VISUS has been obtained to this end.
8. If the Licensee changes the hardware, he shall be obliged to delete the installed JiveX software in its entirety from the hardware used before. Simultaneously storing the software, either electronically or physically, or using the software on more than one computer per acquired license shall not be permitted, unless the license is a multi-user or company-wide license (campus license).
9. One backup copy per license may be prepared but may not be used at the same time with the stored master template (i.e. the acquired JiveX software itself). VISUS shall be notified in writing of any backup copies prepared as well as, in addition, of their use.
10. Modifications to the JiveX software by the Licensee as well as the removal of individual components and/or their separation shall not be permitted. Interventions shall be prohibited, in particular, since VISUS considers it its task to comply with all provisions of the Medical Device Regulation.
11. Any prohibited intervention shall result in the immediate loss of any performance, liability and warranty claims to the extent such intervention impedes or changes the obligations incumbent on VISUS. The burden of proof that the modification carried out by the Licensee or the intervention does not constitute an impediment or change within the meaning of the foregoing sentence shall rest with the Licensee.

12. Any extension of the right of use between the Licensee and the Seller shall require a written agreement; these additional provisions shall be subject to the provisions of the present license agreement directly and without any further reference.
13. Any use beyond the scope agreed in the accepted offer shall constitute a breach of contract. The Licensee shall be obliged to notify the Seller immediately of any excessive use and pay the remuneration of a regular permission to use granted by VISUS. If the Licensee does not advise the excessive use within one month from the beginning of such excessive use, a penalty amounting to three times the standard prices (with reference to the period of excessive use) shall become payable. The right to claim other and additional damages is reserved.

## § 5 Delivery of Software

1. The JiveX software shall be delivered in an executable form, unless agreed otherwise with VISUS.
2. Source codes of the JiveX software shall not be the subject of this License Agreement and shall not be delivered. Any right of inspection shall be excluded.
3. In the discretion of VISUS, the JiveX software shall be either provided on a separate data carrier or made available to the Licensee for downloading from the internet.
4. Together with the JiveX software, VISUS shall deliver the associated industry-standard documentation in printable electronic form. On request, basic information and installation instructions may also be delivered as single-fold hardcopy.
5. The Seller and the Licensee shall separately agree the delivery channel and the mode of delivery as well as the terms of payment, unless a direct special arrangement with VISUS exists

## § 6 Rights of the Licensee

1. Bugs/defects: If the JiveX software contains Bugs within the meaning of Section 1 of this License Agreement, VISUS shall provide the services in this respect directly to the Licensee, who pays a fee, as soon as the Licensee is registered with VISUS for being licensed. If the immediate assistance by telephone provided by VISUS or the Seller has not yielded a satisfactory result, the Licensee, at the request of VISUS, shall transmit a complete description by e-mail to VISUS at the address: support@visus.com. If the Licensee is allowed to use the JiveX software without paying a fee, a claim for remedial of defects, or a warranty right, or a claim for damages of any kind whatsoever shall not exist – unless mandatory standards exist for such a case – and VISUS shall not be obliged to provide any service.
2. Complaints of registered Licensees shall be processed during normal working hours of VISUS upon receipt of the relevant notification. VISUS shall endeavor to ensure the elimination of the Bugs, also temporarily by way of circumvention if not possible otherwise. Guaranteed service levels may be defined by separate service level agreements (SLA).
3. Subsequent performance: VISUS shall be entitled to provide subsequent performance in its own discretion by rework or replacement. The Licensee may demand rework or replacement within reasonable periods if one of the two forms of subsequent performance is not acceptable for him.
4. In any case, specifications of VISUS regarding the procedure in case of a notified defect shall be observed. If hardware interventions or modifications are necessary, the Licensee shall have them carried out at his own expense by a specialist company or his own qualified staff. In case of defects of the hardware, the Licensee shall not be entitled to any warranty claims against VISUS, unless such defects of the hardware have been caused by the JiveX software. Since experience have shown that this software does not cause defects to the hardware, the Licensee shall be responsible to prove that a defect of the hardware has been caused by the JiveX software.

5. If additional expenditure is caused for VISUS due to a change of the place of the Licensee / JiveX software resulting in the programs not being properly used or being used at any other than the contractual place, the Licensee shall bear any relating costs incurred by VISUS therefrom. Then, warranty and liability claims may not be asserted against VISUS if the relocation/change of place may have had an impact on the performance of the JiveX software. The Licensee shall furnish proof that this was not the case.
6. If it turns out that a defect notified by the Licensee, in fact, does not exist or is not attributable to VISUS, VISUS shall be entitled to charge the Licensee with the expenditure incurred by them based on the standard prices of VISUS. This shall also apply in case of willful intent or gross negligence of the Licensee when notifying this defect or if, erroneously, a non-existent defect is repeatedly notified as a defect. Such allocation of costs shall apply in any case if the Licensee has intervened with the software or the defect is based on improper operation by the Licensee.
7. VISUS shall expressly reserve – at their sole discretion – also to perform the remedial of defects by means of instructions given to the Licensee by phone, in writing or by electronic means.
8. Upon delivery of the JiveX software, the Licensee shall check it for completeness and any defects and notify VISUS of any complaints without delay. The provisions of Section 10 (also regarding the complaint notification period) shall apply in appropriate application. If the Licensee violates his duties in this respect, he shall forfeit any warranty claims regarding such material defects which would have been detected if the initial check had been properly performed. This shall apply accordingly to any documentation and any other instructions and specifications of VISUS.
9. Reduction or withdrawal:
  - a. If the subsequent performance of VISUS is not successful within a reasonable period which allows for at least two attempts of rework, the Licensee shall be entitled to set VISUS a reasonable last grace period allowing for at least two attempts of rework. If VISUS is not successful within this last grace period, the Licensee shall be entitled, in his own discretion, to either reduce the remuneration of the Seller or withdraw from the contract vis-à-vis the Seller.
  - b. Waiting for deadlines and the setting of time limits by the Licensee may be dispensed with if it is no longer deemed acceptable and, in particular, VISUS has finally and permanently refused subsequent performance. Subsequent performance shall not be deemed finally failed as early as upon the second attempt of rework. In fact, VISUS shall be entitled to the number of attempts of subsequent performance indicated above during the grace periods.
10. Damages, reimbursement of expenses and compensation:
  - a. If the fault is attributable to VISUS or the Seller, the Licensee may demand, apart from withdrawal and reduction, damages in lieu of performance or reimbursement of expenses under due consideration of the other provisions of the present agreement.
  - b. The right of withdrawal and/or claim for damages in lieu of full performance shall only exist in case of significant defects.
  - c. In case of a justified withdrawal, VISUS shall be entitled to demand from the Licensee reasonable compensation for the benefits obtained from the use of the JiveX software until complete reversal. Such compensation for use shall be calculated on the basis of a total period of use of three years of the JiveX software with a reasonable deduction for the impairment of the programs due to the Bug having led to the withdrawal.
11. Both parties expressly declare that warranty statements, an extension of the contractual rights of the Licensee or similar contractual undertakings have neither been made under this License Agreement nor at any other place.
12. The Licensee shall only be entitled to offset in cases of undisputed or legally enforceable claims in his favor. The same shall apply to the exercise of any right of retention.

13. Any warranty claims/rights regarding the removal of Bugs shall not apply if the relevant system environment – with reference to the date of purchase or, in case of an installation by VISUS or a company commissioned by VISUS, with reference to the date of installation – is changed. The Licensee shall be at liberty to prove that the change of the system environment has not influenced the Bug situation. The Licensee shall be responsible to furnish proof to this end.
14. If cases of contributory negligence occur in connection with the above provisions, claims against VISUS shall be permitted only to the extent such contributory negligence on the part of VISUS can be proven. Accordingly, an exclusion of liability – reduction – shall apply to the extent proper installation conditions did not exist due to the use of previous programs or occur during the period of use.
15. An assignment of rights of the Licensee to any third party shall not be permitted

## § 7 Third-Party Intellectual Property Rights

1. If any third-party asserts claims against the Licensee on the basis of a violation of intellectual property rights by the JiveX software or its documentation, the Licensee shall inform VISUS immediately and ensure also immediate communication. To the extent possible, the defense against such claims shall be left to VISUS. In this respect, the Licensee shall provide any reasonable assistance to VISUS and, in particular, transmit any necessary information about the use and editing, if any, of the software if possible in writing and make available any documents required.
2. In case of justified third-party claims, VISUS shall indemnify the Licensee against any relating costs to the extent the settlement of this matter has been transferred to VISUS. The Licensee shall be obliged to cooperate to this extent and also mandate in his own name the lawyers designated by VISUS. VISUS shall control litigation proceedings, decide internally about the approach and also bear further costs.
3. To the extent third-party rights have been violated, VISUS, in their own discretion, may provide rectification either by VISUS
  - a. acquiring a right of use in favor of the Licensee sufficient for the purpose of this contract, or
  - b. modifying the software violating intellectual property rights, even without impacts on its function or with impacts on its function acceptable for the Licensee, or
  - c. supplying a new software standard acceptable for the Licensee, the contractual use of which not violating any third-party intellectual property rights.
4. Otherwise, the provisions regarding the rights of the Licensee (Section 6 above) shall apply accordingly.
5. To the extent technically required and common according to industry-standards, VISUS also rely on Third-Party Software within the meaning of Section 1 for providing their own services. This is done by additionally acquired Third-Party Software and relating licenses. VISUS shall also check such Third-Party Software according to the state of the art and perform its system integration into their own JiveX software. In this respect, VISUS shall maintain any intellectual property rights. Regarding the Third-Party Software obtained from third parties, VISUS shall be held liable according to the Product Liability Act for proper selection and intended integration. As soon as VISUS becomes aware that such Third-Party Software does not work properly, relevant information shall be provided to the Licensee. Any further liability shall be excluded.

## § 8 Liability for Software License

VISUS shall be liable to the Licensee for any reason and in any amount for any circumstances covered by the following provisions.

1. Personal injury: In the event of damage resulting from injury to body or health, liability shall also be unlimited in terms of amount in case of a simple negligent breach of duty by VISUS or by a legal representative or vicarious agent of the company.

2. Corporate negligence and guarantee: Also unlimited in terms of amount shall be the liability for damage attributable to serious corporate negligence on the part of VISUS, as well as for damage caused by the absence of a property guaranteed by VISUS.
3. Violation of material contractual obligations: If material contractual obligations are violated, VISUS shall be liable, irrespective of other liability provisions and restrictions, to an amount limited to the foreseeable damage typical to this type of contract and unavoidable by the Licensee.
4. Willful intent, gross negligence and recognizability: VISUS shall only be liable for damage or disadvantages relating to assets or objects caused by the contractual JiveX software if this/these were caused intentionally or by gross negligence. The liability shall be limited to the foreseeable damage.
5. Exclusion of liability: Any further liability for damages shall be excluded unless stipulated by law in an inalienable form; in this respect, excluding, for example, any liability without fault.
6. Medical Device Regulation and Product Liability: The above provisions shall not affect any legally mandatory liability according to Product Liability or Medical Device Regulations.
7. In the event of contributory negligence on the part of the Licensee with respect to a case of damage, the liability ratio shall be determined as the relationship between the respective contributions to the fault. In all other respects, the Licensee shall be obliged to ensure damage mitigation.

## § 9 Data Backups

1. Responsibility for the accuracy and completeness of data to be processed with the JiveX software shall lie with the Licensee. The Licensee shall also be responsible for regularly checking the data, performing the data backup and complying with the statutory provisions for long-term archiving.
2. The task of VISUS shall be limited to the provision of the JiveX software for the administration, archiving and provision of the entire data. Liability for the loss of data shall be limited to the typical restoration effort applying in the case of the regular and risk-appropriate creation of back-up copies.

## § 10 Duties to Cooperate

1. The Licensee shall notify VISUS immediately of any defects or Bugs detected upon delivery of the software or during the period of use to cause the relating remedial of defect (Bug Fix) of the software be performed. The software must therefore be inspected immediately after delivery by VISUS, as far as this is feasible in the ordinary course of business, and, if a defect becomes apparent, VISUS must be notified immediately. The associated notification may initially be made verbally/by phone and shall be repeated not later than by the next working day in writing by e-mail or telefax.
2. The duty of the Licensee to cooperate shall include the timely performance of the preparatory work and the provision of the required documents and information as well as any other notification of the local circumstances and the provision of any necessary materials, which are relevant to the provision of the services for the proper operation of the software. To this end, also the specifications of the Product Documentation shall be implemented.
3. The technical facilities, including computer times and communication accesses, shall be made available by the Licensee free of charge.
4. In this respect, VISUS shall not be obliged to check the fulfilment of the above legal obligation. The Licensee shall bear the responsibility for the accuracy, completeness, clarity and timely availability of any information in this respect.
5. If the delayed or inappropriate cooperation of the Licensee results in deviations in the performance of the service by the Seller, any resulting additional costs and the resulting disadvantages shall be at the expense of the Licensee.
6. In the interest of the Licensee with regard to maintaining a proper product standard, the Licensee shall inform VISUS as early as possible about any processes or events that may lead to so-called incidents or near misses within the meaning of the Medical Device Regulation, irrespective of the fact whether and to what extent a report will have to be filed with the competent authority at a later time. The provisions under Section 6 (1) shall apply in appropriate application.



7. In order to ensure that users are informed about safety-related problems in medical devices, the legal regulations covering medical devices stipulate that all health care facilities or health care professionals to which/whom a product has been supplied must be identified within the supply chain. For this reason, a health care facility or trader must inform VISUS about the new contact persons if a medical device by VISUS is passed on.

## § 11 Software Maintenance

1. Basically, this agreement does not provide for any maintenance and servicing work; such service shall only be provided if it has been agreed in writing.
2. The Licensee is pointed out that an agreement about software maintenance is always desirable when a software license from VISUS is acquired. Therefore, VISUS strongly recommend the conclusion of such an agreement since, in view of the own duties of the Licensee according to the Medical Device Regulation and the statutory provisions for the operation of medical systems and devices, the operator is required to maintain the appropriate technical state of such systems and devices. If a software maintenance agreement is not concluded, the Licensee shall bear the risk to this extent.
3. In the absence of a maintenance agreement, Bug Fixes and restrictions shall be subject exclusively to the provision under Section 1 for Bug Fixes. VISUS, in their own discretion, may also remedy defects by providing an update or upgrade instead of a Bug Fix.

## § 12 Period of Use

1. The authorization, in terms of time, for using the license shall be subject to the license agreement concluded (purchase or managed service).
2. If the Licensee does not conclude an agreement with the Seller about software maintenance, the rights of the Licensee and all liability claims shall apply only for a period of 12 months from the date of licensing of the JiveX software to the Licensee with the option to use it, providing that VISUS shall not incur any obligation of whatever kind for any Bugs subsequently occurring and notified.
3. Both parties shall reserve the right of termination with immediate effect.
4. The local rights shall not affect the obligation to pay remuneration from a software maintenance contract that may have been additionally concluded.

## § 13 Final Provisions

1. The fulfilment of VISUS's obligations under this License Agreement may be transferred in whole or in part to authorized third parties.
2. The legal relationships between the Licensee and VISUS shall be exclusively governed by German law. To the extent the provisions of the German international private law would justify referral to foreign law, such referral shall be excluded herewith. Also, the application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
3. If individual provisions of this contract are or become invalid, this shall not affect the validity of the remaining provisions. Insofar as a provision is invalid, the provision that comes closest to the previously desired provision in a legally permissible manner shall apply.
4. The place of jurisdiction for any disputes arising from or in connection with this agreement shall be Bochum. The above provision shall apply exclusively to such Licensees who are merchants or special funds under public law. Otherwise, the statutory provisions regarding the place of jurisdiction shall apply.
5. Any modifications and supplements to the legal obligations of the parties shall only become effective if they have been made in writing with reference to this License Agreement and signed by both parties. Even the above written form requirement may only be waived in writing

