

## Visensia® Software Licence Agreement

**IMPORTANT - READ CAREFULLY:** This Visensia® Software Licence Agreement ("Licence") is a legal agreement between the end user of the software product accompanying this Licence ("you" or the "User") and OBS Medical ("OBS") for the OBS software product accompanying this Agreement, which includes computer software and may include associated media, printed materials, and on-line or electronic documentation (collectively, the "Software"). By installing, copying, or otherwise using the Software, you agree to be bound by the terms of this Licence and to have acknowledged the Safety Information for Visensia. If you do not agree to the terms of this Licence, do not install, use, distribute in any manner, or replicate in any manner, any part, file or portion of the Software.

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3. **No Warranty** OBS does not warrant that the functions contained in the Software will meet User's requirements or that the operation of the Software will be uninterrupted or error-free.

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4. **Limitation of Liability** In no event shall OBS be liable to user for any damages resulting from User's use of the Software, including, but not limited to, consequential, incidental, direct, indirect, special, punitive or other damages whatsoever arising out of or in any way related to the use of or inability to use the software and whether based on contract, tort, negligence, strict liability or otherwise, even if OBS has been advised of the possibility of such damages. This exclusion of damages will be effective even if any remedy fails of its essential purpose. OBS's total liability for any reason whatsoever, whether as a result of a claim or breach of contract, warranty, tort or otherwise, shall not exceed the total amount paid to OBS by User under this agreement.
5. **Confidentiality and Protection of Proprietary Rights** User hereby acknowledges that the Software contains valuable trade secrets, including, but not limited to, the technology, system design and architecture, the modular program structure, system logic flow, file content, data structures, algorithms and other processes embodied therein. In order to protect these trade secrets and whether or not any portion of the Software is patented, copyrighted or is deemed proprietary and/or held confidential by OBS, User shall hold the Software, the Object Code and the Source Code in trust and in confidence and further agrees:
  - (a) User will not distribute, rent, licence, lease, assign, sell, or otherwise provide access to third parties or release from its possession the Software (or any portion thereof) without the prior written consent of OBS; and
  - (b) User will take all reasonable precautions to prevent the disclosure, in any form or fashion, of the contents of the Software (or any portion thereof) to any person without the prior written consent of OBS except to employees of User, on a need-to-know basis.
  - (c) This paragraph imposes no obligation upon the User with the respect to proprietary information which:
    - (i) is or becomes a matter of public knowledge through no fault of the User;
    - (ii) is disclosed by the OBS to a third party without a duty of confidentiality on the third party;
    - (iii) is disclosed under operation of law; or
    - (iv) is disclosed by the User with prior written approval from OBS.

6. **Ownership of Software and Modifications** User understands and agrees that the Software, the Object Code and the Source Code are and shall at all times remain the property of OBS or third parties which have granted OBS the right to Licence the Software, and User shall have no rights or interests therein except the right to use the Software as set forth herein. User shall not reverse-engineer, re-engineer or decompile the Software or allow anyone else to do so.

User acknowledges and agrees that, except as specifically set forth in this Agreement, this Agreement shall not be construed to provide to User any express or implied Licence to use, convey or otherwise exploit the Software, or any portion thereof, or obtain or use any other OBS products or obtain any other services. OBS reserves all rights not expressly granted to User. User acknowledges that the development of the Software is an ongoing process and that User and other

Licensees of the Software benefit from the improvements resulting from such ongoing development. In order to facilitate such ongoing development, User may provide certain suggestions, documentation, materials and other data (the "Development Ideas") to OBS and its personnel that may be used by OBS in the development of the Software. Unless specifically provided in a writing signed by OBS and User and specifically relating to the disclosure of any Development Ideas, and notwithstanding any provision in this Agreement to the contrary, User hereby grants to OBS the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and Licence to disclose, use and incorporate the Development Ideas in connection with the development of the Software, and the demonstration, Licence, distribution and sale of the Software.

All modifications and enhancements to, together with any software derivative of, the Software, whether developed by OBS, User and its employees or any person employed by User, or jointly by OBS and User and its employees, and regardless of whether or not User pays for such development, shall be and shall remain the property of OBS, and User and its employees shall have no rights or interests therein. In addition, User is to provide OBS notice of any such modifications, enhancements or derivatives, and, upon request from OBS, User is to provide to OBS such modifications, enhancements or derivatives at no charge to OBS.

## 7. Termination

- (a) **Termination for Cause** In the event that User materially or repeatedly defaults in the performance of any of its duties or obligations hereunder, which default is not cured within thirty (30) days after written notice is given to User specifying the default, then, the OBS may, by giving written notice thereof to User, terminate this Licence as of the date specified in such notice of termination.
- (b) **Effect of Termination** In the event of a termination of this Licence, User shall cease to use and immediately return to OBS all copies of the Software and certify that all existing copies of the Software been returned or destroyed.
- (c) **Remedy for Termination for Breach by User** In the event of any material breach by User of any obligation, term or condition contained herein, User acknowledges, and upon request by OBS, shall stipulate that money damages or any other remedy at law are insufficient and will cause OBS irreparable injury and that OBS shall have the following rights:
  - (i) to obtain an injunction in any court of competent jurisdiction against User to cease and desist from any activity deemed a breach hereof; and
  - (ii) to obtain the immediate return of all copies of the Software possessed by User or under its control upon notification in writing that a breach has occurred, together with a certification by User, made under oath, that all copies thereof have been returned.

Notwithstanding the foregoing, OBS shall be further entitled to damages and such other remedies at law or equity as a court may determine, without in any way limiting the right of OBS to an injunction as provided in this Section.

- 8. **Entire Agreement and Waiver** This Licence represents the entire understanding of the parties and supersedes all prior and contemporaneous agreements, arrangements, negotiations and understandings between the parties. No waiver of any term, provision or condition of this Licence, whether by conduct or otherwise, in any one or more instances shall be deemed to be, or shall constitute, a waiver of any other instance or provision, whether or not similar, nor shall such waiver constitute a continuing waiver and no waiver shall be binding unless executed in writing by the party making the waiver.
- 9. **Reformation/Severability** If any provision of this Licence is declared invalid by any tribunal, then such provision shall be deemed automatically adjusted to the minimum extent necessary to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of this Licence as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Licence as though such provision had never been included herein. In either case, the remaining provisions of this Licence shall remain in effect.
- 10. **Governing Law** This Licence shall be governed by the laws of England and Wales. Any disputes or claims relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.

**Intellectual Property Rights** Visensia® has been designed and developed by OBS Medical Ltd, Unit 14, Cirencester Office Park, Tetbury Road, Cirencester, Gloucestershire, GL7 6JJ, UK

**Trademarks** Visensia® is a registered name of OBS Medical.