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- 4.1. Vicon does not represent or warrant that the Software or Firmware or its operation will be uninterrupted or free from errors.
- 4.2. Subject to the limitations and exclusions below, Vicon warrants that the Software shall, during the Warranty Period, perform substantially in accordance with the functions described in the Documentation, provided that the Software:
  - 4.2.1. is used in accordance with the Documentation; and
  - 4.2.2. is used on hardware that meets the specifications set out in the Documentation and on an operating system for which it was designed as set out in the Documentation.

In this Licence the "**Warranty Period**" shall be the period of 12 months from delivery of the Software to the User. In order to claim under this warranty, the User will be required to provide written evidence of the date of delivery and proof of purchase, to the satisfaction of Vicon.

- 4.3. If the warranty in clause 3.2 is breached, the User will tell Vicon as soon as is reasonably possible. The User must give Vicon a reasonable time to fix the problem and (if necessary) to repair or replace the affected Software. This shall be Vicon's sole responsibility and the User's sole remedy in the event of breach of that warranty.
- 4.4. If Vicon carries out any repair or replacement to the Software as specified in clause 3.3 but in circumstances where the relevant defect or malfunction has been caused by an accident, by the improper or abnormal use of the Software, or for one of the reasons

that Vicon is not responsible under clause 4 or otherwise, the User shall pay for such repair or replacement at Vicon's then current rates, within 30 days of Vicon issuing an invoice for that work.

- 4.5. Except as expressly set out in this Licence Agreement, no conditions, warranties or other terms apply to the Software, Firmware or Documentation. Subject to clause 4.1, no implied conditions, warranties or other terms apply (including any implied terms as to quality, fitness for purpose or conformance with description). The User is responsible for deciding whether or not the Software, Firmware and Documentation is suitable for the User's purpose and Vicon will not be responsible for this.

## **5. LIMITATION OF LIABILITY**

- 5.1. Nothing in this Licence shall be deemed to exclude or limit, or attempt to exclude or limit, the liability of either Vicon or the User for:

5.1.1. death or personal injury resulting from the negligence of its employees or officers;

5.1.2. fraudulent misrepresentations;

5.1.3. breach of any condition or warranty as to title or quiet enjoyment implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or

5.1.4. any liability which cannot under applicable law be excluded or limited by agreement.

- 5.2. Subject to clause 4.1, in no circumstances shall Vicon be liable under or in relation to this Licence or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any:

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5.2.2. loss of sales;

5.2.3. loss of opportunity;

5.2.4. loss of anticipated savings;

5.2.5. wasted expenditure;

5.2.6. loss of business opportunity, goodwill or reputation;

5.2.7. loss or corruption of data;

5.2.8. loss of use of:

(a) any motion capture system;

- (b) any equipment on which the Software or Firmware is installed; or
- (c) any other equipment;

5.2.9. loss of use of:

- (a) the Software or Firmware;
- (b) any other software; or

5.2.10. special, indirect or consequential loss or damage,

whether Vicon is advised of the possibility of any such losses being incurred or not and whether any such losses are reasonably foreseeable or otherwise. For the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

5.3. Subject to clauses 4.1 and 4.2, Vicon's total liability arising from or in connection with this Licence, the Software or Firmware, and in relation to anything which Vicon may have done or not done in connection with this Licence (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to the price paid by the User for the applicable licence to use the Software.

5.4. Vicon will not be liable for breach of any term of this Licence (including breach of any warranty) to the extent that the breach concerned arises from:

5.4.1. use of the Software or Firmware other than in accordance with normal operating procedures as described in the Documentation or as otherwise published by Vicon from time to time;

5.4.2. any alterations to the Software or Firmware made by anyone other than Vicon or someone authorised by Vicon;

5.4.3. any problem with the computer or equipment on which the Software or Firmware is installed;

5.4.4. any abnormal or incorrect operating conditions; and/or

5.4.5. any hardware, equipment or software being used with or in relation to the Software or Firmware, unless this use has been approved in writing by Vicon.

5.5. The User is entirely responsible for the use it makes of the Software or Firmware. In particular, (where applicable) neither the Software nor the Firmware is intended to replace the clinical skill of a medical practitioner or his/her independent professional judgement of individual clinical circumstances to make a diagnosis and/or determine a patient's treatment. The Software and Firmware should only be used by those who have been appropriately trained in its operation, functions, capabilities and limitations, and in any event (where applicable) should not be relied upon, by itself, as the sole method of making any diagnosis or determining any treatment.

5.6. This Licence gives the User specific legal rights and the User may also have other rights that vary from country to country. Some jurisdictions do not allow the exclusion of implied warranties, or certain kinds of limitations or exclusions of liability, so the above limitations and exclusions may not apply to the User. Other jurisdictions allow limitations and exclusions subject to certain conditions. In such a case the above limitations and exclusions shall apply to the fullest extent permitted by the laws of such applicable jurisdictions. If any part of the above limitations or exclusions is held to be void or unenforceable, such part shall be deemed to be deleted from this Agreement and the remainder of the limitation or exclusion shall continue in full force and effect. Any rights the User may have as a consumer (i.e. a purchaser for private as opposed to business, academic or government use) are not affected.

## 6. TERMINATION

6.1. This Licence automatically terminates if:

6.1.1. the User fails to comply with any provision of this Licence; or

6.1.2. an Insolvency Event occurs in relation to the User. For the purpose of this clause an "**Insolvency Event**" in relation to the User, means any of the following: (a) a meeting of creditors of the User being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to the User; (b) a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within 7 days) on the whole or a material part of the assets of the User; (c) the User ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986; (d) the User or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (e) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the User; or (f) the happening in relation to the User of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

6.2. On termination for any reason:

6.2.1. all rights granted to the Customer under this Licence shall cease;

6.2.2. the Customer shall cease all activities authorised by this Licence; and

6.2.3. the Customer shall immediately destroy or return to Vicon (at Vicon's option) all copies of the Software and Documentation in its possession, custody or control and, in the case of destruction, certify to Vicon that it has done so.

## **7. ASSIGNMENT**

- 7.1. This Licence Agreement is personal to the User and the User may not assign, novate, transfer, sub-contract or otherwise part with this Licence Agreement or any right or obligation under it without Vicon's prior written consent.
- 7.2. Vicon may assign, novate, transfer, sub-contract or otherwise part with this Licence Agreement or any right or obligation under it.

## **8. MISCELLANEOUS**

- 8.1. The User agrees that Vicon shall have the right, after supplying reasonable undertakings as to confidentiality, to audit any computer system on which the Software or Firmware is installed in order to verify compliance with this Licence.
- 8.2. If any provision of this Licence is held for any reason to be ineffective or unenforceable it shall be deemed deleted and this shall not affect the validity or enforceability of (i) any other provision of this Licence; or (ii) this Licence as a whole.
- 8.3. If a party: (i) delays in enforcing its rights under this Licence (whether in relation to a breach by the other party or otherwise); or (ii) agrees not to enforce its rights, or to delay doing so, then unless the party concerned expressly agrees otherwise, that delay or agreement shall not be treated as waiving the rights of the party concerned. Any waiver of a party's rights in relation to a particular breach of this Licence shall not operate as a waiver of any subsequent breach. No right, power or remedy to which either party is entitled under this Licence is exclusive of any other right, power or remedy available to that party.
- 8.4. No variation of this Licence shall be effective unless it is in writing and signed by an authorised representative on behalf of Vicon.
- 8.5. This Licence constitutes the entire agreement between the parties in respect of its subject matter and supersedes all proposals, representations, understandings and prior agreements, whether oral or written. Subject to clause 4.1, each party acknowledges that, in entering into this Licence, it has not relied on any statement or representation made by the other party that has not been set out in this Licence, and agrees that it will not try to rely on any representation made by the other party except to the extent that the representation concerned is contained in this Licence.
- 8.6. No term of the Licence is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Licence.
- 8.7. This Licence shall be governed by the laws of England. The parties submit to exclusive jurisdiction of the courts of England and Wales. Notwithstanding the submission to the exclusive jurisdiction, Vicon may bring proceedings in the courts of any other state which may have jurisdiction for reasons other than the parties' choice, for the purpose of seeking:



- 8.7.1. an injunction, order or other non-monetary relief (or its equivalent in such other state); and/or
- 8.7.2. any relief or remedy which, if it (or its equivalent) were granted by the courts of England and Wales, would not be enforceable in such other state.