



# VBI Virtual Reality Based Exposure Therapy End User License Agreement

VBI Relaxation Suite Version 2.0 (HTC VIVE Pro2)

THIS DOCUMENT IS A LEGAL AGREEMENT (the "License Agreement") BETWEEN VIRTUALLY BETTER, INC. ("VBI") AND YOU OR THE ORGANIZATION ON WHOSE BEHALF YOU ARE UNDERTAKING THE LICENSE DESCRIBED BELOW (the "End User"). THIS AGREEMENT IS IN RELATION TO A COMPUTER PROGRAM IN OBJECT CODE FORM WHICH EMBODIES "VIRTUALLY BETTER RELAXATION SUITE" (the "Licensed Program") AND ALL RELATED MATERIALS. BY DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE LICENSED PROGRAM, YOU ACCEPT THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH ANY OF THE TERMS OR CONDITIONS OF THIS LICENSE AGREEMENT, DO NOT PROCEED WITH THE DOWNLOADING, COPYING, INSTALLATION OR ANY OTHER USE OF THE LICENSED PROGRAM OR ANY PORTION THEREOF. THE LICENSED PROGRAM IS PROTECTED BY UNITED STATES COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT LAWS, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES.

THIS LICENSE AGREEMENT DESCRIBES END USER'S RIGHTS AND RESPONSIBILITIES WITH RESPECT TO THE LICENSED PROGRAM AND ITS COMPONENTS.

## 0. DEFINITIONS

- 0.1 "Clinical Use" means use of a product for the treatment and care of patients in a clinical setting by providers licensed or otherwise permitted by applicable law to treat patients and which providers are trained in the use of the product for that purpose. Clinical Use must comply with Section 2 of this Agreement.
- 0.2 "End User" means a third party Site duly licensed to perform medical and or psychological clinical services for patients and licensed through this agreement by VBI to use the Licensed Program for such third party's Clinical Use purposes in treating such third party's patients.
- 0.3 "Licensed Program" means a computer program in Object Code form which embodies "VBI Relaxation Suite virtual reality based exposure therapy".
- 0.4 "Object Code" means machine-readable, executable code of a computer program.
- 0.5 "Seat License" means the grant of right for an End User to execute and use one (1) copy of the Licensed Program on a single computer owned or controlled by that End User and used by one of End User's care providers at a time. The End User fixed License term may not exceed ten (10) years.
- 0.6 "VBI" means Virtually Better, Inc.

## 1. OWNERSHIP, LICENSE GRANT

This is a license agreement and not an agreement for sale. VBI has exclusive license rights to distribute and use the Licensed Program. VBI reserves ownership of all intellectual property rights inherent in or relating to the Licensed Program, which include, but are not limited to, all copyright, patent rights, all rights in relation to registered and unregistered trademarks (including service marks), confidential information (including trade secrets and know-how) and all rights other than those expressly granted by this License Agreement.

User License. Subject to the payment of the fee required and subject to the terms and conditions of this License Agreement, we grant to the End User a limited, non-transferable, non-assignable, non-sublicensable, and non-exclusive and revocable license for Designated User(s) (as defined below) within End User organization to use Licensed Program on hardware approved or sold to the End User by VBI. End User may be licensed to install or use a SINGLE SEAT of the Licensed Program on hardware not explicitly provided or approved by VBI, however, VBI does not warrant the functionality on hardware not sold by VBI. "Designated User(s)" shall mean End User employee(s) acting within the scope of their employment, acting on End User's behalf, or for whom End User have purchased a license. "Additional User(s)" may be enumerated separately as part of a purchase agreement executed in conjunction with this license.

End User may not publish, distribute, extract, re-utilize, or reproduce any part of VBI Products in any material or form (including photocopying or storing it in any medium by electronic means) other than in accordance with the limited use license set out in these End User Licensing Agreement or as permitted by the United States Copyright Act. Except as expressly provided herein and the copyright notice, we grant no rights to you under any patents, copyrights, trademarks, trade secrets or any other proprietary rights. Notwithstanding the foregoing, VBI does not own the original personal information that Users input into VBI products.

## 2. CLINICAL USE

The Clinical Use of the Licensed Program by the End Users must comply with applicable United States laws and regulations, as well as the laws and regulations in the countries in which the Licensed Program will be used, governing medical devices intended for human use, including but not limited to 21 C.F.R. Part 812 and laws and regulations concerning registration and results reporting for clinical trials of medical devices promulgated under the Food and Drug Administration Amendments Act of 2007.

The End User must obtain informed consent from their patients before using the Licensed Program. The informed consent must contain language specific to the use of virtual reality for exposure thereby, such as:

"I understand that this treatment is a relatively new method for conducting exposure therapy. Using virtual reality environments might involve wearing a head-mounted display, which is like a helmet with mini-television screens in front of my eyes. The purpose of the virtual environment is to help me feel as if I am really in the situation of which I am afraid or learning to cope with. Thus, virtual environments may elicit anxiety or other physical/emotional responses, which are consistent with the treatment I wish to receive and designed to help me overcome my fears or other identified problem areas.

I understand that it is possible to experience transient adverse side effects from virtual environments, including motion sickness, disorientation, and dizziness. I agree to inform my psychologist if I experience such side effects and wait until I am no longer experiencing any such effects before beginning other activities, such as operating a motor vehicle. A very small portion of the population may experience epileptic seizures when viewing certain kinds of flashing lights or patterns that are commonly present in daily activities. Such people also may experience seizures while using the head-mounted display. I agree to inform my psychologist of any past epileptic activity, as this may affect their professional judgment about utilizing the virtual environments as part of my child's planned treatment."

## 3. RESTRICTIONS

The End User's use of the Licensed Program is subject to the following:

## VIRTUALLY BETTER END USER LICENSE AGREEMENT VBI RELAXATION 2.0

End User must agree not to duplicate, provide, or otherwise make available the Licensed Program or any other material provided in support of the Licensed Program, including but not limited to documentation and the Licensed Program Object Code, in any form, to any person, party, or entity other than disclosure by End User to its employees and consultants to the extent that such disclosure is reasonably necessary to End User's use of the Licensed Program. End User must agree not to reverse engineer, decompile or disassemble the Licensed Program or otherwise attempt to derive the source code. End Users shall not use the Licensed Program to provide services to third parties whether by way of time-share, hosted services or other methods by which such third parties benefit from the use of the Licensed Program, other than the Clinical Use of the Licensed Program on End Users' patients at the Sites as applicable.

Notwithstanding the foregoing limited license grant, End User must acknowledge that certain components of the Licensed Program may be covered by so-called "open source" software licenses ("Open Source Components"), which means any software licenses approved as open source licenses by the Open Source Initiative or any substantially similar licenses, including without limitation any license that, as a condition of distribution of the software licensed under such license, requires that the distributor make the software available in source code format. VBI shall agree to provide a list of Open Source Components for a particular version of the Licensed Program upon End User's request. End User shall agree to comply with the applicable terms of such licenses and to the extent required by the licenses covering Open Source Components, the terms of such licenses will apply in lieu of the terms of the license agreement with the End User. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in this license agreement with the End User with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of the licenses applicable to Open Source Components require VBI to make an offer to provide source code or related information in connection with the Licensed Program, such offer is hereby made. Any request for source code or related information should be directed by the End User only to (VBI DIRECTOR OF SALES). End User acknowledges receipt of notices for the Open Source Components for the initial delivery of the Licensed Program.

License to VBI. End User grants to VBI without charge the right to use, copy, modify and create derivative works of any and all suggestions, improvements, data, feedback, corrections and other information and contributions provided by End User to VBI regarding the Licensed Program; such use by VBI to be for the purpose of (i) improving the operation, functionality or use of VBI's existing and future software and products and (ii) publishing aggregated statistics about software quality, provided that no data in any such publication can be used to specifically identify the End User without prior written consent. End Users shall remove from the results prior to sending to VBI all information that may identify individual patients, including without limitation, all of the following data elements: patient name, contact information, medical record number, any personal information such as social security number or driver's license, photographs or other unique identifies including those found at <http://www.oshpd.ca.gov/Boards/CPHS/HIPAAIdentifiers.pdf>. Any information sent to VBI shall not be considered confidential or secret information of the End User.

End User acknowledges that VBI does not engage in the practice of any health or behavioral healthcare profession and its offer of software is not intended to or constitute the practice of any healthcare profession. VBI's software products or electronic tools or systems may be used by licensed providers to assess and treat their patients pursuant to the exercise of the provider's independent professional judgement. Use of VBI products or systems by unlicensed individual's constitutes a breach of the EULA, and VBI disclaims all liability for use of VBI products or systems in such circumstances. VBI products are also not to be used for health emergencies, and VBI disclaims all liability for use of our products or systems in connection with such emergencies.

## 4. TERMINATION

In case of termination of this Agreement the obligations of the End User to VBI required under Section 3 (Restrictions); 5 (Warranty); 6 (Indemnification); and 7 (Insurance) of this Agreement shall continue. Upon termination End User shall immediately deliver to VBI or destroy all copies of the Licensed Program. In the event of termination or expiration of the licensing agreement, VBI will have no obligations to End User under the End User License Agreement.

## 5. WARRANTY AND LIMITATION ON DAMAGES

The licensed program is furnished to end user as-is. VBI makes no representations or warranties, express or implied. By way of example, but not limitation, VBI makes no representations or warranties of merchantability or fitness for any particular purpose, or that the use of the licensed program components or documentation will not infringe any patents, copyrights, trademarks or other rights.

Nothing in this Agreement shall be construed as:

- 1 a warranty or representation that anything made, used, sold or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents, copyrights and trademarks of third parties;
- 2 a warranty or representation that the Licensed Program will operate uninterrupted or error free;
- 3 conferring rights to VBI to use in advertising, publicity or otherwise, the name of End User or of its employees or subsidiaries; or
- 4 conferring rights to End User to use in advertising, publicity or otherwise, the name, logo, trademark, or symbol of VBI, its affiliates, or employees.

Notwithstanding anything to the contrary contained herein, to the maximum extent permitted by law, in no event will VBI be responsible for any incidental, consequential, indirect, special, punitive, or exemplary damages of any kind, including damages for lost goodwill, lost profits, lost business or other indirect economic damages, whether such damages arise from claims based upon contract, negligence, tort (including strict liability) or other legal theory, resulting from a breach of any warranty or any other term of this agreement, and regardless of whether VBI was advised or had reason to know of the possibility of such damages in advance.

The licensed program is not designed, intended, or authorized for use in any type of system or application in which the failure of the system or application could create a situation where personal injury or death may occur (e.g., medical systems, life-sustaining or life-saving systems).

## 6. IDEMNIFICATION

End User must agree to defend, indemnify and hold harmless VBI and its officers, shareholders, directors, professional staff, employees and agents and their respective successors, heirs and assigns (the "Indemnitees"), against all liability, demand, damage, loss, or expense incurred by or imposed upon the Indemnitees or any one of them in connection with any claims, suits, actions, demands or judgments arising out of any theory of product liability (including but not limited to, actions in the form of tort, warrantee, or strict liability) for death, personal injury or illness (whether mental or physical), or property damage arising from End User's use, or other disposition of the Licensed Program, or a breach of this Agreement.

End User must also agree, at its own expense, to provide attorneys reasonably acceptable to VBI to defend against any actions brought or filed against any of the Indemnitees with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought. To the extent that any proposed settlement directly affects VBI, End User shall obtain the approval of VBI before finally agreeing to such settlement proposal, which consent shall not be unreasonably withheld.

## **7. HARDWARE LIMITED WARRANTY**

VBI warrants that for a period of ninety (90) days from the date of shipment from Us: (i) the media on which the Software is furnished as well as all peripheral devices provided by US will be free of defects in materials and workmanship under normal use.

This limited warranty extends only to You as the original licensee. Your exclusive remedy and the entire liability of VBI and its suppliers under this limited warranty will be, at Our option, repair, replacement, or refund of the Hardware if reported (or, upon request, returned) to the party supplying the Hardware to You.

## **8. LIMITATION OF LIABILITIES**

In no event shall VBI's or its suppliers' liability to You, whether in contract, tort (including negligence), or otherwise, exceed the price paid by You. You agree that the foregoing limitations shall apply even if the above stated warranty fails of its essential purpose.

## **9. INSURANCE**

End User must at its sole cost and expense, procure and maintain in effect a comprehensive general liability policy of insurance in single limit coverage of not less than One Million U.S. Dollars (\$1,000,000) per incident and Two Million U.S. Dollars (\$2,000,000) annual aggregate for death, bodily injury or illness (whether mental or physical) and Two Hundred Thousand U.S. Dollars (\$200,000) annual aggregate in property damage. Such comprehensive general liability insurance shall provide (i) product liability coverage and (ii) broad form contractual liability coverage for End User's indemnification. Each such policy of insurance shall name VBI as an additional insured and shall provide for not less than thirty (30) days prior written notice before any cancellation or material change in coverage shall be effective. A Certificate evidencing the current, comprehensive general liability policy herein defined shall be delivered to VBI within thirty (30) days of the Effective Date. End User shall maintain such insurance for so long as End User is using the Licensed Program if the insurance is a claims made policy and for term of the End User's license agreement plus five (5) years if the insurance is not a claims make policy. Notwithstanding anything to the contrary above, End Users that are government entities are permitted to use their program of self-insurance, rather than meet the insurance requirements as set forth above.

The minimum amounts of insurance coverage required under Section 7 shall not be construed to create a limit of End User's liability with respect to its indemnification in Section 6 of this Agreement.

## **10. VERIFICATION**

VBI or a certified auditor acting on VBI's behalf, may, upon its reasonable request and at its expense, audit End User with respect to the use of the Licensed Program. Such audit may be conducted by mail, electronic means or through an in-person visit to End User installation site. Any such in-person audit shall be conducted during regular business hours at End User facilities and shall not unreasonably interfere with End User business activities. VBI shall not remove, copy, or redistribute any electronic material during the course of an audit. If an audit reveals that End User are using the Licensed Program in a way that is in material violation of the terms of the

License Agreement, then End User shall pay VBI reasonable costs of conducting the audit. In the case of a material violation, End User agree to pay VBI any amounts owing that are attributable to the unauthorized use. In the alternative, VBI reserves the right, at our sole option, to terminate the licenses for the Licensed Program.

## **11. THIRD PARTY LICENSED PROGRAM**

Installed configurations of the Licensed Program may provide menu links to third party applications, libraries or code (collectively "Third Party Licensed Program"). Third Party Licensed Program does not comprise a licensed part of the Licensed Program. In some cases, access to Third Party Licensed Program may be included along with the Licensed Program delivery as a convenience, or in conjunction with a support agreement. Licensee acknowledges that use of any Third Party Licensed Program may be covered by the owners' respective license agreements or restrictions.

## **12. PAYMENT AND TAXES**

Unless other terms are specifically agreed to and included by Us, all payments under this License Agreement are due immediately upon delivery or installation of the Licensed Program. If indicated below, within thirty (30) days of the date We provide an invoice to End User by mail or email.

## **13. SUPPORT AND UPDATES**

End User is not entitled to any support for the Licensed Program under this License Agreement. All support must be purchased separately and will be subject to the terms and conditions contained in the purchased support agreement. End User is entitled to receive minor version updates to the Licensed Program (i.e. versions identified as follows (X.Y, X.Y+1). End User are not entitled to receive major version updates (i.e. X.Y, X+1.Y) or bug fix updates to the Licensed Program (X.Y.Z, X.Y.Z+1), unless purchased independently of this license or covered under a purchased support agreement.

## **14. MISCELLANEOUS**

**Applicability.** The license granted herein applies only to the version of the Licensed Program available when purchased in connection with the terms of this License Agreement. Any previous or subsequent license granted to End User for use of the Licensed Program shall be governed by the terms and conditions of the agreement entered in connection with purchase of that version of the Licensed Program.

**Controls.** End User agrees that End User will comply with all applicable laws and regulations with respect to the Licensed Program. The Licensed Program, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Licensed Program.

**Identification.** End User agree to be identified as a customer of ours and End User agree that We may refer to End User by name, trade name and trademark, if applicable, and may briefly describe End User business in our marketing materials and web site.

**Assignment.** End User may not assign this License Agreement without Our prior written consent, which will not be unreasonably withheld. This License Agreement will inure to the benefit of Our successors and assigns.

**Completeness.** End User acknowledges that this License Agreement is complete and is the exclusive representation of our agreement. No oral or written information given by Us or on our behalf shall create a



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warranty or collateral contract, or in any way increase the scope of this License Agreement in any way, and End User may not rely on any such oral or written information. No term or condition contained in any purchase order shall apply unless expressly accepted by Us in writing,

Severability. There are no implied licenses or other implied rights granted under this License Agreement, and all rights, save for those expressly granted hereunder, shall remain with Us and our licensors. In addition, no licenses or immunities are granted to the combination of the Licensed Program and/or Modifications, as applicable, with any other Licensed Program or hardware not delivered by Us to End User under this License Agreement. If any provision in this License Agreement shall be determined to be invalid, such provision shall be deemed omitted; the remainder of this License Agreement shall continue in full force and effect. If any remedy provided is determined to have failed for its essential purpose, all limitations of liability and exclusions of damages set forth in this License Agreement shall remain in effect.

Government Sales. If the Licensed Program, content or any related documentation is licensed to the U.S. government or any agency thereof, it will be deemed to be "commercial computer Licensed Program" or "commercial computer Licensed Program documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212. Any use of the Licensed Program or related documentation by the U.S. government will be governed solely by the terms of this License Agreement unless such use is specifically addressed by a separate contract.

Jurisdiction. Unless specifically amended and included at the execution of this License Agreement by End User and Us, it is governed by the law of the State of Georgia, United States (notwithstanding conflicts of laws provisions), and all parties irrevocably submit to the jurisdiction of the courts of the State of Georgia and further agree to commence any litigation which may arise hereunder in the state or federal courts located in the judicial district of DeKalb County, Georgia, US.

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My signature below indicates acknowledgement of reading and review of the document identified as **VIRTUALLY BETTER END USER LICENSE AGREEMENT VBI RELAXATION 2.0.**

Primary "Designated User"/Licensed Professional End User (Purchaser):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
License Number & Jurisdiction