

Software License Agreement



VSN International Limited
Integrated Breeding Platform (IBP)
VSNi Software Licence Agreement

[>>> go to Software Service Agreement](#)

This License Agreement applies to the provision and use of proprietary software that is owned or licensed to VSN International Ltd (VSNi), and is provided to Licensees through the Integrated Breeding Platform (IBP). This License Agreement does not apply to Open Source Software that is provided through the IBP, as such Open Source Software is subject to one or more separate licenses.

When You complete an Order Form requesting a VSNi Software license and submit it, You are offering to enter into a contract with VSNi on the terms set out in this document and the Order Form.

Where You are an individual and named as the Licensee in the Order Form, the offer to enter into a contract with VSNi is made by You personally.

Where You submit the Order Form on behalf of a company or organisation and that company or organisation is named as the Licensee in the Order Form, that offer is made on behalf of that company or organisation and, by submitting that form, You are confirming that that company or organisation agrees to the terms of this Agreement and that You have authority to agree to the terms of this Agreement and to enter into a contract with VSNi on behalf of that company or organisation.

In any case You are confirming that You agree to your personal data being used in accordance with VSNi's Privacy Policy, a copy of which is available on VSNi's web site.

Please read the terms of this Agreement carefully. If You do not agree to them, You should not submit the Order Form requesting a VSNi Software license or otherwise ask for a licence to use the VSNi Software.

After You have submitted the Order Form, VSNi or the Authorised Reseller will acknowledge its receipt by e-mail and will contact You to confirm the details on that form and the licence fees payable. VSNi and its Authorised Resellers have the right to reject any Order Form and not issue a licence key, as they see fit, without giving any reason.

A contract between the Licensee and VSNi will come into existence when VSNi sends You or the Licensee written confirmation that the Order Form has been accepted.

VSNi is VSN International Limited is a company registered in England, under company number 4027977. Its registered office is at Amberside House, Wood Lane, Hemel Hempstead HP2 4TP. Its VAT number is 750 0348 63. If You or the Licensee wishes to contact VSNi about the VSNi Software or the terms of this Agreement, please e-mail VSNi at support@vsni.co.uk, or visit VSNi's web site at www.vsni.co.uk for other contact details.

1. Definitions and Interpretation

1.1 In this Agreement the following expressions have the meanings set opposite:

this Agreement: these terms and the Order Form, as amended from time to time in accordance with Clause 10;

an Authorised Reseller: a person appointed by VSNi to negotiate with potential licensees of the VSNi Software, and **the Authorised Reseller** means the particular Authorised Reseller with whom the Licensee in negotiating a license of the VSNi Software;

a Clause: a clause in this Agreement;

the Current Version: the last version of the VSNi Software and the immediately preceding version of the VSNi Software made available through the IBP Operator for use by licensees generally, and does not include any beta test version of any of the VSNi Software or any version developed or modified to meet the requirements of one or more particular licensees;

the Delivery Date: the date on which the relevant VSNi Software is first made available to the Licensee through the IBP Operator;

the Documentation: the help facility included in the VSNi Software;

an Error: a material failure of the Current Version to provide the functions described in the Documentation;

the IBP: the Integrated Breeding Platform operated by the IBP Operator and available at www.integratedbreeding.net or any replacement URL;

the IBP Operator: The entity or entities that host the IBP at the signature of the Work Order, currently: Centro Internacional de Mejoramiento de Maíz y Trigo, an international agricultural research organisation acting as the host of the IBP, with its headquarters at Km. 45, Carretera México-Veracruz, El Batán, Texcoco CP 56237, Estado de México, México;

a Partner Institution: a body:

- a. whose constitution prohibits the distribution of its profits or surpluses and assets to its members or shareholders; and
- b. which is a public institution based in developing countries; and
- c. which is recognised from time to time by VSNi, acting in its sole discretion, as a Partner Institution, such as a university or government research establishment;

Intellectual Property

Rights: patents, rights to any invention, copyrights and related rights, moral rights, rights in computer software, trade marks, service marks, trade names, domain names, rights in any get-up, goodwill and the right to sue for passing off or unfair competition, registered designs, other rights in designs, rights of confidence, rights in any know-how, trade secrets, rights to extract and exploit data, database rights, any similar or equivalent rights protected in any jurisdiction, whether now existing or coming into existence at some future date and whether or not registered, any application for (and rights to apply for and be granted) any of the above, any renewals or extensions of, and rights to claim priority from, any such rights, and any accrued rights of action in respect of any of the above;

the Licence: the right to use the VSNi Software granted in Clause 2.1;

the Licensee: the person named as the Licensee of VSNi Software in the Order Form;

Licensee Data: data pertaining to the licensee which the Licensee may provide to VSNi, the IBP Operator, or the Authorised Reseller in the course of performance of this Agreement;

the Open-Source Software: the open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>) made available to the Licensee through the IBP, as the same may be modified and updated from time to time;

the Order Form: the online order form which allows individuals or entities to request a license to use VSNi Software, or to request a separate contract for support services, which has been completed and submitted by the Licensee or its representative and accepted by VSNi, as amended or replaced from time to time by the written agreement of VSNi and the Licensee or any later Order Form submitted by the Licensee or its representative and accepted by VSNi. This Agreement does not govern the provision of support s that are requested on an Order Form. Instead, the provision of any support services shall be governed by a separate Support Services Agreement;

the Parties: VSNi and the Licensee and each of them is a **Party**;

the Trial Period: for Licenses of VSNi Software installed on individual computers, the period of 90 days starting on the Delivery Date; and for Licenses of VSNi Software installed on a server for multiple users, the period of 30 days starting on the Delivery Date;

You: the person submitting the Order Form;

the VSNi Software: the software (in object code) developed or created by, or licensed to, VSNi and made available to the Licensee through, or as a complementary module of the IBP, as the same may be modified and updated from time;

Working Hours: 9 am to 5 pm (London time) Mondays to Fridays, except bank, public or statutory holidays in England; and

Writing: includes text stored and transmitted electronically.

1.2 Any reference in this Agreement to a statute or regulation is to be construed as a reference to that statute or regulation as amended, extended or re-enacted from time to time, and it includes any subordinate legislation from time to time in force made under it.

1.3 Unless the context otherwise requires, in this Agreement, words in the singular include the plural and words in the plural include the singular.

1.4 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.

1.5 The rule known as the *ejusdem generis* rule does not apply to this Agreement. Accordingly general words introduced by the word **other** will not be given a restrictive meaning because they are preceded by words indicating a particular class of acts, matters or things.

1.6 Any obligation in this Agreement to not do something, includes an obligation not to allow that thing to be done.

1.7 Any words in this Agreement following the expressions **including**, **include**, **in particular**, or any similar expression, are merely illustrative and do not limit the sense of the words, description, definition, phrase or expression preceding those expressions.

1.8 In this Agreement a **person** includes a natural person, a corporate or unincorporated body (whether or not it has a separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.9 A reference in this Agreement to a **Party** includes that Party's permitted assigns.

1.10 Any reference in this Agreement to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing will, in respect of any jurisdiction except England and Wales, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.

1.11 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language version will prevail.

2. Licence, Trial Period and Restrictions

2.1 The Licensee may use the VSNi Software on the terms set out in this Agreement. The licence and this Agreement are non-exclusive and non-transferable by the Licensee.

2.2 The Licensee may use the VSNi Software free of charge, but otherwise subject to the terms of this Agreement, during the Trial Period. At the end of the Trial Period, the Licensee will either:

2.2.1 cease using the VSNi Software;

2.2.2 unless it is a Partner Institution pay the licence fees for the VSNi Software in accordance with Clause 4; or

2.2.3 if it is a Partner Institution, request VSNi to provide it with a licence key which allows the Licensee to use the VSNi Software, without payment of any licence fees, for the remainder of the calendar year in which the Partner Institution submitted an Order Form requesting a licence for the VSNi Software.

On the payment of the licence fees under Clause 2.2.2, VSNi will provide the Licensee with a key which will allow the Licensee to continue to use the VSNi Software.

2.3 If a maximum number of workstations, or named users, or a maximum number of concurrent users, or one or more sites, or one or more machines, or a version of the VSNi Software, or the operating system are specified in the Order Form, the VSNi Software may be used only on up to that number of workstations, or by those named users, or up to that number of concurrent users at any one time, or at that site or those sites or on that machine or those machine, and where a version of the VSNi Software or an operating system is specified in the Order Form, this Agreement permits the use of that version of the VSNi Software and with that version of that operating system only. If the Licensee wants to increase that number of workstations or the named users or the maximum number of concurrent users, or to change or add to the sites or the machines, or to use a different version of the VSNi Software, or to use the VSNi Software with a different operating system, it must obtain an additional licence or extension of the licence from VSNi or an Authorised Reseller. Any additional licence or extension may be subject to the Licensee paying additional licence fees.

2.4 Unless the licence to use the VSNi Software is an annual licence, the licence is restricted to use of the version of the VSNi Software first provided to the Licensee through the IBP, and the Licensee is not entitled to new versions of the VSNi Software.

2.5 If the Order Form states that the licence is for a fixed period, the licence will, unless terminated earlier, automatically expire at the end of that period. If the Order Form states that the licence is an annual licence, it will automatically renew on each anniversary of the Delivery Date until it is terminated by VSNi or the Licensee giving the other at least 30 days' notice of termination to expire on any anniversary of the Delivery Date.

2.6 Where the licence restricts the use of the VSNi Software at one or more sites, each named user or, where the licence is restricted to a maximum number of concurrent users, any user provided that number is not exceeded, may use the VSNi Software via a remote connection to that site.

2.7 The Licence will begin on the Delivery Date and, unless it is terminated under Clause 2.5, 3.3 or 6.2.6, it will continue until the termination of this Agreement under Clause 7.1.

2.8 Only the Licensee and its employees may use the VSNi Software and then only for the Licensee's internal business purposes. The Licensee must not transfer the VSNi Software or share its use with anyone else. Nor may the Licensee use the VSNi Software for anyone else's benefit (including, without limitation, using it to provide outsourcing services, application services or facilities management services). The Licensee may not sub-license the use of the VSNi Software.

2.9 The Licensee may not copy the VSNi Software except to make a reasonable number of back-up copies, and a back-up copy may be used only by substituting it for the original copy of the VSNi Software supplied to the Licensee, for testing the VSNi Software and its integration with other applications, and for testing and implementing the Licensee's disaster recovery or business contingency procedures. The Licensee must keep each back-up copy of the VSNi Software in a secure place, in the Licensee's possession, and under its control, at all times.

2.10 The Licensee must ensure that every copy of the VSNi Software bears the copyright and other proprietary notices on the original copy of the VSNi Software. The Licensee must not remove, obliterate or modify any of those notices.

2.11 The Licensee may not modify the VSNi Software, or combine it with, or incorporate it in, any other software.

2.12 Except as permitted under the European Software Directive or any legislation implementing that Directive or under any local law, the Licensee must not reverse engineer any of the VSNi Software to determine any design structure, concepts or methodology behind the VSNi Software, or to incorporate it in any other software or any product, or for any other purpose.

3. Testing

3.1 If the Licensee discovers any Error in the VSNi Software during the Trial Period, unless the Licensee ceases to use the VSNi Software at the end of the Trial Period, it must notify VSNi of the Error before the end of the applicable Trial Period, and give VSNi a reasonable opportunity to correct the Error, and to re-supply the corrected VSNi Software. If after the applicable Trial Period, VSNi has not been able to correct the Errors notified to it, the Licensee may, by giving VSNi notice, reject the VSNi Software. If the Licensee rejects the VSNi Software, any licence fees paid by the Licensee for the VSNi Software under this Agreement will be refunded and the licence will terminate.

3.2 If the Licensee has not notified VSNi of any Error within the Trial Period or does not permanently cease to use the VSNi Software on or before the end of the Trial Period, the Licensee will be deemed to have accepted the VSNi Software.

3.3 VSNi's refund of any licence fees under Clause 3.1 will be in full and final settlement of any liability VSNi may have to the Licensee (under this Agreement or under any other agreement in connection with the licensing, supply, development, implementation, configuration, support or maintenance of the VSNi Software) and will automatically terminate the Licence and this Agreement.

4. Charges

4.1 Subject to Clause 4.2, the Licensee will pay VSNi or the Authorised Reseller licence fees for the VSNi Software calculated by reference to the details on the Order Form and VSNi's or the Authorised Reseller's rates and charges in force at the time the order for the VSNi Software is accepted by VSNi.

4.2 VSNi and Authorised Resellers may revise any annual licence fees with effect from any anniversary of the Delivery Date by giving the Licensee not less than 30 days' notice. As from the expiry of that notice, the Licensee will pay VSNi or the Authorised Reseller (as the case may be) those revised fees.

4.3 All fees, charges and expenses payable under this Agreement are exclusive of any value added, sales, services, consumption tax, customs duties and other taxes or duties on the supply to the Licensee and the export and import of any goods or services. The Licensee will pay these in addition to the licence fee payable under this Agreement.

4.4 The Licensee will pay, without any deduction, set off or withholding, all fees, charges and expenses payable under this Agreement within 30 days after the date of VSNi's or the Authorised Reseller's invoice for the same. VSNi may, without prejudice to any other right or remedy, terminate this Agreement, or suspend work under it if, within 14 days after receiving written notice of the Licensee's failure to pay in accordance with the terms of this Clause, the Licensee still fails to make those payments in full.

4.5 The Licensee will pay, on demand, interest calculated on a daily basis on all sums not paid within 30 days after the date of VSNi's or the Authorised Reseller's invoice and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2013. The Licensee will also pay VSNi's and the Authorised Reseller's reasonable expenses (on an indemnity basis) in connection with the Licensee's failure to pay any fees or charges when due, including (but not limited to) legal expenses and the costs of collection.

4.6 On the termination or expiry of this Agreement, without prejudice to any other right or remedy available to either Party, the Licensee will pay all unpaid fees and charges accrued up to that date.

4.7 The fees and charges payable under this Agreement are not refundable except pursuant to Clause 3.1, 5.3 or 6.2.6.

5. Warranties

5.1 VSNi warrants to the Licensee that VSNi is the owner of the Intellectual Property Rights in the VSNi Software or that it has the right to license the Licensee to use the VSNi Software.

5.2 VSNi warrants to the Licensee that the VSNi Software as made available to the Licensee through, or as a complementary module of the IBP will, for 90 days after the Delivery Date, function substantially in accordance with the Documentation when properly used on the equipment and operating system specified in the Order Form.

5.3 Provided the Licensee provides a copy of its data and anything else needed to reconstruct the problem, VSNi will investigate any

purported breach of the warranty in Clause 5.2 reported by the Licensee in writing within the period specified in Clause 5.2 and, where appropriate, VSNi will endeavour to correct that Error within a reasonable time, or to provide avoidance or remedial information, or VSNi or the Authorised Reseller will refund any licence fee paid by the Licensee for the VSNi Software. Licensees who have not paid a license fee will not receive a refund.

5.4 Any refund of any licence fees under Clause 5.3 will be in full and final settlement of any liability VSNi, the IBP Operator, or the Authorised Reseller may have to the Licensee (under this Agreement or in any other way in connection with the licensing, supply, development, implementation, configuration, support or maintenance of the VSNi Software) and will automatically terminate the Licence.

5.5 Neither VSN nor the IBP Operator nor the Authorised Reseller will be liable under any warranty or any other provision of this Agreement to the extent that any failure of the VSNi Software to comply with any warranty, or to the extent that any error, defect, bug or deficiency in the VSNi Software, or VSNi's, the IBP Operator's or the Authorised Reseller's failure to correct or delay in correcting it, results from the Licensee not having complied with its obligations under this Agreement, or from any other act or omission on the Licensee's part, on the part of any user or on the part of any other party. In particular, neither VSNi, nor the IBP Provider nor the Authorised Reseller respectively will be liable if any modification has been made to any of the VSNi Software by anyone except it.

5.6 Neither VSNi nor the IBP Operator nor the Authorised Reseller will be liable under any warranty or under any other provision of this Agreement to the extent that any loss or damage is caused by the Licensee's failure to implement, or the Licensee's delay in implementing, any upgrade, update, new release, revision, version or modification of any of the VSNi Software which would have remedied or mitigated the effects of any error, defect, bug or deficiency.

5.7 When notifying VSNi, the IBP Operator or the Authorised Reseller of an Error, the Licensee must provide a documented example of it and all other information and materials needed to reproduce it including, without limitation, an example of where and when the Error occurred and a listing of the related input and output and a written explanation of the Error.

5.8 Because of the nature of software, VSNi does not warrant that any of the VSNi Software will be error free or that it will run without interruption, or that every error, defect, bug or deficiency can be or will be corrected. The existence of any of error, defect, bug or deficiency will not constitute a breach of this Agreement.

5.9 The IBP Operator will not be liable for any error, defect, bug or deficiency in any of the VSNi Software or for the unavailability of the IBP or any of the VSNi Software. Without prejudice to the above, the Licensee acknowledges that the IBP Operator may suspend the IBP for the purposes of support and maintenance or to avoid or reduce the consequences of any breach of data security.

5.10 VSNi warrants to the Licensee that VSNi will use reasonable skill and care in the performance of this Agreement.

5.11 The Licensee acknowledges that proper use of the VSNi Software is dependent on the Licensee and its staff exercising proper skill and care in inputting data into the VSNi Software and interpreting the output provided by the VSNi Software. Neither VSNi nor the IBP Operator nor the Authorised Reseller will be liable for the consequences of decisions taken by the Licensee on the basis of that output.

5.12 The Licensee acknowledges and agrees that the VSNi Software is standard software provided to all licensees and it has not been developed to meet the Licensee's requirements and that it is the Licensee's responsibility to check that the facilities and functions of the VSNi Software meet its requirements.

5.13 The internet, world wide web, local hardware, telecommunications networks and services are outside VSNi's, the IBP Operator's and the Authorised Reseller's control and neither VSNi, nor the IBP Operator nor the Authorised Reseller will be responsible or liable for any error, omission, hacking, loss, corruption, delay in the same, or the inability to use such service or for any content introduced by any such service.

5.14 The express undertakings and warranties given by VSNi in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of VSNi, the IBP Operator or the Authorised Reseller implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these implied warranties, conditions, terms, undertakings and obligations are, to the extent permitted by law, excluded.

5.15 The Licensee warrants that all information provided by it or its representative in relation to its status as a Partner Institution and all information given by it or its representative on the Order Form is and will be true, up to date and complete.

5.16 The Licensee warrants that it has not been induced to enter into this Agreement by any representation or by any warranty (whether oral, or in writing) except those specifically set out in this Agreement as warranties. The Licensee waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by VSNi, the IBP Operator or the Authorised Reseller fraudulently) that is not specifically set out in this Agreement as a warranty.

6. Intellectual Property Rights

6.1 The Licensee acknowledges that all Intellectual Property Rights in the VSNi Software, as between the Licensee and VSNi, are and will remain VSNi's property or that of VSNi's licensors and that VSNi may license others to use them.

6.2 Subject to Clause 12, VSNi will indemnify the Licensee in respect of any damages and costs finally awarded against the Licensee by a court of competent jurisdiction as the result of any claim that the latest version of the VSNi Software (as made available to the Licensee through, or as a module of the IBP) infringes the copyright of any third party, provided that:

6.2.1 the Licensee immediately notifies VSNi of each and every claim that the latest version of the VSNi Software infringes any Intellectual Property Rights;

6.2.2 the Licensee makes no admission or in any other way prejudices VSNi's defence or settlement of the claim;

6.2.3 the Licensee gives VSNi complete control of the defence and settlement of the claim and all reasonable assistance with its defence and settlement;

6.2.4 the claim does not arise out of the Licensee's act or omission, or that of any third party, or any other circumstances outside VSNi's control;

6.2.5 the Licensee takes all reasonable steps to minimise or mitigate the damages and costs which the court might award against it or VSNi in relation to the Licensee's use of the VSNi Software; and

6.2.6 VSNi may, at its option: modify the VSNi Software; or procure for the Licensee the right to continue to use the VSNi Software; or replace the VSNi Software; or terminate this Agreement and the Licence and refund a proportion of the licence fees paid by the Licensee for the VSNi Software. That proportion will be calculated on the basis that the licence fees for the VSNi Software are pro-rated evenly over 3 years (or if the licence fees are paid annually, 1 year) beginning on the Delivery Date (or in the case of annual licence fees, an anniversary of that date) and that the refund will reflect the proportion of that period left to run as at the termination of this Agreement under this Clause.

6.3 Clause 6.2 sets out all of VSNi's and the IBP Operator's liabilities and obligations and all of the Licensee's remedies in relation to any of the VSNi Software infringing any Intellectual Property Rights and in relation to any breach of the warranty in Clause 5.1.

6.4 VSNi acknowledges that all Intellectual Property Rights in the Licensee Data are and will remain the Licensee's property. The Licensee will have sole responsibility for and will ensure the legality, reliability, integrity, accuracy and quality of the Licensee Data.

7. Termination

7.1 Either Party may terminate this Agreement immediately on giving notice in writing to the other if:

7.1.1 the other commits any material or persistent breach of this Agreement and (in the case of a breach which is capable of being remedied) it has failed to remedy it, within 30 days after receiving notice requiring it to remedy the breach. (A persistent breach is one that occurs three or more times in any 12 month period.); or

7.1.2 the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.

7.2 VSNi may suspend the performance of this Agreement by VSNi or the IBP Operator or the Authorised Reseller (or all of them) if any of the circumstances mentioned in Clause 7.1 above arises in relation to the Licensee. That suspension will not prejudice VSNi's right later to terminate this Agreement, either for the same or for a different reason.

7.3 On the expiry or termination of this Agreement (however it happens), the Licensee's right to use the VSNi Software will immediately and automatically terminate, the Licensee will immediately return to VSNi or the Authorised Reseller all copies of the VSNi Software in the Licensee's possession or control, the Licensee will immediately erase all copies of the VSNi Software from any computer system in its possession or control, and the Licensee will certify to VSNi in writing that this has been done.

7.4 The expiry or termination of this Agreement (however it happens) will not affect any accrued rights or liabilities of any person, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.

7.5 On the termination of this Agreement the Licensee will immediately pay VSNi or the Authorised Reseller for all work done before termination and for all expenses VSNi or the Authorised Reseller has incurred or has agreed to incur in connection with any work done or to be done for the Licensee.

8. Confidentiality and Data Protection

8.1 VSNi will keep confidential, and not use for any purpose except providing the VSNi Software and services to the Licensee, any confidential information which the Licensee discloses to VSNi relating to the Licensee's business or its clients and their affairs.

8.2 The Licensee will keep confidential, and not use for any purpose except exercising its rights under this Agreement, the VSNi Software, any information relating to the VSNi Software, any information relating to the IBP, and any information about VSNi's or the IBP Operator's or the Authorised Reseller's business, or their respective financial affairs, methodologies, strategies, plans, technology or clients. The Licensee will notify VSNi immediately if the Licensee becomes aware of any unauthorised use of any of that information or of the VSNi Software. The Licensee will allow VSNi at any time to check that the Licensee's use of the VSNi Software is in accordance with this Agreement and, for that purpose, the Licensee irrevocably licenses VSNi and its employees and agents, to enter any of the

Licensee's premises.

8.3 The Licensee will not, without first obtaining VSNi's written consent or in accordance with Clause 8.8, disclose any of the VSNi Software or any information protected by Clause 8.2 to anyone except:

8.3.1 the Licensee's employees, and then only to those employees who need to know or to have access to them in order to use the VSNi Software in accordance with this Agreement; or

8.3.2 the Licensee's auditors, HM Revenue and Customs, or any other tax authority, or any other person having a right, duty or obligation to know the Licensee's business, but then only in pursuance of that right, duty or obligation.

8.4 The Licensee will ensure that the people mentioned in Clause 8.3 are made aware, before the disclosure to them of any of the VSNi Software or any information protected by Clause 8.2, that it is confidential and that they owe a duty of confidence to VSNi, the IBP operator and the Authorised Reseller. The Licensee will indemnify VSNi, the IBP Operator and the Authorised Reseller against any and all loss and damage which they may respectively sustain or incur as a result of the Licensee or its employees, or anyone who has access to any of the VSNi Software or any information protected by Clause 8.2 through the Licensee failing to comply with the provisions of this Clause 8.

8.5 The Licensee will immediately notify VSNi if the Licensee becomes aware of any breach of confidence by anyone to whom the Licensee discloses the VSNi Software or any of the information protected by Clause 8.2, and the Licensee will give VSNi, the IBP Operator and the Authorised Reseller respectively all assistance reasonably required by them in connection with any action or proceedings which they may institute against that person for breach of confidence.

8.6 The Licensee will effect and maintain adequate security measures to safeguard the VSNi Software and information protected by Clause 9.2 from access or use by any unauthorised person, will retain them and all copies of them under the Licensee's possession and control, will keep a full and accurate record of the Licensee's copying and disclosure of them, and will produce that record to VSNi from time to time on demand.

8.7 The provisions of Clauses 8.1 and 8.2 do not apply to any information which is in or comes into the public domain unless as a result of a breach of Clause 8.1 or 8.2.

8.8 If the License is subject to any freedom of information or similar legislation, it may make any disclosure that it is obliged to make under that legislation provided it informs VSNi of the requirement to make any such disclosure as quickly as possible, takes any reasonable steps requested by VSNi to limit lawfully the information so disclosed and does not make any disclosure of any information which is exempt from disclosure under that legislation.

8.9 If VSNi, the IBP Operator or any Authorised Reseller processes any personal data on the Licensee's behalf when performing its obligations under this Agreement, the Parties' intention is that the Licensee will be the data controller and VSNi, the IBP Operator or the Authorised Reseller (as the case may be) will be data processors and:

8.9.1 the Licensee acknowledges and agrees that the personal data may be transferred or stored outside the European Economic Area or the country where the Licensee and its users are located in order to provide services and carry out VSNi's obligations under this Agreement;

8.9.2 the Licensee will ensure that the Licensee is entitled to transfer the personal data to VSNi, the IBP Operator and the Authorised Reseller so that VSNi, the IBP Operator and the Authorised Reseller may lawfully use, process and transfer the personal data;

8.9.3 the Licensee will ensure that all relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

8.9.4 each Party will take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

9. The Licensee's Information and Facilities

9.1 The Licensee will provide VSNi, the IBP Operator, and the Authorised Reseller, free of charge, with all information, materials, documentation, resources and facilities reasonably requested by it to enable it to perform this Agreement. The Licensee will ensure that its staff, contractors and other suppliers co-operate fully with VSNi, the IBP Operator, and the Authorised Reseller, and cause no delay. Where VSNi, the IBP Operator, or the Authorised Reseller requests the Licensee to provide information or to take a decision, the Licensee will do so promptly and so as not to cause any delay.

9.2 The Licensee is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the IBP Operator, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet.

10. Entire Agreement and Amendments

This Agreement supersedes all earlier agreements, arrangements and understandings between the Parties in respect of its subject matter, and constitutes the complete agreement between them relating to that subject matter. No addition to, or modification of, any provision of this Agreement will be binding on either Party unless recorded in writing and signed by a duly authorised representative of each of them.

11. Notices

All notices given by VSNi under this Agreement will be in writing and be sent to the contact address, e-mail address or fax number of the Licensee set out in the Order Form or any other address, e-mail address or fax number which the Licensee may designate by notice given to VSNi in accordance with this Clause 12. Any notice given by the Licensee under this Agreement must be in writing and sent to VSNi's registered office, or contact e-mail address or fax number given in this Agreement, or any other address, e-mail address or fax number which VSNi may designate by notice given to the Licensee in accordance with this Clause 11. Any notice may be delivered by hand, by courier, by first class pre-paid letter or by e-mail and will be deemed to have been served: if by hand or courier, when delivered; if by first class post, 48 hours after posting; and if by e-mail, on that e-mail being accessible by the intended recipient.

12. Limitations and Exclusions of Liability

12.1 Subject to Clause 12.5, the aggregate total liability of VSNi, the IBP Operator, and the Authorised Reseller for all and any claims in connection with the VSNi Software and the performance or non-performance of this Agreement, whether in contract, or tort (including negligence) or arising in any other way, will not exceed the licence fees paid by the Licensee during the 12 months immediately preceding the date on which the claim is first notified by the Licensee to VSNi.

12.2 Despite anything else contained in this Agreement (except Clause 12.5), neither VSNi, nor the IBP Operator nor the Authorised Reseller will be liable to the Licensee for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, loss of contracts, in any case whether direct or indirect, or for any indirect or consequential loss, in each case whether arising from negligence, or breach of contract, or in any other way, even if VSNi, the IBP Operator, or the Authorised Reseller had been advised of, or knew of, the likelihood of that loss or type of loss arising.

12.3 Because of the uncertainty of future events and circumstances neither VSNi, nor the IP Operator, nor the Authorised Reseller guarantees or warrants that any forecasts, projections, advice, recommendations or the contents of any report, presentation or other document will be achievable, and the Licensee acknowledges that the same (if any) are given to address specific circumstances at the time. All information which VSNi, the IBP Operator, or the Authorised Reseller supplies is supplied in good faith, but the accuracy and completeness of any information obtained from, or based on, information obtained from the Licensee or any third party is not warranted by VSNi, the IBP Operator, or the Authorised Reseller. It is not within the scope of the obligations of VSNi, the IBP Operator, or the Authorised Reseller to enquire as to, or to verify, the accuracy or completeness of that information.

12.4 The Licensee acknowledges that the above limitations of and exclusions on the liability of VSNi, the IBP Operator, and the Authorised Reseller are reasonable in the light of VSNi's insurance arrangements and that VSNi is willing to accept a higher limitation on its liability provided it is able to obtain full insurance cover for its liabilities and the Licensee pays the costs of obtaining and maintaining any increased cover.

12.5 Nothing in this Agreement limits or excludes the liability of VSNi or the IBP Operator or the Authorised Reseller for death or personal injury caused by its negligence or for fraud, or affects any of the Licensee's statutory rights as a consumer.

12.6 The VSNi Software has been developed for use with the operating system specified in the Order Form. Neither VSNi, nor the IBP Operator, nor the Authorised Reseller will be liable for any failure to operate with any other operating system or for any degradation in performance or reduction in functionality caused by the use of the VSNi Software with any other operating system.

13. Delays

13.1 Despite anything else contained in this Agreement, neither VSNi, nor the IBP Operator, nor the Authorised Reseller will be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including, without limitation, any act or omission on the Licensee's part or on the part of any third party, and any bug, defect, error, fault or deficiency in any software or data not provided by VSNi or developed by or on behalf of the Licensee, or in any equipment), and VSNi, the IBP Operator, and the Authorised Reseller will be granted a reasonable extension of time for the performance of its obligations.

13.2 VSNi will endeavour to comply with any timetable, project plan or dates which it has given to the Licensee for the performance of this Agreement but they are estimates only, and neither VSNi, nor the IBP Operator, nor the Authorised Reseller will be liable for any delay or failure to supply or perform in accordance with that timetable or project plan, or those dates.

14. Assignment

14.1 The Licensee may not assign, or transfer, or sub-contract this Agreement or any of its rights or obligations under it, whether in

whole or in part, without first obtaining VSNi's written consent.

14.2 VSNi reserves the right to assign any of its rights or obligations under this contract to a suitably qualified third party, including but not limited to the IBP Operator.

15. Severability

If any part of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will not be affected.

16. Waiver

No forbearance or delay by any person in enforcing its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any later right or breach. No right, power or remedy conferred on, or reserved to, any person is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

17. Law

This Agreement and its validity are governed by, and this Agreement is to be construed in accordance with, the laws of England and Wales. The Licensee irrevocably agrees to submit to the jurisdiction of the English Courts. Where the Licensee is outside the jurisdiction of the English Courts, the Licensee's address for service in England is set out in the Order Form.

18. Partnership and Third Parties

18.1 Nothing in this Agreement creates, evidences or implies any partnership or joint venture between the Parties, or the relationship between them of principal and agent. VSNi is not the IBP Operator's agent and any Authorised Reseller is acting as principal and not as VSNi's agent. Neither VSNi nor the IBP Operator nor the Authorised Reseller will be liable to the Licensee or anyone else for the acts or omissions of the others.

18.2 The IBP Operator and the Authorised Reseller respectively are entitled to the benefit of Clauses 2.14, 3.4, 5.2, 5.4, 5.5, 5.6, 5.7, 5.9, 5.11, 5.13, 5.14, 5.15, 5.16, 5.17, 6.3, 7.2, 8, 9, 10, 13, 14.2, and 18.1 and all disclaimers and limitations and exclusions on or of its liability contained in this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999. Nevertheless the amendment, termination or rescission of this Agreement will not require the agreement or consent of the IBP Operator, or the Authorised Reseller. Subject to the above, no third party is entitled to the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999 (UK) or otherwise.

19. Survival of Clauses

Clauses 5.5, 5.6, 5.9, 5.13, 5.14, 5.16, 6.1, 6.3, 6.4, 7.3, 7.4, 7.5, 8, 10, 12, 13, 14, 15, 16, 17, and 18 will survive the termination or expiration of this Agreement and continue indefinitely.

[>>> go to Software Service Agreement](#)