



October 3, 2017 Revision

This Agreement can be found at <https://www.thinksis.com/legal>

VBS Enterprise Edition Software License Subscription Agreement

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This Agreement is a subscription contract for services setting forth the terms and conditions of the license to use VBS Enterprise Edition as defined below. VBS, LLC (hereinafter “VBS”) hereby grants to you (“Licensee” as identified in the Sales Order) a non-exclusive license (the “License”) for the use of the enclosed computer software program and documentation (together, the “Software”), subject to the terms and conditions described below. This Agreement is terminable by either Party pursuant to the terms contained herein and, unless otherwise terminated consistent herewith, shall automatically renew from month to month.

Section 1 – Definitions.

- 1.1 “Contact Person” shall mean the person designated by the Licensee to receive all notices or other information regarding or affecting the License or the Software. Licensee agrees to provide to VBS with the name, address, telephone number and email address of said Contact Person and any changes thereto.
- 1.2 “Documentation” shall mean any support documents associated with the Software which is located at the VBS website.
- 1.3 “Intellectual Property Rights” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.
- 1.4 “License” means a license to use the Software as specified in the applicable Sales Order and this Agreement.
- 1.5 “Monthly Subscription Fees” means the fees for the License to the Software as specified or required in the applicable Sales Order.
- 1.6 “Sales Order” means completed document to indicate price, scope, term, of the use of the Software.

- 1.7 "Sales Order Effective Date" means, with respect to each Sales Order, (i) the effective date specified in the Sales Order or, if none, the date on which the last of VBS and Licensee executes the Sales Order.
- 1.8 "Software" shall mean VBS Enterprise Edition Software of any or all thereof, as applicable, and any other computer software or electronic files provided by VBS to Licensee under the terms of this Agreement.
- 1.9 "User" means any individual who is an employee of Licensee who is authorized by Licensee to use the Software pursuant to the applicable.

Section 2 – Payment Terms, Grant of License, Term, and Termination.

- 2.1 **Payment Terms** – The monthly subscription contract for services is payable by means of a Monthly Subscription Fee, which fee shall be chargeable and accrue on or about the same business day of each month until termination of this Agreement by VBS or until Licensee notified VBS of, and VBS receives, notice of termination by Licensee in writing. Payment terms are net 30 days from date of invoice. VBS is not obligated to prorate or to refund any accrued Monthly Subscription Fees.
- 2.2 **Taxes** - Licensee will be responsible for any applicable sales, use, or any value added or similar taxes ("Taxes") payable with respect to the licensing of the Software to Licensee, provision of the Software, or otherwise arising out of or in connection with this Agreement, other than taxes based upon VBS's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all Monthly Subscription Fees, rates and estimates exclude Taxes. If Licensee has tax-exempt status, Licensee will provide written evidence of such status with its purchase orders.
- 2.3 **Delinquent Account** – Monthly Subscription Fees are due and payable to VBS on or about the same business day of each month in advance without demand (hereinafter "Due Date"). Any Monthly Subscription Fees that are due and payable to, and not received by, VBS by the Due Date shall be considered delinquent. VBS retains the right to, and shall, terminate Licensee's access to the Software in the event that Licensee is delinquent as defined above. AN ACTIVE SUBSCRIPTION IS REQUIRED IN ORDER TO USE THE SOFTWARE OR TO OBTAIN TECHNICAL SUPPORT, INCLUDING, BUT NOT LIMITED TO, ACTIVATION, RE-ACTIVATION, REGISTRATION, RE-REGISTRATION AND AUTHORIZED TRANSFER BY LICENSEE OF THE SOFTWARE TO ANOTHER USER, AND TERMINATION OF LICENSEE'S SUBSCRIPTION FOR ANY REASON SHALL FORTHWITH SERVE TO DENY ACCESS TO THE SOFTWARE AND THESE SERVICES AS AFORESAID
- 2.4 **Updates** - Except as otherwise provided in this Agreement, while this Agreement is in effect, VBS shall provide Licensee with all applicable updates and upgrades for the Software at no additional charge; however, services effort will be billable and is not included in standard support. VBS reserves the right to provide updates and upgrades via Internet download or via CD-ROM or other medium to be determined at the sole discretion of VBS. Current updates and upgrades shall not be made available to a Licensee who is delinquent as defined above.
- 2.5 **Grant of License** - VBS grants to Licensee such number of licenses to use the Software as to which Licensee shall subscribe. Licenses may be used on a computer network and/or individual stand-alone computers. One license is required for each authorized workstation whether on a network or stand-alone, regardless of number of users.
- 2.6 **Copying, Installation and Operation** - VBS hereby grants Licensee the following non-exclusive, non-transferable, worldwide licenses, without right to sub-license, for the License Term, and

subject to the Sales Order and the provisions of this Agreement, to: (a) reproduce the Software to the extent permitted within the Sales Order; (b) to distribute such copies to and install them on computers owned by Licensee or under its control; (c) to run the Software on the computers described in Section 2.6(b) above; and (d) to reproduce copies of the Documentation to the extent reasonably necessary for Users to use the Software, and to distribute and display such copies internally within Licensee to Users.

- 2.7 No Assignment by Licensee - Licensee may not, except as expressly provided herein, sub-license, lease, rent, or transfer the Software, in whole or in part, to any person or entity; provided, however, that in the event of a change in control of Licensee due to merger or acquisition, Licensee may assign its rights herein on receipt of VBS's written consent, which shall not be withheld unreasonably.
- 2.8 Protection Against Unauthorized Use - Licensee will promptly notify VBS of any unauthorized use of any Software of which Licensee becomes aware. In the event of any unauthorized use by any User, Licensee will use all commercially reasonable efforts to immediately terminate and prevent further occurrences of such unauthorized use.
- 2.9 Annual Fee Increases - Fees for Licensee's use of the Software are subject to annual increases, which will be effective beginning upon the first day of each Renewal Term. VBS will notify Licensee of any increase prior to its becoming effective; notice may be in a form of an updated Sales Order. If Licensee objects to the increase, then Licensee may terminate its License; any such termination will be effective on expiration of the then current License Term. Licensee acknowledges that expiration of any discount or incentive programs to which Licensee was previously entitled do not constitute fee increases.
- 2.10 Term - Each Sales Order will commence on the Sales Order Effective Date, and will continue for the period specified in the Sales Order or, if not so specified, one year (the "Initial License Term"), unless sooner terminated in accordance with Section 2.12 below. Unless otherwise specified in the Sales Order, the Initial License Term will automatically renew for additional terms of the same length as the Initial License Term (each a "Renewal License Term") unless either party declines renewal by notice in writing to that effect delivered to the other party at least 30 days prior to expiration of the then current License Term. The Initial Term and each Renewal Term are individually referred to in this Agreement as the "License Term".
- 2.11 Termination – Licensee may terminate the Agreement in accordance with the following subsections:
- i. Licensee's Termination for Convenience. Licensee may terminate any Sales Order for convenience following expiration of all minimum terms specified in the Sales Order, upon not less than 30 days prior written notice to VBS. If Licensee terminates any Sales Order under this Section 2.12, Licensee will not be entitled to any refund of Monthly Subscription Fees paid or relief from Monthly Subscription Fees payable under such Sales Order.
 - ii. Termination for Cause. If either Party materially breaches any of its obligations under this Agreement and fails to cure such breach within 30 days from the date it receives from the non-breaching Party a notice of the breach and a demand for cure, then the non-breaching Party may terminate all or any affected Sales Orders, Licenses or related services immediately on notice. Without limiting the foregoing, Licensee's failure to pay past due Monthly Subscription Fees within 15 days of receipt of a written notice of late payment will constitute a material breach of the applicable Sales Order and of the License. If Licensee has not cured a

material breach within the applicable cure period then, until Licensee has cured the breach in full, VBS may, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, (i) suspend performance of some or all of VBS's obligations under the applicable Sales Order, including obligations to provide the Support Program or Installation Services; and (ii) suspend the Licenses granted pursuant to the applicable Sales Order. Notice of termination for any Sales Order will not be interpreted to be notice of termination for any other Sales Order.

- iii. Obligations on Termination. Upon any termination or expiration of a License Licensee will destroy all copies of the Software and the Documentation within its custody or control within 30 days of such termination, and immediately provide VBS with a written statement signed by an authorized representative of Licensee certifying that all copies of the Software have been destroyed and all use of the Software has been discontinued; and (ii) each Party will return or destroy all copies of any Confidential Information of the other, as certified by an authorized representative of the returning party.
- iv. Effect of Termination. No expiration or termination of this Agreement or of any Sales Order will relieve Licensee of its obligation to pay any amounts accruing under such Sales Order prior to such expiration or termination.
- v. Survival. The provisions of Sections 3.1, 3.2, 3.3 and of this Agreement will survive any termination or expiration of this Agreement.

Section 3 – Confidentiality, Warranties, and Liability.

3.1 Confidentiality - Licensee acknowledges that the Software contains trade secrets of the VBS. Except as may be required by applicable law, Licensee is prohibited from creating or attempting to create, or permitting others to create or attempt to create, by reverse engineering, disassembly, recompilation, or otherwise, the source code for the product from the object code or from other information made available under the License. Licensee agrees to notify VBS immediately of the unauthorized possession or use of any item supplied under the License. Licensee will promptly furnish full details of such possession or use to the VBS, will assist in preventing the recurrence of such possession or use and will cooperate with VBS to protect its proprietary rights. Licensee's compliance with this paragraph shall not be construed in any way as a waiver of any right of VBS to recover damages from, or obtain other relief against Licensee. Licensee acknowledges and agrees that the Software is of extraordinary and unique character and that the injury, which would be suffered by VBS, in the event of a breach by Licensee of any of its obligations would be irreparable and otherwise of a character which could not be fully compensated for solely by recovery of monetary damages. Accordingly, Licensee agrees that, without in any way limiting the other rights or remedies of VBS, VBS shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement, or any other appropriate equitable relief, without any bond or other security being required and without being required to show any actual damage or that monetary damages would not provide an adequate remedy. All right, title and interest in and to any derivative software created or developed by or for Licensee and all intellectual property rights therein or related thereto shall be owned exclusively by VBS.

3.2 Limited Warranty -THE SOFTWARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND FROM VBS, EXCEPT AS EXPRESSLY PROVIDED BELOW. VBS has no obligation to

Licensee for any defect in the Software, except as expressly provided below, or for their failure to meet Licensee's needs.

i. For a period of ninety (90) days following installation of the Software, the Software will not malfunction or otherwise become inoperative causing a significant and ongoing interruption of Licensee's business operations. In such event, VBS shall expend all reasonable efforts to provide a correction or otherwise repair such problem as soon as reasonably practicable. In the event such malfunction is not fixed within thirty (30) days of VBS's receipt of notice of such malfunction, VBS shall, at Licensee's request, refund 100% of Monthly Subscription Fees for the previous and current month of occurrence of malfunction.

ii. **Sole and Exclusive Remedy for Breach.** VBS will repair, replace or correct Software failing to conform to the warranties set forth in this Section, provided that the relevant Licensee notifies VBS in writing of the defect. VBS's obligation to repair, replace or correct in accordance with this Section shall be the Licensee's sole and exclusive remedy for a breach of the warranties set forth in Section.

iii. **LIMITATION OF ALL OTHER WARRANTIES.** Licensee expressly acknowledges and agrees that, except for the express warranties and exclusive remedy set forth in this Section, use of the Software is at its own risk and the Software is provided "AS IS, WITH ALL FAULTS AND DEFECTS," and without any other warranty of any kind, and VBS EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, ACCURACY, AESTHETICS, MARKET APPEAL, SATISFACTORY QUALITY OR FITNESS FOR A PURPOSE. VBS DOES NOT WARRANT THAT THE INFORMATION OR FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR FULFILL ANY OF LICENSEE'S PARTICULAR PURPOSES OR NEEDS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, VBS DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VBS OR A VBS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE VBS SOFTWARE PROVE DEFECTIVE, LICENSEE (AND NOT VBS OR AN VBS AUTHORIZED REPRESENTATIVE) ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION, except as otherwise provided in this Section.

3.3 Limitation of Liability –

i. **ALL ACTIONS.** VBS SHALL NOT IN ANY EVENT BE LIABLE HEREUNDER FOR PENALTIES OR LIQUIDATED DAMAGES, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST OR DAMAGED INFORMATION OR DATA, FAILURE TO ACHIEVE COST SAVINGS, LOSS OF USE OF FACILITIES OR EQUIPMENT, OR THE FAILURE OR INCREASED EXPENSE OF OPERATIONS, REGARDLESS OF WHETHER ANY SUCH

LOSSES OR DAMAGES ARE CHARACTERIZED AS ARISING FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF VBS IS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, OR IF SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

- ii. **Exceptions.** The provisions of this Section shall not limit (a) liability for breach of any confidentiality obligation, (b) liability for infringement of the other party's Intellectual Property Rights, or (c) liability for payment of interest added by a court of law or an arbitration panel to a judgment entered in any action or proceeding under this Agreement.
- iii. **Limitations Period.** No action, suit or proceeding arising out of this Agreement may be brought more than two (2) years after the cause of action arises, except that VBS may bring an action for payment within one year after the date of the most recent payment.

Section 4 – VBS Support and Maintenance.

- 4.1 Support - For such a period as Licensee has paid the applicable Monthly Subscription Fee and is current (within 30 days of due date) in any other payables to VBS. VBS will use reasonable commercial efforts to provide Licensee with support regarding use and deployment of the Software from 8:00am to 5:00pm Eastern Standard Time on Monday through Friday (excluding VBS Inc. holidays) ("Support") to up to two (2) designated employees of Licensee ("Designated Licensee Contacts"), consisting of the following: (i) all support requests must be initiated through submitting a ticket via the VBS Call Center application; upon receipt of ticket request, VBS will provide email support or may schedule a phone/online support session, (ii) generally commercially released code corrections, patches, updates, Major Releases and Minor Releases of the same Software product(s) as licensed by Licensee ("Maintenance"). Support is provided for the current release of the Software and for the release immediately prior to the current release. Service effort in support of Software updates is not included and will be provided on an hourly basis; (iii) Services provided outside of regular business hours listed above in Section 4.1 will incur an uplift in charge with weekday (Monday through Thursday) incurring a 1.5 times the established hourly rate and weekend (Friday through Sunday) incurring a 2.0 times the established hourly rate for work performed.
- 4.2 Service Level Commitments - VBS shall provide Support response within four hours for service requests that are declared by the Licensee to be problems which render the Software inoperative or otherwise cause a significant and continuing interruption of Licensee's business activities ("Critical Malfunction"). VBS shall provide Support response within one business day for all other service requests. VBS understands and acknowledges the critical nature of the proposed application of the VBS software in Licensee's business and the importance of providing Licensee prompt and appropriate levels of Support within the time frames outlined herein. In the event there exists a Critical Malfunction which VBS is unable to correct within a period of forty-five (45) days following Licensee's notification to VBS of the existence of such event, VBS agrees to refund, at Licensee's request, the previous one-month Monthly Subscription Fees paid by Licensee for the Software.
- 4.3 Excluded Items - The following are excluded from VBS's Support and Maintenance obligations hereunder: (i) Any third party hardware or software used on or in conjunction with the Software other than the hardware and software with which the Software was designed to be used as described in the documentation accompanying the Software; (ii) Software that has been altered or modified, unless altered or modified by VBS or pursuant to the express terms of this

Agreement; (iii) Software that has become defective due to accident, hardware malfunction, abuse or improper use by Licensee or any third party; (iv) any version of the Software for which Maintenance services have been discontinued by VBS (v) any Software sold separately by VBS including, without limitation, consulting code, unless generally made available to VBS's Support and Maintenance customers at no additional charge for the applicable Software; and (vi) general questions regarding JAVA or any other computer language. VBS will provide "commercially reasonable" but in no event less than 45 days' notice of exclusion as it relates to (i), (ii) (iv) (v) and (vi).

- 4.4 Additional Services and Charges - VBS reserves the right, upon prior notice, to charge for services, at current VBS hourly rates, that are not within the scope of Support and Maintenance, such as, without limitation, (i) after-hours support to include "mission critical" support 24 hours per day (ii) debugging application decoding errors in Licensee's or other third party's applications; or (iii) debugging problems in non-Maintained Software, or in combinations of Maintained Software and non-supported products or applications, where the problem, occurs in the non-supported product or application, (iv) telephone and/or email support for third party applications required by VBS environment.

Section 5 – Miscellaneous Terms.

- 5.1 Governing Law – The laws of the Commonwealth of Kentucky shall govern this Agreement, and, where such laws are preempted by the laws of the United States, by the internal laws of the United States, in each case without regard to (a) conflicts of laws principles, and (b) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods.
- 5.2 Publicity - Provided that VBS complies with any trademark usage requirements notified to it by Licensee, VBS may refer to Licensee as one of VBS's Licensees and use Licensee's logo as part of such reference. With Licensee's prior written approval, not to be unreasonably withheld, VBS may issue a press release announcing the relationship between VBS and Licensee.
- 5.3 Compliance with Laws/Export Control - Licensee agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Licensee covenants that it will not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from VBS under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Licensee agrees to indemnify, to the fullest extent permitted by law, VBS from and against any fines or penalties that may arise as a result of Licensee's breach of this provision.
- 5.4 Force Majeure - If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease.

- 5.5 Modification to Agreement – The terms and provisions of this Agreement may be modified from time to time; however, such updated terms will be available on the website.
- 5.6 Binding Effect - This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- 5.7 Equitable Relief - Each of Licensee and VBS acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a Party's Intellectual Property Rights or Confidential Information. Accordingly, each of them will have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of such obligations in this Agreement.
- 5.8 Captions and Headings - The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.
- 5.9 Severability - If any provision of this Agreement is held to be invalid, such invalidity will not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision will be interpreted to be only as broad as is enforceable.
- 5.10 Waiver - No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, will in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver will be effective only in the specific instance and for the purpose for which given.
- 5.11 Third Party Beneficiaries - Except as expressly set forth in this Agreement, no provisions of this Agreement are intended nor will be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party.
- 5.12 Entire Agreement - This Agreement constitutes and embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. All Software and related services licensed or purchased, as applicable, by Licensee under this Agreement will be subject to the terms and conditions of this Agreement. With the exception of order quantities and Monthly Subscription Fees, any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those specified in this Agreement will not be binding on the Parties, even if signed and returned, unless both Parties agree in a separate writing to be bound by such different or additional terms and conditions. In the event of any conflict between the terms of this Agreement and any Sales Order, the following order of precedence will apply: (a) the Agreement, and (b) the applicable Sales Order.