VSN International Limited

Institutional Licence Agreement

Genstat For Teaching and Learning

Date: 20

Parties:

1.   **VSN International Limited**, a company registered in England, under company number 4027977, whose registered office is at 5 The Waterhouse, Waterhouse Street, Hemel Hempstead, HP1 1ES, United Kingdom (**VSNi**).

2.   **[Insert Full Name of Institution
                    ]** of [insert full address of institution

                                                                          ]
      (**the Institution**).

Agreement

1.   Definitions

this Agreement means this document and the Schedule attached to it, as amended from time to time in accordance with clause 10;

the Current Version means the last version of the Software released by VSNi for use by schools and universities generally, and does not mean any beta test version of the Software or any version developed or modified to meet the requirements of one or more particular licensees;

the Documentation means the Genstat Getting Started Guide included in the Software and any lesson plans and other teaching guides which VSNi chooses to make available to the Institution from time to time;

an Educational Institution means an academic or vocational institution, public or private school, elementary, primary, intermediate, secondary or high school, academy, vocational school, job training establishment, a sixth form college, college of education or further education, a university, scientific or technical college or institution or a polytechnic, in each case accredited or recognised by the government or a governmental regulatory agency in the country in which the Institution is situated;

Intellectual Property Rights means any patent, copyright, trade mark, trade name, service mark, registered design, design right (registered and unregistered), know-how, right of confidence, trade secret, right to extract or exploit data, database rights, any similar rights protected in any jurisdiction, whether now existing or coming into existence at some future date, any application for any of the above, and any accrued rights of action in respect of any of the above;

a Reseller means a person appointed by VSNi to negotiate with, and provide certain services to end users of the Software, and **the Reseller** means the particular Reseller through whom the Institution has acquired its licence to use the Software;

the Software means the software (in object code) known as Genstat for Teaching and Learning provided by VSNi or a Reseller to the Institution;

the Start Date means the date on which VSNi or the Reseller provides the Licence Key to the Institution;

a Student means a registered pupil or student at the Institution except a postgraduate student or work placement student;

Working Hours means 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.

2.   Licence - Restrictions

2.1   The Institution may use the Software and the Documentation only on the terms set out in this Agreement. The licence is non-exclusive and non-transferable.

2.2.   The Software and the Documentation may only be used by an Educational Institution and the Institution warrants to VSNi that the Institution is an Educational Institution.

2.3.   The Software and the Documentation may only be used by an employee of the Institution, faculty member of the Institution or any Student for the purpose of teaching Students (including by distance learning where the teacher and materials are geographically remote from the Student).

2.4.   The Software and the Documentation may **NOT** be used:

2.4.1   for postgraduate teaching;

2.4.2   for research purposes;

2.4.3   for commercial purposes;

2.4.4   for consultancy or other services provided to any third party (whether or not provided for a fee or monetary reward);

2.4.5   in connection with any work which directly benefits the employer of any person on an industrial or student placement or course paid for by that person's employer;

2.4.6   by a walk in user, being a person who is not, at the relevant time, a Student, faculty member or employee of the Institution but who, for instance, accesses the Institution's systems via a computer or terminal within a library; or

2.4.7 in connection with the administration or management of the Institution's business.

2.5 If the Institution wishes to use the Software or the Documentation for any of the purposes listed in clause 2.4 or for any purpose other than teaching Students, the Institution should contact VSNi who may grant a licence for that use in return for a licence fee.

2.6 If one or more sites, or one or more machines, or a version of the Software, or the operating system are specified in the Schedule, the Software may only be used at that site or those sites or on that machine or those machines, and where a version of the Software or an operating system is specified in the Schedule, this Agreement permits the use of that version of the Software and with that version of that operating system only. If the Institution wants to change or add to the sites or the machines, or to use a different version of the Software, or to use the Software with a different operating system, it must obtain an additional licence or extension of this licence from VSNi or the Reseller.

2.7 The licence is restricted to use of the version of the Software first supplied pursuant to this Agreement by VSNi or the Reseller, and the Institution is not entitled to new versions of the Software.

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

2.9 Any employee of the Institution, faculty member of the Institution or any Student may use the Software at his normal residential address for the purpose of teaching Students.

2.10 The licence will begin on the Start Date and unless it is terminated under clause 2.8, it will continue until the termination of this Agreement under clause 7.1.

2.11 The Institution must not transfer the Software or the Documentation nor share their use with anyone except its employees, faculty members and Students in accordance with this Agreement. Nor may the Institution use the Software or the Documentation for anyone else's (except a Student's) benefit (including, without limitation, using it to provide bureau, outsourcing or application services or facilities management services). The Institution may not sub-license the use of the Software or the Documentation except to allow its employees, faculty members and Students to use the Software in accordance with this Agreement.

2.12 The Institution (but not any other person) may copy the Software and the Documentation for the purposes of using it in accordance with this Agreement and may make a reasonable number of back-up copies. The Institution must keep each copy of the Software and each copy of the Documentation in a secure place, in the Institution's possession, and under its control, at all times

and must ensure that when its employees, faculty members and Students use the Software or the Documentation from home, they keep them secure at all times.

2.13   The Institution must ensure that every copy of any of the Software and every copy of the Documentation bears the copyright and other proprietary notices on the original copy of the Software or the Documentation (as the case may be).   The Institution must not remove, obliterate or modify any of those notices.

2.14   The Institution may not modify the Software, or combine it with, or incorporate it in, any other software.

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

2.16   The Institution must ensure that its employees, faculty members and Students comply with the terms of this Agreement.

3.   Support, Training and other Services

3.1   VSNi will endeavour to assist the Institution, through VSNi's help desk during Working Hours, if the Institution encounters any problem in installing the Software on the Institution's internal systems. VSNi is under no obligation to provide any other support, maintenance, assistance in relation to the Software.

3.2   VSNi is not obliged to provide any statistical advice to the Institution, but will try and provide that sort of advice if and when it can. If VSNi or the Reseller provides any advice, training, assistance or service to the Institution, the clauses in this Agreement limiting or excluding liability will also apply to VSNi's or the Reseller's liability (as the case may be) in connection with that advice, training, assistance or service.

3.3   VSNi may decline to provide assistance under clause 3.1 or may charge the Institution for providing that assistance, if the Institution makes more than 3 calls to the helpdesk in any 3 month period.

3.4   VSNi may decline to provide the assistance referred to in clause 3.1 to anyone except the Institution's technical contacts named in the Schedule and anyone that the Institution notifies VSNi is replacing one of those contacts.

4.   Charges

4.1   The Software is provided free of charge.

4.2   If VSNi or the Reseller provides any advice, training, assistance or service (except that in clause 3.1) to the Institution, the Institution will pay VSNi or the Reseller (as the case may be) for that advice, training, other assistance or service the charges agreed between them for the same or, if no charges have

been agreed, at VSNi's or the Reseller's then standard rates for that advice, training, other assistance or service.

4.3 The Institution will reimburse VSNi and the Reseller for all travel, subsistence and other expenses incurred by their respective employees or contractors in providing the Software or any advice, training, assistance or service to the Institution.

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

4.5 The Institution will pay VSNi or the Reseller (as the case may be) all fees, charges and expenses payable under this Agreement within 30 days after the date of VSNi's or the Reseller's invoice. VSNi and the Reseller 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 Institution's failure to pay in accordance with the terms of this clause, the Institution still fails to make those payments in full.

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

5. Warranties

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

5.2 VSNi does not give any warranty in relation to the ownership of any Intellectual Property Rights in, or in relation to any right to license or use, any lesson plans, teaching guides and other materials it may make available.

5.3 Because the Software is provided free of charge, except for the warranty in clause 5.1, VSNi gives no warranty in relation to the Software or the Documentation and the Institution accepts that that Software and the Documentation are provided 'as is' and that the Institution uses them at its own risk.

5.4 Without prejudice to the provisions of clauses 5.2 and 5.3, neither VSNi nor any Reseller will be liable to the extent that any error, defect, bug or deficiency in the Software results from the Institution not having complied with its obligations under this Agreement, or from any other act or omission on the Institution's part, or on the part of any third party. In particular, VSNi

and the Reseller will not be liable if any modification has been made to any of the Software by anyone except VSNi.

5.5   Without prejudice to the provisions of clauses 5.2 and 5.3, neither VSNi nor the Reseller will be liable to the extent that any loss or damage is caused by the Institution's failure to implement, or the Institution's delay in implementing, any upgrade, update, new release, revision, version or modification of the Software which would have remedied or mitigated the effects of any error, defect, bug or deficiency.

5.6   Because of the nature of software, VSNi does not warrant that the 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.

5.7   The Institution acknowledges that proper use of the Software is dependent on the Institution and its employees, faculty members and Students exercising proper skill and care in inputting data into the Software and interpreting the output provided by the Software. Neither VSNi nor the Reseller will be liable for the consequences of decisions taken by the Institution, any employee, faculty member, Student or any other person on the basis of that output.

5.8   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 or the Reseller implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are, to the extent permitted by law, excluded.

5.9   The Institution 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 Institution waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by VSNi or the Reseller fraudulently) which is not specifically set out in this Agreement as a warranty.

6.   Intellectual Property Rights

6.1   The Institution acknowledges that all Intellectual Property Rights in the Software and the Documentation, as between the Institution 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   VSNi invites the Institution to make available to it lesson plans and other teaching guides for the Software. If the makes Institution makes any such material or any similar material available to VSNi (either directly or through any Reseller), VSNi will have the right to copy, amend and adapt that material and to distribute it (in its original form or as adapted or amended) to any licensee of the Software.

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 its performance of this Agreement if any of the circumstances mentioned in clause 7.1 above arises in relation to the Institution. 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 termination of this Agreement (however it happens), the Institution's right to use the Software and the Documentation will immediately and automatically terminate, the Institution will immediately return to VSNi or the Reseller all copies of the Software and the Documentation in the Institution's possession or control or in the possession or control of any of the Institution's employees, faculties members and Students, the Institution will immediately erase all copies of the Software and all copies of the Documentation from any computer system in its possession or control and will ensure that they are erased from any computer system in the possession or control of any of its employees, faculty members and Students, and the Institution will certify to VSNi or the Reseller in writing that this has been done.

7.4   Any termination of this Agreement (however it happens) will not affect any accrued rights or liabilities of either party, 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 Institution will immediately pay VSNi or the Reseller for all work done before termination and for all expenses VSNi has incurred or has agreed to incur in connection with any work done or to be done for the Institution.

7.6   Clauses 3.2, 4.5, 4.6, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 6, 7.2, 7.3, 7.4, 7.5, 7.6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 will survive the termination of this Agreement and continue indefinitely.

8.   Confidentiality

8.1   VSNi will keep confidential, and not use for any purpose except providing the Software and services to the Institution, any information which the Institution

discloses to VSNi and which is clearly marked as being 'confidential'. The Institution agrees that any lesson plans, teaching guides and similar materials which it supplies to VSNi or any Reseller are not confidential (even if marked as such).

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

8.3 The Institution will not, without first obtaining VSNi's written consent, disclose any of the Software, the Documentation or any information protected by clause 8.2 to anyone except:

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

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

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

8.5 The Institution will immediately notify VSNi if the Institution becomes aware of any breach of confidence by anyone to whom the Institution discloses the Software, the Documentation or any of the information protected by clause 8.2, and the Institution will give VSNi all assistance reasonably required by VSNi in connection with any action or proceedings which VSNi may institute against that person for breach of confidence.

8.6 The Institution will effect and maintain adequate security measures to safeguard the Software, the Documentation and information protected by clause 8.2 from access or use by any unauthorised person, will retain them and all copies of them under the Institution's possession and control, will keep a full and accurate record of the Institution'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.

9.   The Institution's Information and Facilities

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

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 Institution set out in the Schedule or any other address, e-mail address or fax number which the Institution may designate by notice given to VSNi in accordance with this clause 12.   Any notice given by the Institution under this Agreement must be in writing and sent to VSNi's registered office, or contact e-mail address or fax number given in the Schedule, or any other address, e-mail address or fax number which VSNi may designate by notice given to the Institution in accordance with this clause 11.   Any notice may be delivered personally, or by first class pre-paid letter, or by fax, or by e-mail and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; if by fax, when despatched, provided the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the intended recipient's fax number, 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, VSNi's and the Reseller's aggregate total liability for all and any claims in connection with the Software, the Documentation 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 greater of £5,000 (five thousand pounds sterling) or the fees and charges (if any) paid by the Institution under this Agreement.

12.2 Despite anything else contained in this Agreement (except clause 12.5), neither VSNi nor the Reseller will be liable to the Institution 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, whether arising from negligence, or breach of contract, or in any other way, even if VSNi or the 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 Reseller guarantees that its forecasts, projections, advice, recommendations or the contents of any report, presentation or other document will be achievable, and the Institution acknowledges that VSNi gives the same to address specific circumstances at the time. All information which VSNi or the Reseller supplies is supplied in good faith, but the accuracy and completeness of any information obtained from, or based on, information obtained from the Institution or any third party is not warranted by VSNi or the Reseller. It is not within the scope of VSNi's or the Reseller's obligations to enquire as to, or to verify, the accuracy or completeness of that information.

12.4 The Institution acknowledges that the above limitations of and exclusions on VSNi's and the Reseller's liability 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 Institution pays the costs of obtaining and maintaining any increased cover.

12.5 Nothing in this Agreement limits or excludes VSNi's or the Reseller's liability for death or personal injury caused by its negligence or for fraud.

12.6 The Software has been developed for use with the operating system specified in the Schedule. Neither VSNi nor the 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 Software with any other operating system.

13. Delays

13.1 Despite anything else contained in this Agreement, neither VSNi nor the 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 Institution'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 Institution, or in any equipment), and VSNi and the 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 Institution for the performance of this Agreement but they are estimates only, and VSNi will not be liable for any delay or failure to supply or perform in accordance with that timetable or project plan, or those dates.

14. Assignment

The Institution 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.

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 either party 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, either party is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

17. Headings

The headings in this Agreement are solely for convenience; they do not affect its interpretation, construction or terms.

18. Law

This Agreement and its validity are governed by, and this Agreement is to be construed in accordance with, the laws of England. The Institution agrees to submit to the jurisdiction of the English Courts or any other courts of VSNi's choosing. Where the Institution is outside the jurisdiction of the English Courts, the Institution's address for service in England is set out in the Schedule.

19. Partnership and Third Parties

19.1 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. Any Reseller is acting as principal and not as VSNi's agent.

19.2 The Reseller is entitled to the benefit of the disclaimers and limitations and exclusions on its liability contained in this Agreement and to be paid in accordance with clause 4 of this Agreement. Subject to that, no third party is entitled to the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

THE SCHEDULE

The site(s):

The version of the Software: **GenStat for Teaching and Learning**

The operating system:

Duration of licence: **12 month licence renewable annually**

The Institution's technical contacts (including email address & telephone):

The Institution's principal user contacts (including email address & telephone):

The Institution's contact address, e-mail address and fax number:

VSNi's contact e-mail address and fax number: **support@vsni.co.uk**
                                               +448701 215653

Signed for and on behalf of the Institution:

....
Signature

....
Name

....
Position

....
Official Stamp of the Institution