

# Software Agreement: Terms of Service

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**By using the software, you accept these terms. If you do not accept them, do not use the software, and you must contact us on: 01427 881277.**

**As described below, using the software also operates as your consent to the transmission of computer information during error-logging, backups, activation, validation and for Internet-based services.**

OVERVIEW

IT IS THE RESPONSIBILITY OF THE USERS TO MONITOR THE DATA RECORDED AND THAT THE INFORMATION ENTERED INTO THE SOFTWARE IS ACCURATE. ITS USE CANNOT REPLACE CLINICAL JUDGEMENT. USERS MUST MAINTAIN CONSISTENCY BY REGULARLY CHECKING THE DUPLICATE BARCODES REPORT OR HISTORY RECORDS. IF DATA HAS BEEN ENTERED INCORRECTLY, IT MUST BE CORRECTED BY THE USER USING THE DATA MANAGEMENT UTILITIES PROVIDED. USERS SHOULD BE VIGILANT WHEN ENTERING NEW DATA AND CONTINUE TO CHECK MANUALLY. THE USER SHOULD REPORT FAULTS (FOR VIVITECH PRODUCTS) TO US IF THEY ARISE SO THAT ANY ISSUE(S) CAN BE ADDRESSED. TECHNICAL SUPPORT IS SUBJECT TO AN ANNUAL SUPPORT FEE.

LIMITATION ON AND EXCLUSION OF DAMAGES

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**If you comply with these license terms, you have the rights below for each license you acquire.**

Licensing

The scope of the license is that the software is licensed not sold; this agreement only gives you some rights to use the software. Vivitech owns all other rights, unless applicable law gives you more rights despite this limitation. The device the license is assigned to be defined as the 'licensed device'. The software provided is licensed on a per-machine basis; if a terminal is decommissioned Vivitech will transfer the license to another terminal at no additional cost. If an additional installation of software is required, you must purchase an extra license and our support team will carry out the installation. PCT Engineers are permitted to reinstall our software on machines which have been replaced, we advise they contact us for guidance.

You may use the software only as expressly permitted in this agreement. In doing so, you comply with any technical limitations in the software that only allow you to use it in certain ways. You may **NOT**:

- Work around any technical limitations in the software.
- Non-Vivitech Personnel are not authorised to redistribute and use our software in source and binary forms, with or without modification.
- The reverse engineering, decompiling, disassembly or duplication of this software is strictly prohibited (except only to the extent that applicable law expressly permits, despite this limitation).
- Make more copies of the software than specified in this agreement.
- Publish the software for others to copy.
- Rent, lease or lend the software.

Validation

The software will automatically attempt to validate itself, verifying the product hasn't been tampered with and is properly licensed. During the verification, our software will send information to Vivitech to check if the data matches our records. This information includes a unique software key, the Internet Protocol address of the device and the site it is installed at. By using the software, you authorise the transmission of this information.

If after validation, the software has been found to be unlicensed, the functionality of the software will be significantly affected, and you must contact us to purchase a license or have the setup removed.

## Documentation

Any authorised user with valid access to your network is permitted to make a copy of any digital documentation supplied and reprint as many copies as they require for internal and referential purposes.

## Proprietary Rights

The Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the software and documentation are and shall remain the property of Licensor, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any third party.

In the event we detect the Licensee has unlawfully tried to duplicate our software in an attempt to circumvent copyright, we reserve the right to end all support at the site, remove our software and no payment will be refunded. Under more serious circumstances the licensor, Vivitech may seek to pursue legal action against any person(s)/organization(s) found to be responsible for breaching its intellectual/proprietary copyright(s).

## Data Protection & Privacy

Vivitech will not gather any personal information relating to any individual without express permission. Any identifiable data will only be stored temporarily in accordance to the Data Protection Act (1998) and will not be shared with any external organisation. Our representatives agree to sign and adhere to non-disclosure agreements if necessary, please fax a blank copy to: 0870 288 5898. By allowing our engineers to remote into your terminals, you authorise our representatives to view the contents of the machine and make changes to the system to enable them to carry out their job. Vivitech will NOT install any adware/spyware to monitor user's usage habits.

## Annual Support & Maintenance

Vivitech will provide one year free support for new installations, and will charge a nominal annual support fee once every year. The support fee covers Unlimited Remote Support via LogMeIn Rescue. The Licensee must have an active Internet Connection to enable our Engineers to remote-in. Intensive Jobs which require a call out on-site and will incur an additional charge which is not included as part of the support fee. Jobs which require a call out are charged: **£45 per hour (from the point engineer leaves office, until return) + Time spent on site + 45p per mile from DN22 9DS to the Installation site (to and from) + Overnight accommodation (only if absolutely necessary)**. 95% of all support issues are dealt with remotely by our dedicated team of Support Engineers.

The support fee MUST be paid annually, and is **NOT** available on an ad-hoc basis. The support fee covers the Licensee up to a 12 month period, and is non-refundable. If the Licensee decides to withdraw or stops using the services provided for any reason after the service has commenced, they will not be entitled to a refund. Refunds will only be at the Management's discretion and will be assessed on an individual basis. Vivitech reserves the right to refuse providing Support for a site if no support fee has been paid, until the account is brought up-to-date. Clients who have paid their support fee are entitled to a support visit to archive history databases and speed up the system, the customer must contact us to arrange a suitable time for a remote support visit.

## Updates

As part of the Support package, the Licensees are entitled to free updates to software which enhance stability and often increase features. Software will only be updated if necessary. If there is a major security update, you authorise our representatives to update your terminals at short notice. Vivitech cannot be held responsible for any loss of data as a result of the update process or updates provided. It is the Licensees' responsibility to ensure backups are made everyday. By using our software you authorise us to install any additional 3<sup>rd</sup> party pre-requisite Software or Drivers to enable our products to function correctly e.g. NET Framework, Access Runtimes, PDF Reader, Internet Explorer, LogMeInRescue Applets and other components. Vivitech will not be held responsible for the stability of 3<sup>rd</sup> party products.

## Backups

It is the responsibility of the users to backup each terminal regularly (at least once every-day). Vivitech cannot be held responsible for any data lost caused by data corruption, unauthorised intrusions or any hardware failure. The Licensee is authorised to make one backup copy of our software on a digital media storage device.

## Hardware Warranty

The performance speeds of our products are dependant on the hardware at the site, slow Networks and Computers will have an adverse impact on the performance of our products; therefore it is the responsibility of the Licensee to upgrade components where necessary. Vivitech is not responsible for the maintenance or upgrade of the hardware unless provided by us; this must otherwise be addressed by the PCT or GP System Suppliers.

Vivitech is not responsible for the maintenance of the Clinical System Software or Script Printers, only Software and Hardware provided by us will be covered. As a gesture of goodwill our Engineers may attempt to resolve any other issues not caused by our Software which they have access rights to (e.g. GP System). However this is under the engineer's discretion.

Barcode Scanners, Printers and Other PC Hardware supplied by Vivitech are covered by a 12 Month Manufacturer warranty. Any hardware which develops a fault exceeding this period is not covered by the support fee and will incur a replacement charge. Vivitech will endeavor to provide refurbished units at a lower rate or a new replacement unit if the Licensee agrees to pay the cost(s). If we are able to repair the hardware, we will send the item back at no extra cost.

## Internet-Based Services

Vivitech provides internet-based services with the software and or communicates with suppliers for stock ordering; it may change or cancel these services at any time. By using the software, you consent for the software to communicate with these suppliers, Vivitech will not be held responsible for incorrect quantities of stock being delivered to our clients from its suppliers (e.g. AAH, Phoenix, Sigma etc.) as a result of negligence or improper use. The Licensees are responsible for ensuring that stock levels are correctly maintained and updated when changes are made to stock levels. Staff members are expected to be adequately trained to use the product, or request further training.

Computer Information - The following features use Internet Protocols, which send to the appropriate systems computer information, such as your Internet Protocol address, your Business name, Address, Telephone Number, and Order details from your site. Vivitech uses this information to make web services available to you. This information may be used to contact you by us, or your suppliers.

- **Stock Ordering** – Devices which have automated Stock Ordering enabled will send automatically generated order lists to the company's suppliers. These orders are generated by monitoring current stock levels. The users **MUST** ensure that the Stock is correctly added onto the system and deducted when dispensed and that minimum and maximum order levels are set correctly to prevent incorrect levels of stock being ordered. Order status queries must be handled by the supplier.
- **License Validation** – The software upon first use will communicate with our web-services to validate the license and to activate software. If software is found to be illegally obtained, the information gathered will be used to contact you and the software will be disabled. Information gathered includes, the IP address of the device, and the company details.
- **Error Logging** – In order to improve our software and services, it is necessary for us to log-errors to track issues and provide updates quicker for our clients. If one of our products crash, it will automatically create an error log, this log contains; the time and date of the error, any data which was being processed at the time it crashed, the version number of the software, and also an error code. This information will not be shared with any external organisation and will only be available to Vivitech Engineers for fault diagnosis and testing.
- **Auto Update** – Some versions of our products will have auto update functionality for small components which download new reports and executable files, these files will replace only existing '**Vivitech**' components and no other component. They will not contain any adware or malware and are scanned by Enterprise standard Anti-Virus tools prior to being shared. Larger updates will require a Remote visit by an Engineer.
- **Backup** – Occasionally our software will make backups of our setup files onto our server. Backups will be requested, and consent must be granted by the user first.

### Not for resale

This software is "Not for Resale" (NFR) and is only licensed to the site it was installed on. If your business is relocating to another address, contact us and we will transfer the license to the new machines remotely at no extra cost.

### Licensee's Liability

The Licensee hereby indemnifies the Licensor (Vivitech) against any claim for (i) alleged infringement of any UK registered copyright or patent, arising out of the use of the software by Licensee in any manner prohibited by this Agreement and (ii) any claim related to or arising out of a financial transaction brought by any third party based on the use of the software.

### Force Majeure

Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including, without limitation, industrial disputes of whatever nature, power loss, telecommunications failure or any other cause beyond its reasonable control.

### Price and Payment

The Licensee shall pay the price in accordance with the payment plan agreed. We will invoice any additional costs reasonably incurred in the delivery of the software as they are incurred. Payment of the price and additional costs shall be made by Licensee to Vivitech in full and the Licensee shall pay the price and such costs within seven days from the date of the invoice. All prices are correct at the time of publishing and are subject to change without notice.

The Licensee shall be responsible for any applicable taxes or any value added taxes payable with respect to the licensing of the software, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Licensor's income. In the event that Licensor pays any such taxes on behalf of Licensee, Licensor shall invoice Licensee for such taxes and Licensee agrees to pay such taxes in accordance with this Agreement.

Failure by Licensee to pay any amounts invoiced under this Agreement in full in accordance with this Agreement will result in action taken against the Licensee, and the collection of payment be passed to a debt collection agency. The licensee shall be responsible for any additional costs incurred as a result of this.

### Discounts

Dispex Customers are entitled to a 5% Discount from any purchase. To qualify for the Discount, the clients must inform the Sales team upon ordering so that the discount can be applied. Discounts are limited to a promotional period and can be redeemed within the period stated on the advertisement material.

### Term

The term of this Agreement shall commence on the delivery date and the License granted herein shall remain in effect perpetually unless terminated as provided for in this Agreement.

### Termination

The Licensee will be given a minimum thirty-day notice for any unpaid services. In the event that the Licensee repeatedly fails to pay its invoiced amount, Vivitech holds the right to withhold support or terminate the account until the account is brought up-to-date. If the Licensee is having difficulty keeping up-to-date with payments, they must contact us and inform us within thirty days of the invoice being received.

Support subscriptions must be renewed annually; if the Licensee seeks to stop using the service they must provide us a minimum of one month notice before the account renewal date. Terminated accounts are non-refundable and are at the management's discretion.

Any Licensee found to be breaching the Licensor's Intellectual or Proprietary Copyrights will have their account terminated by the Licensor and the Licensee must cease to use the infringing software until sufficient Licenses are purchased so the account can be re-activated.

**Cessation of use**

Upon termination of this Agreement, the Licensee shall cease using the software and promptly return all copies of the software, documentation and all other confidential information in its possession or control. The Licensee shall delete all copies of such materials residing in or off-line computer memory, and destroy all copies of such materials which also incorporate Licensee's confidential information. The Licensee should, within 5 days from the effective date of termination contact us to enable our engineers to remotely disable and remove the software.

**Governing Law**

This Agreement shall be interpreted in the light of and governed by the laws of the United Kingdom.

**Competent Court**

All disputes between the parties arising from or relating to this Agreement shall be brought before the Law Court of England, United Kingdom.

**Dispute Resolution**

In the event of any dispute between the parties hereto arising from or relating to this Agreement, then, upon the written request of either party, each of the parties will appoint a designated representative to endeavour to resolve such dispute. The designated representatives will negotiate in good faith to resolve the dispute. Except for those disputes where injunctive relief may be an appropriate remedy, no formal proceedings relating to such dispute may be commenced until the designated representatives conclude in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely.