

ITI VR Simulations Service Agreement



IMPORTANT: CAREFULLY READ THIS END USER LICENSE AGREEMENT BEFORE ACCESSING OR USING THE SOFTWARE. BY ACCESSING OR USING THE SOFTWARE, YOU AUTOMATICALLY ACKNOWLEDGE, ACCEPT AND AGREE TO ALL THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT ACCESS OR OTHERWISE USE THE SOFTWARE.

THIS SERVICE AGREEMENT (the “Agreement”) is a legally binding and enforceable agreement between **Industrial Training International LLC**, a Washington limited liability corporation (“Company”) and the end-user of the Software (“Customer”), governing the Customer’s license to and use of the Software.

1. DEFINITIONS.

(a) “Customer End-Users” means, where Customer is a business entity, Customer’s internal employees, officers and owners, but shall not include any independent contractors or subcontractors of Customer.

(b) “Hardware” means those certain respective items of related hardware purchased by Customer and identified in the applicable customer invoice, or through a third-party platform, such as the Salesforce.com or similar third-party intermediary, reseller or sublicensor, as applicable, and may include, by way of example, (i) the Oculus Rift, Oculus Rift S, Oculus Quest, Oculus Go, HTC Vive Focus Plus or similar Software compatible VR Headset (the “VR Headset”), (ii) Laptop Computer or similar Software compatible computer (the “Computer”), (iii) the industrial travel case or palletized container (the “Container”), and (iv) either the ITI Desktop Crane VR Simulator (“Desktop Sim”) or the Motion Based Crane Simulator (the “MB Sim”).

(c) “Licenses” means the “ITI VR Library License” granted hereunder, as identified by the applicable Estimate, Purchase Agreement, and Order between the Company and the Customer.

(d) “License Fees” means the amounts due and owing to Company from time to time by Customer as established in the applicable Quote and Order between the Company and the Customer, or as otherwise set forth in writing at the time Customer subscribes for or renews the ITI VR Library License granted hereunder. The License Fees may be as established or set forth on an applicable customer invoice, or established through a third-party platform, such as the Salesforce.com or similar third-party intermediary, reseller or sublicensor, as applicable.

(e) “LMS” means the ITI Learning Management System.

(f) “Simulator” means any Desktop Sim or MB Sim provided by the Company.

(g) “Software” refers to the ITI VR Library software and associated software components, including software programs, documentation, and accompanying features available under Customer’s applicable License.

(h) “Subscription Plan” means the applicable customer subscription plan as established in the applicable Estimate, Purchase Agreement, and Order between the Company and the Customer.

2. HARDWARE. The use of the Software requires software compatible Hardware. At a minimum, use of the Software requires a Software compatible VR Headset. For the ITI VR Crane Simulation Library, a Software compatible Computer and a Crane Simulator hardware components are also required. The Customer may purchase the necessary Hardware from the Company; provided that the Customer may elect to provide its own VR Headset and Computer at its own risk. The Company makes no representations and warranties with respect to the Software when used in connection with any Customer-provided hardware, and it is the responsibility of the Customer to ensure proper compatibility with the Software when supplying its own VR Headset and Computer.

3. SOFTWARE. The following terms and conditions apply to all Licenses granted hereunder.

(a) Grant of ITI VR Library License. Subject to Customer's timely payment of all applicable License Fees, and Customer's full and continued compliance with this Agreement, the Company hereby grants to the Customer a limited, revocable, non-exclusive, non-transferrable, non-assignable, non-exclusive license, to use and run one instance of the ITI VR Library Software per the terms of Customer's applicable Subscription Plan, on one internal Customer Computer or virtual machine, solely for the applicable Term, and subject to the terms and conditions of this Agreement (the "ITI VR Library License"). Subject to the terms and conditions herein, the ITI VR Library License shall allow the Customer to access the ITI VR Library and run simulations pursuant the terms of Customer's applicable Subscription Plan during the Term. The ITI VR Library License shall be delivered electronically, through a link allowing the Customer to download the Software, and shall require an Verification Key for access, setup and use.

(b) LMS. The Customer may also elect to access the Software through the Company's LMS, or enhance their use of the Software by subscribing to related content, record keeping and performance tracking tools through the Company's LMS, subject to the terms and conditions of a the Company's LMS End-User License Agreement.

(c) License Fees. The various ITI VR Library Subscription Plans allow the Customer to purchase a subscription to the Software for a specific Term, for a set price. The Purchase Agreement will automatically renew for the same initial Term length thereafter, unless either Party provides written notice to the other Party of its intention not to renew the Agreement at least ninety (90) days prior to the expiration date of the initial term of the Agreement.

(d) No Sale. While purchasing any Hardware will result in title to such items of Hardware passing to the Customer (i.e., the Customer owns the Hardware), the Customer's access to and use of the Software is strictly pursuant to the applicable Licenses described in this Agreement, and does not constitute any form of sale, or transfer any rights of ownership to the Customer. No conduct, acts or omissions of either Customer or the Company shall be construed as altering the terms or conditions of any Licenses granted herein, or creating any form of transfer or sale of the Software. The Company expressly reserves all rights, title and interest in and to the Software and all related functionality.

(e) Features and Updates. The Licenses shall extend to any features, updates, modifications and additional functionality of the Software provided by the Company during the Term, or any renewal or extension thereof.

(f) Server Use. Customer may install the Software on computer file server(s) within Customer's Internal Network only for use of the Software initiated from a single computer or virtual machine within the same Internal Network, pursuant to the ITI VR Library License. By way of example, the foregoing does not permit the Customer to install or access (either directly or through commands, data or instructions) the software: (i) from or to a computer not part of the Internal Network or a network under its control, (ii) from services available to the public, or (iii) to transfer to any individual or entity to use, download, copy or otherwise benefit from the functionality of the Software unless licensed to do so by the Company.

(g) Backup Copy. Customer may not make any backup copies of the Software.

(h) Source Code; Confidential; Trade secret. In the event that in connection with any of the Licenses granted herein, Company shares or otherwise discloses to the Customer any source code with respect to the Software, the Customer agrees that the Company source code is strictly confidential, and that Customer shall not use or otherwise disclose the source code for any purpose other than in strict compliance with the Licenses granted, and shall otherwise keep the Source Code strictly confidential. Customer agrees that this obligation of non-disclosure, non-use and confidentiality is perpetual, material and survives termination of this Agreement. Customer has or will have an appropriate agreement with each of Customer's employees sufficient to comply with all of the terms of this Agreement and that Customer will disclose source code only to those employees who have an absolute need to know. Customer shall use the same degree of care as Customer uses to protect its own most highly protected confidential information and trade secrets, but no less than a reasonable degree of care, to protect the secrecy of and avoid any unauthorized disclosure or use of

Confidential Information. Customer shall not make any copies of any source code unless Company previously approves the same in writing. The Customer expressly agrees that the Company's source code contains intellectual property that the Company derives independent financial benefit, and has taken significant and reasonable measures to keep secret, and as a result constitutes a trade secret pursuant to the Uniform Trade Secrets Act, as adopted in Washington, RCW 19.108, et seq. ("UTSA"), and that any use of the Confidential Information by Customer in violation of any portion of this Agreement would constitute a misappropriation under the UTSA, for which Company would be entitled to immediate injunctive relief. In addition to any other remedies the Company may have, any breach of this provision or unauthorized use or replication of the source code will result in the automatic termination of all Licenses granted herein, and all amounts paid by Customer to the Company shall become non-refundable. Customer agrees that the terms and conditions of this provision are reasonable and necessary for the Company to protect its trade secrets.

4. RESTRICTIONS ON USE. The following terms and conditions apply to both the ITI VR Library License and any Hardware purchased from the Company.

(a) Copyright and Trademark Notices. All copies of Software and Hardware or other items made available by the Company or in the Customer's possession or control must contain the same copyright, trademark, patent, and other proprietary notices that appear therein, as applicable.

(b) No Modifications; Derivatives. Customer shall not modify, adapt or translate the Software support components, or Hardware components, or make any derivative works thereof.

(c) No Reverse Engineering. Customer hereby agrees that it shall not reverse engineer, decompile, disassemble the Software or otherwise attempt to discover the source code of any Software, their respective component parts provided by the Company except to the extent that Customer may be expressly permitted under applicable law to decompile only in order to achieve interoperability with authorized Software.

(d) No Unbundling. The Software and Hardware provided by the Company may include various applications, utilities and component parts, may support multiple platforms and languages, and may be provided to the Customer on multiple media or in multiple copies. Notwithstanding the foregoing, any Software and Simulators provided to Customer constitutes a single, unified product to be used as a single, unified product on internal computers as permitted by this Agreement. Customer is not required to use all component parts of the Software or Hardware, but Customer agrees that its use of the Software is dependent upon the Hardware it has purchased. Customer is not permitted to unbundle the component parts of the Software for use on different computers without express permission. Customer shall not unbundle or repackage for resale any Software, Simulators or their respective component parts, including any additional functionality provided with future updates, support services, or otherwise made available.

(e) No Transfers Permitted. Customer will not rent, lease, sell, sublicense, assign, distribute, encumber or otherwise transfer any Software or Simulators, in any form, or authorize or make copies available to another individual or entity.

5. UPDATES. The Company may, from time to time in its sole discretion, release updates to the Software and Simulators on a periodic basis. Updates will be sent via email to Customer provided that Customer has current, valid and applicable Licenses. Failure to maintain the applicable valid Licenses will result in loss of access to the Software, and as a result the Software will not receive updates. The Company will not be liable for incidents that occur as a result of failure to update Software in accordance with its policies.

6. MAINTENANCE & SUPPORT Unless otherwise expressly agreed, ITI will provide contracted maintenance and support services as described in this Section during the Term. During the Term, ITI will (i) provide enhancements to the Service that are generally made available to ITI' customers and (ii) provide helpdesk support during ITI' customer support department business hours (8 a.m. to 5 p.m. PST), Monday through Friday excluding ITI holidays, to address issues

concerning use and performance of the Service. ITI will use reasonable efforts to correct significant programming errors and to repair or replace parts of the Service not performing substantially in accordance with the applicable user documentation, as selected by ITI, provided notice of such is received by ITI during the Term. Such enhancements are governed by this Agreement. ITI is not obligated to investigate or correct defects found by ITI to be (i) caused by Customer's negligence or modification of the Service or use thereof in combination with software not provided by ITI; (ii) caused by improper or unauthorized use of the Service; or (iii) due to external causes including without limitation hardware problems, power failure or electric power surges. To facilitate such maintenance and support services and as a condition thereof, Customer shall (i) appoint and identify a system manager and alternate as ITI's sole contact point for maintenance and support issues, who shall obtain training in the use of the Service; (ii) promptly notify ITI's customer support department of bugs or other problems requiring maintenance service.

7. TERM. Unless otherwise stated in the Purchase Agreement, the term of this Agreement (the "Term") shall take effect immediately on the date Customer purchases valid Licenses for the Software (such date, the "Effective Date") and continue for a period of time as set forth on the applicable Customer Order (in each case, the "Initial License Term"). The Customer shall pay any and all License Fees up front on an annual basis during the Term (i.e., payment in months 1, 13 and 25).

8. TERMINATION.

(a) Termination. Upon any termination of this Agreement in accordance with its terms, as defined in section 7, Customer shall remain fully liable and responsible for payment of any and all Services ordered by the Customer that remain unpaid at the date of such termination. In addition, in the event of a default by Customer, Customer shall be liable for a termination charge equal to 100% of the remainder of the then current term. It is agreed that ITI's damages, in the event the Services are terminated prior to the completion of the then current Term, shall be difficult to ascertain, thus the termination charge set forth above is intended as liquidated damages and not as a penalty. Notwithstanding anything else in this Agreement to the contrary, Customer hereby knowingly, voluntarily and irrevocably waives and releases ITI from any and all damages, costs, losses, claims, expenses, liability or causes of action, at law or in equity, to which Customer may claim or otherwise have been entitled to as a result of any suspension of Services or termination of this Agreement, provided that such suspension or termination is in accordance with the terms hereof.

(b) By the Company. The Company may terminate this Agreement upon 30 days' notice of breach by Customer and opportunity to cure, provided, however, that the Company may terminate this Agreement immediately upon material breach or for breach for infringement, improper use of the Software, Simulators or non-payment.

(c) By the Customer. The Customer may terminate this Agreement upon the material breach by the Company, where the Customer has provided the Company with thirty (30) days' written notice of such breach, identifying with specificity the nature and known information regarding such breach, with opportunity to cure.

(d) Effect of Termination. Upon Termination, the following procedures shall apply (i) all Licenses and subscriptions granted under this Agreement shall be automatically revoked and terminated; and (ii) certain covenants as set forth in Section 18(h) of this Agreement will survive, but shall not imply or create any continued license or right to use the Software after the date of termination.

(e) No Refunds. All amounts paid pursuant hereto are non-refundable. In the event of early termination of this Agreement as a result of Customer breach or default, Customer acknowledges that no refunds or other amounts prorated will be issued or refunded to Customer. Notwithstanding the foregoing, in event of early termination of this Agreement by the Customer due to the uncured material breach of this Agreement by the Company, Company shall pay to Customer a refund of the fees actually paid hereunder prorated for any actual pro-rata period of non-use of the Software remaining in the then-applicable Term.

9. INTERNET CONNECTIVITY AND PRIVACY. Customer acknowledges and agrees that installed Software may cause the computer to automatically connect to the Internet to connect with the LMS or check for software updates available for automatic download to end-user's computer and to notify the Company servers that software was successfully installed. Only non-personal identifying information is transmitted to the Company when this happens. Communication with the Company electronically, including through its websites, is governed by the Company Online Privacy Policy (www.iti.com/privacy) as it may be updated from time to time in the Company's sole discretion, and which is incorporated herein by this reference.

10. INTELLECTUAL PROPERTY. The Software and its respective updates and Simulators provided under this Agreement are proprietary, and the Company exclusively owns all rights, title and interest in the same, including without limitation, any copyrights, patent rights, trademark rights and other intellectual property rights. Furthermore, the structure, organization and code of the Software constitute designated valuable trade secrets and confidential proprietary information of the Company. The Software is further protected by United States Copyright Law and related proprietary laws, including but not limited to the intellectual property laws of the United States and other countries, and international treaty provisions. Except as expressly stated herein, this Agreement does not grant Customer any intellectual property rights, interest, or title to or in the Software. The Company hereby exclusively reserves all rights not expressly granted herein.

11. LIMITED WARRANTIES.

(a) SOFTWARE. The Company only warrants that the Software as provided by the Company will be free from material defects in material and manufacture for a period of one year from the date of delivery to Customer, and that the Software will possess substantially similar characteristics and functionality as listed on the Company's website and datasheets as of the date of this Agreement. The Company does not warrant that the functions contained in the Software will meet Customer's requirements or that the operation thereof will be uninterrupted or entirely error free, appear or perform precisely as described, or comply with regulatory requirements. The Customer acknowledges and agrees that the functionality of the Software and its respective updates and features depends greatly on the Customer's use and that Customer error may impact the performance and results thereof. This warranty extends only and directly to the Customer that subscribed for valid Licenses from the Company or through an authorized third-party platform, such as Salesforce.com or similar third-party intermediary, distributor, reseller or sublicensor. All warranty claims must be made, along with proof of notice to the Company's Customer Support within 365 days from the date of delivery to Customer.

(b) CRANE SIMULATOR HARDWARE. The Company only warrants that the Simulators as provided by the Company will be free from material defects in material and manufacture for a period of one year from the date of delivery to Customer, except where a period of 2 years is required, and that the Simulators will possess substantially similar characteristics and functionality as listed on the Company's website and datasheets as of the date of this Agreement. The Company does not warrant that the functions contained in the Simulators will meet Customer's requirements or that the operation thereof will be uninterrupted or entirely error free, appear or perform precisely as described, or comply with regulatory requirements. The Customer acknowledges and agrees that the functionality of the Simulators depends greatly on the Customer's use and that Customer error may impact the performance and results thereof. This warranty extends only and directly to the Customer that purchased the Simulators and related Licenses directly from the Company or through an authorized third-party platform, such as Salesforce.com or similar third-party intermediary, distributor, reseller or sublicensor. All warranty claims must be made, along with proof of notice to the Company's Customer Support within 365 days from the date of delivery to Customer.

(c) ALL OTHER HARDWARE. With respect to all other Hardware purchased by Customer from the Company, the Customer acknowledges and agrees that the Company is not the manufacturer thereof, and is a reseller of such third-party Hardware (other than the Simulators), and therefor makes no representations and warranties to the Customer with respect thereto; provided, however, that to the extent allowable under applicable law and the specific terms and conditions of sale, the Company shall and does hereby, with respect those certain items of third-party Hardware purchased

by the Customer from Company, pass through to the Customer any third-party manufacturer warranties related thereto. For more information on 3rd party hardware specs and warranties visit www.iti.com/vr/hardware-specs.

12. DISCLAIMER OF WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTIES IN SECTION 11 ARE EXCLUSIVE. THE COMPANY OTHERWISE PROVIDES THE SOFTWARE AND ALL HARDWARE, AND ACCESS TO ANY WEBSITES OR THE COMPANY LMS ON AN “AS-IS” BASIS AND “WITH ALL FAULTS AND DEFECTS” AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF EVERY AND ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, SECURITY, NON-INFRINGEMENT, INTEGRATION, MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

13. LIMITATION OF LIABILITY. IF THE SOFTWARE OR ITS RESPECTIVE UPDATES AND FEATURES DO NOT PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE LIMITED WARRANTY, OR IN THE EVENT THE COMPANY BREACHES THIS AGREEMENT, THE ENTIRE LIABILITY OF THE COMPANY AND CUSTOMER’S EXCLUSIVE REMEDY WILL BE LIMITED TO, AT THE COMPANY’S OPTION, EITHER (A) REPLACEMENT OF THE SOFTWARE OR HARDWARE AT ISSUE; OR (B) REFUND OF ANY LICENSE FEES AND HARDWARE PURCHASE PRICE PAID BY CUSTOMER TO THE COMPANY THEREFOR. IN NO EVENT WILL THE COMPANY OR ITS PARTNERS, AFFILIATES OR LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING LOSS OF USE, DATA, OR PROFITS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE COMPANY HAS OR ITS PARTNERS, AFFILIATES OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO THE COMPANY’S LIMITED INDEMNIFICATION OBLIGATION UNDER SECTION 14(B) BELOW, THE COMPANY’S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF LICENSE FEES PAID, IF ANY, IN THE THEN APPLICABLE TERM.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO CUSTOMER, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO CUSTOMER, AND CUSTOMER MIGHT HAVE ADDITIONAL RIGHTS.

14. MUTUAL INDEMNIFICATION.

(a) By Customer. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPANY, TOGETHER WITH ITS OWNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, CONTRACTORS, INSURERS, SUCCESSORS, ASSIGNS, PARTNERS, AFFILIATES AND LICENSORS FROM ANY CLAIMS, CAUSES OF ACTION, DISPUTES, CONTROVERSIES, LOSSES, COSTS, DAMAGES, EXPENSES, OR LIABILITIES, INCLUDING ATTORNEYS’ FEES, COURT COSTS, AND LITIGATION EXPENSES RELATED THERETO, ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER’S USE OF THE SOFTWARE OR SIMULATORS IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, CUSTOMER’S ACTIONS OR OMISSIONS RESULTING IN INFRINGEMENT, NEGLIGENCE, TORTIOUS ACTION, VIOLATIONS OF LAW, VIOLATIONS OF THIS AGREEMENT, IMPROPER PURPOSES, INTENTIONAL MISCONDUCT, DAMAGE, INJURY TO PERSON OR PROPERTY, DEATH OR OTHER HARM TO THIRD PARTIES.

(b) By Company. THE COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CUSTOMER FROM ANY CLAIMS, CAUSES OF ACTION, DISPUTES, CONTROVERSIES, LOSSES, COSTS, DAMAGES, EXPENSES, OR LIABILITIES, INCLUDING ATTORNEYS’ FEES, COURT COSTS, AND LITIGATION EXPENSES RELATED THERETO, ARISING OUT OF OR IN CONNECTION WITH THIRD-PARTY CLAIMS OF INFRINGEMENT BASED ON THE CUSTOMER’S PROPER USE OF THE SOFTWARE OR SIMULATORS UNDER THIS AGREEMENT WHERE AND ONLY TO THE EXTENT THE ALLEGED INFRINGEMENT CLAIM DIRECTLY RELATES TO THE SOFTWARE OR SIMULATOR, AS PROVIDED BY THE COMPANY, AND NOT TO ANY OTHER HARDWARE, OR TO ANY MODIFICATIONS, ADAPTATIONS, DERIVATIVES OR EXTENSIONS OF ANY SOFTWARE OR HARDWARE MADE BY CUSTOMER, WHETHER IN COMPLIANCE WITH OR IN VIOLATION OF THIS AGREEMENT, OR RELATED TO ANY CUSTOMER NEGLIGENCE, MISUSE, MISCONDUCT, OR RELATING TO CUSTOMER’S OWN SOFTWARE OR ANU CUSTOMER PROVIDED HARDWARE.

15. COMPLIANCE WITH LICENSES. Customer hereby agrees that, no more than once every 12 months, the Company or its authorized representative shall, upon 10 days’ prior notice to Customer, and subject to an appropriate non-

disclosure agreement and other reasonable safeguards to protect Customer's Confidential Information, have the right to inspect and audit end-user records, systems and facilities to verify that use of any and all of the Software in conformity with Customer's then-valid Licenses. If verification discloses that use is not in conformity with the Customer's then-valid License, the Customer shall be required to immediately obtain the necessary valid Licenses to bring its use into conformity and pay all applicable fees on a retroactive and going-forward basis through the remainder of the Term. The Parties agree that this right to conduct an inspection and audit may be performed by the Company, any applicable third-party intermediary, distributor, reseller or sublicensor, or by a neutral third-party auditor, at the Company's sole expense. In the event the audit reveals that Customer's use is not in conformity with the Customer's then-valid License, the costs of the audit shall be reimbursed in full by Customer.

16. EXPORT RESTRICTIONS. Use of the Software and Simulators is subject to United States' export laws and regulations. Customer must comply with all domestic and international export laws and regulations that apply. All rights of Customer are forfeited, and all Licenses granted herein are automatically revoked and terminated if Customer violates the terms of any applicable law or regulation or materially breaches the terms of this Agreement.

17. U.S. GOVERNMENT LICENSE RIGHTS. The Software was developed entirely at private expense, and is commercial computer software within the meaning of the applicable acquisition regulations. Pursuant to US FAR 48 CFR 12.212 and DFAR 48 CFR 227.7202, use, duplication and disclosure of the Software or for the U.S. Government or a U.S. Government subcontractor is subject solely to the terms and conditions set forth in this Agreement, except for provisions which are contrary to applicable mandatory federal laws.

18. MISCELLANEOUS.

(a) Entire Agreement. This Agreement, together with the related Customer Invoices or applicable third-party intermediary, distributor, reseller or sublicensor agreements issued in connection herewith, collectively contain the final, complete and fully integrated agreement relating to its subject matter and supersedes all prior or contemporaneous agreements. In the event of a conflict between the terms of this Agreement and any third-party intermediary, distributor, reseller or sublicensor agreements issued in connection herewith, the terms and conditions of this Agreement shall prevail and govern. These terms and conditions are subject to change, modification and update by the Company from time to time in its sole discretion, and shall be deemed accepted upon use of the Software by Customer following electronic notice to Customer of such changes.

(b) Notices. Any notice required by or in connection with this Agreement shall be in writing and shall be given to the appropriate party by personal delivery or by email, certified mail, postage prepaid, or recognized overnight delivery services to the contact provided in the Customer Invoice or at to ITI, 9428 Old Pacific Highway, Woodland, WA 98674. If you have any questions about this Agreement, or if you want to contact the Company for any reason, please direct all correspondence to the ITI Customer Success Team by calling 800-727-6355 or emailing vr@iti.com. Each party agrees to keep current all contact information, and provide the other with notice of changes in writing.

(c) Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, it shall first be modified to the minimum extent necessary to be enforceable under applicable law, and if not possible, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

(d) Governing Law; Venue; Attorneys' Fees. The parties shall attempt to promptly resolve through good faith negotiation any and all disputes arising out of or in connection with this Agreement or its performance, including, but not limited to, any questions regarding the existence, validity or termination hereof. This Agreement shall be governed in all respects by the laws of the State of Washington and the United States of America as such laws are applied to agreements entered into and to be performed entirely within the state of Washington without reference or regard to its conflicts of laws provisions. This Agreement is prepared and executed in the English language only and any translations of this Agreement to any other language shall have no effect. All proceedings related to these Terms will be conducted in the English language. In the event of any litigation or arbitration between the parties hereto arising out of this Agreement,

the prevailing party shall be allowed all reasonable attorneys' fees, court costs, arbitration fees and expenses incurred in such litigation or arbitration, including all such expenses incurred on appeal. All disputes arising under this Agreement or any arbitration shall be brought in the Superior Court of King County, Washington or the U.S. District Court for the Western District of Washington, and the parties consent to the exclusive jurisdiction of these courts.

(e) Assignment. Customer may not assign any rights under this Agreement without the prior written approval of the Company. The Company may assign this Agreement, including its rights and obligations hereunder, in whole or in part, by operation of law, or in the event of a merger, acquisition or similar transaction.

(f) Waiver. Failure or delay by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right. Further, a waiver, express or implied, by either party of any default by the other in the observance and performance of any of the conditions, covenants or duties set forth in this Agreement shall not constitute or be construed as a waiver of any subsequent or other default.

(g) Relationship of Parties. The relationship of the parties shall be that of independent licensor and licensee of software on an independent contractor basis, and nothing herein shall create any form of agency partnership, joint venture or other form of association.

(h) Survival. Upon termination of this Agreement for any reason, the provisions of Sections 1, 3 (except for 3(a) which shall terminate), 4 and 8 through 18 shall survive indefinitely.

(i) Authority; Enforceability. If the Customer is a corporation, limited liability company, partnership, joint venture, trust or other business entity, then the individual signing this Agreement, signifying acceptance or manifesting assent to these terms and conditions or otherwise accessing the Software represents and warrants that they have sufficient authority to bind the Customer to this Agreement, and Customer hereby agrees that this Agreement shall be legally binding and enforceable against Customer in accordance with its terms.