



## General Terms and Conditions

These General Terms and Conditions, together with any Work Authorization, and the Hosting Terms and Conditions, which are located on <http://www.itx.com/terms> and are incorporated by reference, constitute Client's entire agreement for services with ITX Corp. (collectively, the "Agreement"). By engaging ITX Corp. ("ITX") for services, Client agrees to be bound by the following terms and conditions:

1. Authorized Work – Client may authorize ITX to perform the Authorized Services verbally by opening a Work Order or by signing a document authorizing work ("Work Authorization"). All Work Authorization Forms authorized by Client to perform the services (the "Authorized Work"), whether verbally or in writing, shall incorporate by reference these General Terms and Conditions.

2. Conflict of Terms – In the event of a conflict between a term contained in these General Terms and Conditions and a term contained in any Work Authorization Form, the terms of these General Terms and Conditions shall take precedence except to the extent that the applicable Work Authorization Form states an intent to supersede these General Terms and Conditions on a specific matter.

3. Copyrights – ITX shall, if stated in the Work Authorization Form, transfer to Client intellectual property rights to the work created in the performance of the Authorized Work, subject to Client's payment to ITX of all monies owed. ITX agrees to give Client, or any person designated by Client, all assistance reasonably required to protect the intellectual property rights explicitly transferred to Client.

### 4. Use of Reserved Technology

a) ITX Reserved Technology. ITX may incorporate software code or text previously written and owned by ITX into works created for the Client ("ITX Reserved Technology"). Ownership and title to ITX Reserved Technology will remain exclusively with ITX. ITX will grant Client a non-exclusive, non-transferable, worldwide, perpetual use license to ITX Reserved Technology. Client understands that under no circumstances does it acquire any rights to ITX Reserved Technology, or any processes, practices, or methods developed or employed by ITX.

b) Third Party Software. Client authorizes ITX to use software code or text written by others in works created for the Client as long as: 1) ITX procures an author's license to use the software code or text; 2) the author's license procured by ITX does not inhibit Client's use of the software code or text; and 3) Client is not obligated to pay any fee for the author's license procured by ITX.



c) Limitation of Liability for Third Party Software. When Client explicitly authorizes ITX in writing to use third party software code or text, ITX shall not be liable for any limitations or defects in the use of such third party software code or text. Further, ITX disclaims all warranties related to the use of such third party software.

## 5. Confidential Information

a) Definition. ITX and Client shall consider the following “Confidential Information”: all information relating to any proposal, product, project in development, technology, service, business forecast, or procurement requirement of either party, which is disclosed by either party and marked “confidential” or reasonably understood to be confidential.

b) Confidentiality Agreement. All persons engaged by ITX and Client will have executed an agreement protecting any Confidential Information obtained in the performance of the Authorized Work (“Confidentiality Agreement”). During the term of the Agreement, and for a period of two (2) years thereafter, ITX and Client shall not disclose any Confidential Information to any third party without the written authorization of the other party. Client shall not disclose any of ITX’s processes or work practices with others.

c) Termination of Confidentiality Obligations. The obligations of confidentiality shall terminate with respect to any Confidential Information when the receiving Party can document that the Confidential Information:

1. Was in the public domain at the time of disclosure; or
2. Entered the public domain, through no fault of the recipient, after disclosure; or
3. Was released by the disclosing Party to a third party free of any obligation of confidence; or
4. Was already in the receiving Party’s possession, free of any obligation of confidence, at the time of disclosure; or
5. Was rightfully communicated to the receiving Party, free of any obligation or confidence, subsequent to the time of disclosure; or
6. Was developed by the receiving Party, independently of and without use or reference to the Confidential Information; or
7. Was disclosed more than two (2) years prior.

d) Notice of Disclosure. In the event a Party is requested or required by a court or governmental authority to disclose Confidential Information, that Party shall not disclose such Confidential Information without first providing the other Party with prompt written notice of such request or requirement to disclose.

6. Solicitation of Employment – Both ITX and Client agree not to hire, solicit, engage or employ or cause anyone else to hire, solicit, engage or employ the other’s employees or personnel throughout the duration of the Agreement, and for a period of two (2) years after the Agreement’s termination.



7. Client Requirements – In addition to any obligations and responsibilities described in the Work Authorization Form, Client shall ensure that the necessary business and application knowledge is available and conveyed to ITX in a timely manner. Client will provide ready access to all appropriate computing platforms, documentation and personnel necessary to fully understand the current business systems. Any activities or costs incurred by ITX in resolving Client obligations that are not met will be billable as additional work including costs of delay, additional effort, provision of missing items, or placing finished work into production environments.

8. Changes in Authorized Services – Client may change the Authorized Services or Service Options with appropriate prior written notice to ITX, but will be subject to any change fees in effect at the time. Any change in the Authorized Work must be made in writing and signed by authorized representatives of both ITX and Client. Unless otherwise specified, ITX may use the least cost method for providing Authorized Work. If Client requires a change in the depth or breadth of the Authorized Work, or specifies a different method or a specific approach or design not previously detailed in the Work Authorization Form, and such change increases the cost of the Authorized Work, such change must be in writing and Client is responsible to pay ITX for the additional effort and increased costs.

9. Project Delays – If Client causes the Authorized Work to be delayed for a period of more than five (5) business days, without prior communication regarding the delay, the Authorized Work will be placed on hold and Client will be responsible for an archival fee of 10% of the total contract, with a minimum of \$750. ITX personnel assigned to the Authorized Work will be released, the Authorized Work will be postponed and a new delivery schedule will be created when the Authorized Work is reinitiated by Client. If Client wishes to have a short-term delay without archiving the Authorized Work or releasing ITX personnel assigned to the Authorized Work, Client may do so at a fee of \$200 per day, per person, assigned to the Authorized Work. This will ensure the human resources assigned to the Authorized Work will remain active and ready to respond when Client is ready to proceed.

10. Location of Work – ITX personnel may perform the Authorized Services at any location that does not negatively affect the quality of the work output. When necessary, ITX will perform the Authorized Services at a location designated by Client (“Designated Location”), and Client shall be responsible for providing access to any required facilities, workspaces or other items necessary for ITX to perform the Authorized Services at the Designated Location. Client will reimburse ITX for any and all costs and travel expenses incurred by ITX personnel in performing the Authorized Services at a Designated Location.

11. Pricing – The amount to be billed for Authorized Work shall be defined in the Work Authorization Form, and if not defined, shall be ITX’s customary charge for resources of similar type. All pricing is exclusive of applicable taxes.



a) Changes to Pricing. Except for fixed price projects, ITX may revise the pricing contained in a Work Authorization Form with 30 days' written notice to Client.

12. Travel and Other Expenses – Client shall reimburse ITX for all expenses incurred in the performance of Authorized Work, as detailed in the Work Authorization Form. All expenses will be billed at actual cost without any surcharge or additional fees.

### 13. Payment

a) Payment Terms. Client agrees to pay all invoices rendered by ITX within fifteen (15) days of the invoice date. For billing purposes, fractions of units shall be rounded up. Client agrees to pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Authorized Services provided to Client, other than taxes based on the net income of ITX. Client's failure to fully pay any fees and taxes within thirty (30) days after the applicable due date will be deemed a breach of the Agreement, justifying the suspension of delivery of the Authorized Services and, in ITX's sole discretion, termination of the Agreement. Accounts in default are subject to an interest charge on the outstanding balance equal to the lesser of 1.5% per month or the maximum rate permitted by law. In the event that Client fails to pay any amount due on time, Client agrees to pay any additional sums for reasonable attorney's fees, court costs, collection agency fees and any other costs incurred in the collection of amounts due.

b) Disputed Payments. All charges are considered valid unless disputed in writing within thirty (30) days of the invoice date.

14. Term – The Agreement shall remain in full force and effect until such time as either party terminates the Agreement as provided for herein, or unless otherwise stated in a Work Authorization

15. Termination – Either party may terminate the Agreement, with or without cause, by providing thirty (30) days' written notice to the other party. Upon termination, ITX shall return all property in its possession belonging to Client, and Client agrees to immediately pay all remaining amounts due to ITX. Should the Agreement be terminated for any reason, ITX will not be liable to Client because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with Client's business, or for any other reason whatsoever flowing from such termination.

16. Warranties – ITX WILL PERFORM THE AUTHORIZED SERVICES IN A WORKMANLIKE MANNER. CLIENT ACKNOWLEDGES THAT ANY SOFTWARE OR ITX SYSTEMS (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY ITX IN CONNECTION WITH ANY AUTHORIZED SERVICES HEREUNDER) IS PROVIDED "AS IS." UNLESS SPECIFIED IN THESE TERMS AND



CONDITIONS ITX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES AS TO THE DESIGN, PERFORMANCE, OR FUNCTIONALITY OF ANY OF THE PRODUCTS, DELIVERED UNDER ANY WORK AUTHORIZATION OR ANY SERVICES, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT (OR OTHER VIOLATION) OF ANY PATENT RIGHT OF ANY THIRD PARTY OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT AS DESCRIBED IN THE WORK AUTHORIZATION, NO WARRANTY IS MADE THAT USE OF THE SOFTWARE OR SERVICES WILL BE ERROR FREE OR UNINTERRUPTED, ALWAYS ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE, OR THAT, ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE'S FUNCTIONALITY WILL MEET COMPANY'S REQUIREMENTS.

17. Limitation of Liability – UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM THE PERFORMANCE UNDER OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THE AGREEMENT (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES), SUCH AS, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. IN ANY EVENT, ITX'S LIABILITY UNDER THE AGREEMENT SHALL BE STRICTLY LIMITED TO THE FEES PAID BY Client TO ITX FOR THE WORK DESCRIBED IN THE WORK AUTHORIZATION FORM UNDER WHICH THE CLAIM ARISES AND LIMITED TO THE AMOUNT PAID WITHIN THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM IS MADE.

18. No Indemnification – Client acknowledges and agrees that ITX shall have no obligation to indemnify, defend and hold harmless Client, its affiliates, and their respective officers, directors, members, personnel and employees from and against any third party claims or actions claiming that the software as provided by ITX to Client infringes a third party's patent right.

19. Force Majeure – Neither party will be responsible for any failure to comply with or for any delay in the performance of these terms and conditions, except Client's responsibility to pay ITX for Authorized Work, where such failure or delay is caused by events outside its reasonable control.

20. Notice – Notices shall be delivered to Client at the billing address listed on the Work Authorization. Notices shall be delivered to ITX at 1169 Pittsford-Victor Rd. Suite 100, Pittsford, NY 14534, ATTN: Legal Department.



21. Completeness – The Agreement constitutes the complete agreement and understanding between ITX and Client with respect to the subject matter, and shall supersede and void any and all prior agreements, understandings or communications, whether oral or written, including, any previous master agreements or Work Authorizations.

22. Modifications to Terms and Conditions – ITX may modify these General Terms and Conditions, or any policy or guideline applicable to the Authorized Work, at any time, in its sole discretion. Such changes will be posted on the ITX Website and become effective upon posting on the ITX Website. Client's continued use of the Authorized Services following ITX posting changes on its website will constitute Client's acceptance of any changes to these General Terms and Conditions, or any policy or guideline applicable to the Authorized Work. If Client does not agree to changes, Client's sole remedy is to terminate the Agreement.

23. Severability – If and to the extent that any provision of the Agreement or portion thereof shall be determined by any legislature or court to be in whole or in part invalid or unenforceable, such provision or term shall be unenforceable only to the extent of such invalidity without invalidating the remaining provisions hereof and all other provisions of the Agreement shall remain in full force and effect, and the rights and obligations of the parties shall be construed and enforced accordingly. In addition, it is the intent of the parties hereto that any provision of the Agreement which is determined to be invalid or unenforceable due to the duration, scope, breadth, or otherwise, shall be interpreted in a reduced form which is not invalid or unenforceable with the intent that the restrictions imposed by the Agreement shall be construed and enforced in such a manner as to give them the broadest enforceable scope and effect.

24. Waiver – Under no circumstances will the failure of either party to enforce its rights under the Agreement constitute a waiver of those rights.

25. Successors and Third Party Beneficiaries – The Agreement shall inure to the benefit of ITX and Client and any successors or assigns of ITX and Client. No third party shall have any rights hereunder.

26. Governing Law – The Agreement shall be governed and construed under the laws of the State of New York without regard to any conflicts of law principles that could result in the application of the laws of another jurisdiction.

27. Venue – Any judicial actions taken to enforce or interpret the Agreement shall be brought in the state or federal courts located in the State of New York, Monroe County, and both ITX and Client will submit to such court's jurisdiction.

- See more at: <https://www.itx.com/Resources/General-Terms-and-Conditions#sthash.WSUad63f.dpuf>