Vitruvi™ Customer Terms of Service

Updated September 11, 2020

vitruvi™

VITRUVI™ Customer Terms of Service

All of the Services described in the Order Form, including the use of the Software, will be provided in accordance with the Order Form, any schedules or exhibits attached to the Order Form, and the terms and conditions set out herein, which the Customer and the Company acknowledge and agree shall, together with the Order Form and the schedules and exhibits attached to the Order Form, constitute the entire agreement and understanding of the parties, including any renewal of Services (collectively, the "Agreement").

The terms and conditions herein describe the Services we will provide to you, how we will work with you and your team members, and other aspects of our business relationship, including commercial and service level terms. It is an important legal document so some of the language is necessarily comprehensive, but we have tried to make it as readable as possible. These terms and conditions are so important that we cannot provide our products and services to you unless you agree to them. By executing the Order Form, using our Software, or receiving the Consulting Services, you are agreeing to these terms and conditions.

We review and update these terms on a regular basis. If you have an active Vitruvi subscription, we will let you know when we do, via an email or in-app notification. You can find archived versions of previous terms [here](#).

TABLE OF CONTENTS

1	**DEFINITIONS**

1.1   **"Active Users"** means a User who has a valid login to access the Software.

1.2   "**Affiliate**" means any entity controlling, controlled by or under common control with a Party (in each case whether directly or indirectly) where "control" means the ownership of greater than 50% of the equity or beneficial interest of the Party or that entity or the right to vote for or appoint a majority of the board of directors or other governing body of the Party or that entity.

1.3   **"Annual Pre-Paid License"** means the advance payment, equal to 12 months (or such equivalent) of License Fees, where such payment is non-refundable, regardless of the Customer's utilization of such licensed services.

1.4   **"Back-end"** means the servers and application software running on these servers.

1.5   **"Back-end Administration"** refers to the administration portal used by the Customer to manage certain Workspace settings, and any configuration settings that are not administered on the Front-end. The unique URL(s) for this administration portal will be referenced as **"http://[workspace name].api.vitruvi.cc/admin/"**, where [workspace name] will be a unique name as assigned by the Company.

1.6   **"Billing Cycle"** means the period from the first day of the month to the last day of the month.

1.7   **"Cloud Services"** means the Company hosted software-as-a-service offering that the Customer purchases with an Order and which is governed by this Agreement and expressly excludes any Software.

1.8   **"Company Intellectual Property"** means any and all Intellectual Property that is conceived, invented, developed, improved or acquired by the Company (including by its Affiliates and its and their employees and contractors) prior to or during the term of this Agreement and includes Feedback and Improvements proposed by the Customer and/or the Company, and, includes all Intellectual Property in and to the Technology.

1.9   **"Confidential Information"** means information, data, any proprietary tools, proprietary knowledge, know-how or proprietary methodologies, trade secrets, knowledge, documents or materials owned, developed or possessed by the disclosing party, or other property, of any kind and in whatever form, that is confidential or proprietary to the disclosing party, or any Affiliate, customer, client, supplier, joint venture or partner of the disclosing party. Confidential

Information includes, but is not limited to, information pertaining to the disclosing party's (or that of any Affiliate, customer, client, supplier, joint venture or partner) business, assets, operations, research, analyses, projections, business relationships (including those with customers, suppliers and others), products (including prices, costs, markets, sales or content), financial information or measures, business methods, future business plans, databases, matters of a technical nature (including know-how, data, formulae, secret processes and designs, methods, processes, models, operating procedures, and schematics), inventions (whether patentable or not), improvements, discoveries, data including technical data, database rights, user data, and documentation relating to any of the foregoing; knowledge of the organization, and other information of any nature whatsoever owned, developed or possessed by the disclosing party. Confidential Information also includes the substance and terms of this Agreement.

Confidential Information does not include data or information that: (a) is within the public domain at the date of disclosure by the disclosing party or which thereafter enters the public domain through no fault of the receiving party or its representatives or Affiliates (but only after it becomes part of the public domain); (b) is already known to the receiving party at the time of its disclosure by the disclosing party, and is not subject to confidentiality restrictions; (c) following its disclosure to the receiving party, is received by the receiving party without obligation of confidence from a third party who the receiving party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence; or (d) is independently developed by the receiving party without reference to or knowledge of the disclosing party's Confidential Information.

1.10   "**Consulting Services**" means the professional services provided to you by us, which may include training services, installation, integration or other consulting services.

1.11   "**Customer**" or "**You**" means the person or entity using the Software or receiving the Services or Consulting Services, as identified in the applicable account record, billing statement or Order Form.

1.12   "**Customer Address**" means the Customer's physical location or shipping address, as identified on the Service Order.

1.13   "**Customer Data**" means all information, data and materials that the Customer or anyone acting on behalf of the Customer provides or transfers to the Company for any purpose in connection with the Customer's use of the Cloud Services.

1.14 **"Documentation"** means the notes, instructions and reference materials pertaining to the use of the Software.

1.15 **"Environment"** means the Vitruvi infrastructure required to deliver the Software to the Customer.

1.16 **"Extended Working Hours"** are those working hours, outside of standard Working Hours, as defined in the Service Order.

1.17 "**Feedback**" means feedback or suggestions provided by Customer relating to or regarding the Technology, the Company's Confidential Information or the Company Intellectual Property, which may include suggestions for, or feedback concerning, improvements, modifications, corrections, enhancements, derivatives or extensions, as well as branding ideas.

1.18 **"Front-end"** means the software website as well as the mobile application.

1.19 **"Implementation Playbook"** see Vitruvi Implementation Playbook.

1.20 "**Improvements**" means, with respect to the Technology or the Company Intellectual Property or the Company's Confidential Information, any and all improvements, derivative works, variations, updates, modifications, enhancements or adaptations on, to or of such Technology, the Company Intellectual Property or the Company's Confidential information (including for greater certainty, the application of such Improvements to any and all additional products or services).

1.21 "**Intellectual Property**" means all intellectual property and industrial property of a Party anywhere in the world, whether registered, subject to an application for registration or unregistered, including all: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, know-how, methods, processes, technology, technical data, database rights, user data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights in all works and all other rights of authorship, including moral rights and benefits of waiver of moral rights therein, copyright registrations and applications for copyright registration; (iv) designs, design rights, industrial designs, industrial design registrations, design patent registrations, industrial design registration applications, applications for design patents, and integrated circuit topographies; (v) trade names, business names, corporate names, domain names, social media identities, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade-mark applications, brand names, slogans, trade dress, logos, and the goodwill associated with any of the foregoing; and (vi) computer

software, programs, applications, and customizations thereof (both source code and object code form), interfaces and development tools, including all proprietary rights therein and all documentation and other materials related thereto.

1.22 **"License Fees"** means the fees paid for access to the Software and/or Services, where such Software and/or Services are billed under a license based pricing structure.

1.23 **"License Type"** means the unique types of software licenses used across a Customers' Environments. The capabilities, permissions and costs of these vary and are detailed in the Order Form.

1.24 **"Minimum License Commitment"** means the minimum billable total, per Billing Cycle, as agreed upon in the Order Form.

1.25 **"Mobile Application"** or **"Mobile App"** means the application that runs on mobile devices, and is available from both Google Play® and the App Store®, under the product name 'Vitruvi'.

1.26 **"Order"** or **"Order Form"** means the Vitruvi approved form by which you agree to subscribe to the Services and/or purchase Consulting Services. The Order may be referred to as a "Statement of Work" if you are purchasing only Consulting Services.

1.27 **"Party"** means either of the Customer or the Company and **"Parties"** means both the Customer and the Company.

1.28 **"Priority Contacts"** means those Users, having administrator access, who will act as the Customer's main points of contact for any critical operational and Software issues.

1.29 **"Product"** means the Software product provided by the Company for use by the Customer.

1.30 **"Product Unavailability"** means, for software services and databases, when the Product is not running or not reachable due to the Company's fault or error. The following are not considered the Company's fault or error (and therefore not included as Product Unavailability events): Planned Downtime (defined in Section 5.8), Customer scheduled maintenance time, issues with the Customer's own internet services, Force Majeure (defined in Section 7.15 of the Agreement) events, any systemic internet failures, any failure in the Customer's own hardware, software or network connection, the Customer's bandwidth restrictions, the Customer's acts or omissions, and the "Exclusions" identified in Section 5.18.

1.31 **"Production Workspace"** means a Workspace used by the Customer for active business operations. The unique URL for the workspace's Front-end, being: **"https://[workspace name].vitruvi.cc"**, where [workspace name] will be a unique name as assigned by the Company.

1.32 **"Related Party"** means any person or entity who is not directly employed by the Customer, but who is related to the Customer's Work by way of: a client or vendor contract engagement, a permitting engagement/relationship, or other such third-party involvement with the Customer's Work.

1.33 **"Reseller"** means an approved partner, under contract with Vitruvi, to resell the Software and Services.

1.34 **"Server"** means the physical computer servers which store the Customer Data.

1.35 **"Service Account"** means a special type of User account intended to represent a non-human user that needs to authenticate and be authorized to access data from Vitruvi APIs.

1.36 **"Service Order"** means the Order or Order Form.

1.37 **"Single Sign-on"** or **"SSO"** means an authentication scheme that allows a user to log in to the Software using a centralized session and user authentication service.

1.38 **"Software as a Service**" or **"Service(s)"** consists of system administration, system management and system monitoring activities that Company performs via the Software, and includes the right to use the Software, support services for such Software, as well as any other services provided by Company, as defined in the Order.

1.39 **"Software"** means Vitruvi™ software, an enterprise class, cloud based, GIS enabled, construction management platform, relating to enterprise resource management in the field of construction management and project management services.

1.40 **"Staging Workspace"** means a Workspace used by the Customer for testing and training purposes only, including user acceptance testing and configuration testing. The unique URL for this Workspace's Front-end, being: **"https://[workspace name].vitruvi.cc"**, where [workspace name] will be a unique name as assigned by the Company. Note that service level and uptime commitments do not apply to Staging Workspaces.

1.41 **"Statement of Work"** means the document describing and outlining the work requirements, activities, deliverables and timelines for Consulting Services.

1.42 **"Subscription Term"** means the time period detailed in the Service Order for which Services will be provided.

1.43 **"Taxes"** means any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes.

1.44 **"Timesheet User"** means any User that is registered in the Software for the purposes of recording and/or registering a timesheet entry. Such a User does not have the ability to login to the Software using their own credentials.

1.45 **"Technology"** means the Software and any plans, tools, devices, mechanisms, items, products, processes, techniques, information or methods which are described in or are the Company's Confidential Information, or which are developed, invented, improved, modified, enhanced or changed in connection with the Software or as a result of Confidential Information, Intellectual Property and any proprietary rights in or to the foregoing, in each case which are developed, invented, discovered, created or conceived by the Customer in the course of the Customer's engagement pursuant to this Agreement, or by the Company or by other customers, agents or Affiliates, associates or subsidiaries of the Company.

1.46 **"Uptime"** is calculated by subtracting from 100%, the percentage of minutes during Working Hours in the month, in which Product Unavailability occurred.

1.47 **"User"** or **"Users"** means an individual licensee of the Software, as sanctioned by the Customer or its Affiliates, and includes employees, agents, and contractors of the Customer and its Affiliates, where such individual has access to the Software—for any length of time—during the Billing Cycle. The Customer is not permitted to have multiple persons using one User account.

1.48 **"Vitruvi"**, **"we"**, **"us"**, and **"Company"** means Fresnel Software Corporation.

1.49 **"Vitruvi Implementation Playbook"** or **"VIP"** means the document that defines and describes the scope of work for the Customer's implementation, as agreed to, and signed off by both the Customer and the Company.

1.50 **"Work"** or **"Customer's Work"** refers to the project, construction or other such activities the Customer is engaged in, where the Customer is using the Software to manage some or all of these activities.

1.51 **"Working Hours"** are defined as 8:00AM to 7:00PM Eastern Time (UTC/GMT-5:00), Monday through Friday, excluding statutory holidays in the United States and Canada.

1.52   **"Workspace"** means all of the application software on both the Back-end and Front-end specific to a particular Customer, where a single Workspace is the proprietary set of data and configurations for a given Customer.

2   GENERAL COMMERCIAL TERMS

2.1   **Consulting Services.** You may purchase Consulting Services by placing an Order with us. Fees for these Consulting Services are in addition to your Subscription Fee. If you purchase Consulting Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription.

a) All Consulting Services are performed remotely, unless you and we otherwise agree.

b) For Consulting Services performed on-site, you will reimburse us our reasonable costs for all expenses incurred in connection with the Consulting Services.

c) If there are a specific number of hours included in the Consulting Services purchased, those hours will expire as indicated in the applicable description, which expiration period will commence upon purchase (the "Expiration Period"). If there are deliverables included in the Consulting Services purchased, it is estimated that those deliverables will be completed within the time period indicated as the delivery period in the applicable description, which delivery period will commence upon purchase (the "Delivery Period"). If there is no Expiration Period or Delivery Period indicated, then it will be one hundred and eighty (180) days from purchase. If the Consulting Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us or to perform your obligations, such Consulting Services will be deemed to be complete at the end of the Delivery Period. If the Consulting Services provided are not complete at the end of the Delivery Period due to our failure to make the necessary resources available to you or to perform our obligations, the Delivery Period will be extended to allow us to complete such Consulting Services.

d) We might provide some or all elements of the Consulting Services through third-party service providers, for which we shall be fully responsible. Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

e) Standard rates for consulting services are as follows:

Resource Type	Resource Qualifications	Rate
A. Senior Consultant	A "Senior Consultant" is defined as a person who meets one or more of the following: • has developed a specialization within software or GIS development, implementation and training; • is often responsible for the completion of a part of a project or activities for which he/she leads a small team; • is more client oriented and explores sales activities; • holds an advanced degree or certification (Masters, PhD, Peng, etc.); and • has extensive and recognized industry experience (generally greater than five years).	**$3,000.00** per day
B. Consultant	A "Consultant" is defined as a person who meets one or more of the following: • is at an intermediate level of expertise in software or GIS development, implementation and/or training; • is developing in most competency dimensions and works in different roles on different projects; and • may have a related degree and/or two or more years of industry experience.	**$2,500.00** per day

2.2   **Invoicing for Software Licensing Fees.** On, or before, the fifth (5th) business day of each month (the "Current Month"), an invoice summary (the "Invoice" or "Invoice Summary") for the Customer's prior month's usage of the Software will be sent via email to the Customer's billing contact (as identified on the Order Form). The Invoice will be deemed to have been received by the Customer as of the date sent. This Invoice Summary will contain, among other items, the following information regarding the User registrations/use in the Software: (i) Environment name and URL, (ii) usernames, (iii) User classes, (iv) User license fees, (v) license fee adjustments (if any), (vi) total User license fees owing.

2.3   **Fees and Payments for Subscription and Consulting Fees.**

a) All amounts owing pursuant to an Invoice Summary are due and payable by the Customer on or before the Due Date.

b) Unless otherwise stated on the Order Form, all fees will be billed in United States Dollars.

c) Interest on any late payments shall accrue at the rate of 2.0% per month or the highest rate permitted by applicable law, whichever is less, from the date such amount is due until finally paid. The Customer shall reimburse the Company for all reasonable costs and expenses incurred (including legal fees) in collecting past due amounts.

d) **Fee Adjustment for Billing Cycle.** Monthly billing will be adjusted based upon the Users and their associated License Types, within the Software.

e) **Fee Adjustments at Renewal.** If renewal pricing is not included in your Order, then our standard pricing on the date of renewal will apply.

    (1) **Payment against Invoice.** Payment of invoices is due within the Payment Terms listed on the Order. There are three options for payment: pre-authorized payments, wire transfer or electronic fund transfer (EFT), or cheque.

f) **Taxes.** Unless otherwise set forth on the Order Form, Vitruvi License fees do not include any Taxes. If Vitruvi has a legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Vitruvi with a valid tax exemption certificate authorized by the appropriate taxing authority.

2.4 **Uptime Commitment.** The Company guarantees that certain items will be available for a certain percentage of the time, as per the following:

a) Uptime levels are calculated on a monthly basis, using the Company's automated systems.

Guaranteed Uptime	Penalty
99.5%	0% of license fees
99.5% - 99%	2% of fees
<99%	5% of fees

b) If monthly Uptime during Working Hours drops below the relevant threshold, a penalty, per hour, will be applied in the form of a credit for the Customer. The level of penalty will be calculated as the number of hours for which Product Unavailability occurred (pro-rated to the nearest minute) during Working Hours.

c) Product Unavailability begins at the earliest of:

    (1) When a Customer raises a support issue, identifying Product Unavailability; or

    (2) When the Company notifies the Customer of Product Unavailability.

d) Product Unavailability ends when the Company notifies the Customer that access has been restored, provided that the Customer can confirm such access has been restored.

e) Uptime penalties in any month are capped at 25% of the monthly fees for the month in which the penalties are incurred.

3   USE AND LIMITATIONS OF USE

3.1   Acceptable Use. You will comply with our Acceptable Use Policy (**"AUP"**).

3.2   Customer Rights. The Company hereby grants to the Customer and its Affiliates, and to any Users of any of the foregoing, a limited and revocable, nonexclusive, non-assignable, non-sublicensable, worldwide limited right to use the Services solely for Customer's business operations and subject to the terms of the Agreement. Customer may allow individual Users to use the Services for this purpose and Customer is responsible for Users' compliance with the Agreement.

3.3   Customer may not:

a) Permit, authorize, recommend or continue to have multiple persons using one User account;

b) Remove or modify any program markings or any notice of Company or its licensors' proprietary rights;

c) Make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the Services Customer have acquired);

d) Modify, alter, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Software or Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Software or Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Company;

e) Disclose results of any Services or program benchmark tests without Company prior written consent;

f) License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Company programs or materials available, to any third party other than, as expressly permitted under the terms of the Agreement;

g) Use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our Servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser, except through the use of Service Accounts;

h) Use the Software in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Software;

i) Attempt to gain unauthorized access to the Software or access the Software other than through our interface; or

j) Use the Software for any purpose or in any manner that is unlawful or prohibited by this Agreement.

3.4 **Notification of Unauthorized Use.** You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account by contacting our customer support team.

3.5 **No Copy/No Access.** The rights granted to Customer under the Agreement are also conditioned on the following:

a) Except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and Client agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

3.6 **Software and Customer Data.**

a) The Company will be responsible for provisioning the Software on Company hosted servers for use by the Customer, and for provisioning all other services (such as support, backup and recovery) necessary for the Customer's use of the Software in accordance with the terms and conditions in this Agreement.

b) The Customer acknowledges and consents to the Company collecting Customer Data and certain personal data/information about the Customer and its Users through the interaction with the Software, including personal data (including but not limited to names, email addresses, phone numbers, addresses, geo-location information, third party data, derivative data, hardware data). The Company will not disclose such information unless required by any applicable law, rule or regulation.

c) The Customer acknowledges and agrees that the Company is the owner of all right, title and interest in and to the Technology, the Product, Cloud Services, Company Confidential Information and the Company Intellectual

Property. The Customer is the owner of all right, title and interest in and to the Customer Data. The Customer Data may not be disclosed, sold, assigned, leased or otherwise disposed of to third parties by Company, or commercially exploited by or on behalf Company.

d) Notwithstanding the foregoing, the Customer hereby grants to the Company a non-exclusive, non-transferable, royalty-free perpetual license to use the Customer Data in an anonymized manner for the purposes of system administration, technical support, research and development, product and services enhancements, and to perform the services described herein in accordance with this Agreement. The confidentiality requirements as set out in this Agreement shall be strictly adhered to by the Company in any use of the Customer Data pursuant to the license of use granted hereby and any use of anonymized data shall not disclose any Customer identifying information or otherwise.

4   SUBSCRIPTION TERM, TERMINATION AND SUSPENSION

4.1   Term and Renewal.

a) The Agreement shall commence as of the Commencement Date and continue for the specified Subscription Term, both as identified in your Order Form.

b) Your subscription for Services will automatically renew for the shorter of: (i) the Subscription Term; or (ii) one (1) year. To prevent renewal of the subscription, the Customer shall be required to provide to the Company advance written notice of its desire to cancel a renewal at least thirty (30) days prior to the end of any applicable Subscription Term. We will provide you with the minimum notice required prior to any renewal term, in accordance with the applicable laws of the governing jurisdiction as set forth in your Order Form.

4.2   Termination.

a) In the event that either Party commits a material breach of its obligations under this Agreement, and such material breach continues for a period of thirty (30) days after written notice from the other Party (except for a breach regarding failure to pay amounts due, in which case the period to cure shall be three (3) business days), the other Party may terminate this Agreement immediately upon written notice.

b) The Customer may terminate this Agreement upon fifteen (15) days' advance written notice to the Company.

c) Either Party may terminate this Agreement immediately if the other Party (i) becomes subject to any bankruptcy, insolvency, winding-up, debt-

protection, liquidation, dissolution proceedings; attempts to appoint a receiver, liquidator or trustee over its business or assets; or (iii) makes a general assignment for the benefit of its creditors.

4.3 **Suspension for Non-Payment.** We will provide you with written notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the Services ten (10) days after such written notice is provided to the Customer. We will not suspend the Services while you are disputing the applicable charges, provided you are acting reasonably and in good faith and are cooperating diligently with us to resolve the dispute. If Services are suspended for non-payment, we may charge you a re-activation fee to reinstate the Services.

4.4 **Effect of Termination or Expiration.**

a) In the event of termination of this Agreement, any amounts owed to the Company under this Agreement before such termination shall be immediately due and payable.

b) Termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve the Customer's obligation to pay all amounts due to the Company hereunder that accrued prior to such termination.

4.5 **Data Retention Policy:**

a) Upon the termination of this Agreement, the Customer shall: (a) cease using the Software and Documentation; and (b) certify to the Company within 1 month after termination that the Customer has destroyed or has returned to the Company the Product and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

b) Upon termination of this Agreement, the Company agrees to make available to the Customer for their download certain Customer Data (in an Excel format) for a period of 30 days from the termination of this Agreement (the "**Customer Data Retention Period**"). Subject to the Customer notifying the Company in writing prior to the end of the initial Customer Data Retention Period, the Customer Data Retention Period may be extended by the Customer for a fee of $2,500.00 per month. The Company shall certify to the Customer that all of the Customer's Data has been destroyed within 30 days of the end of the Customer Data Retention Period.

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5   SOFTWARE SUPPORT AND MAINTENANCE

5.1   Access. During the Term, the Company will provide to the Customer access to the Product, twenty-four hours a day, seven days a week, subject to the Uptime Commitment noted in section 2.4, and will host all the Customer Data and information input in connection with the Product. The Company will provide access to the hosted Product and the Customer Data in the Production Environment. To obtain access, the Company will require that users provide a user name (email address) and a user-selected password.

5.2   User Access Definitions

a) The abbreviations in the table below are explained below:

   (1) RW = read and write access

   (2) R = read-only access

   (3) NA = no access

Program Area	Sub Area	Office User	Field User	Read-Only User
Back-end Administration	All areas of the back-end administration, see 5.2(b)	**RW**	NA	NA
Web	Administration	**RW**	NA	NA
	Work Management	**RW**	R	R
	Engineering	**RW**	R	R
	Inventory	**RW**	R	R
	Invoicing	**RW**	NA	R
	Field Reporting	**RW**	**RW**	R
	Tickets	**RW**	**RW**	R
Mobile	Mobile application	**RW**	**RW**	NA
Vitruvi™ Safety	Manage safety administration settings on the web and access reporting	**RW**	NA	NA
	Submit safety reporting via the mobile application	**RW**	**RW**	NA

Program Area	Sub Area	Office User	Field User	Read-Only User
Vitruvi™ Video	Upload video content and manage video administration settings on the web	**RW**	NA	NA
	View video content on the mobile and access the dedicated video portal via the web and mobile.	**RW**	**RW**	NA

b) Back-end Administration access is optional and will be provided on an as needed basis, as determined by the Company.

c) Timesheet Users will not be permitted Access to the system, but will only be able to appear on timesheets submitted by other Users.

d) Access to Program Areas will also be subject to the terms of the Service Order, which will specify to which Program Areas the Customer has subscribed.

5.3 **Training.** The Company will provide training for the Customer's Users utilizing one or more of the following methods: in person, remote, web-based and written documentation. The Company will also provide additional training support and materials, as further described and specified in the Service Order.

5.4 **Support Help Center.** On-line help and support resources are available to each User through the Vitruvi™ web application, and are included in the license fees. These include:

a) in-application walkthroughs, which are available for all major workflows;

b) static walk-throughs and tutorials;

c) and the Vitruvi Support website which has access to the knowledge base, as well as other training materials.

5.5 **Backup and Recovery of the Customer Data.** The Company is responsible for maintaining a backup of the Customer Data and for an orderly and timely recovery of such data in the event that the Product may be interrupted. Backups are maintained up to a maximum 30 days. Customer requests for the recovery, restoration or migration of data can be made as per Data Restoration & Recovery Pricing.

5.6 **Maintenance.** The Company will provide bug fixes, corrections, modifications, enhancements, upgrades, and releases to the Product as per the Maintenance Policy (published at: Vitruvi Update & Release Policy) to ensure the functionality

of the Product is available to the Customer and the functionality of the Product is in accordance with the representations and warranties set forth herein.

5.7   Upgrades and Releases. The Company will make available to the Customer all upgrades and releases at the same time that the Company generally makes such upgrades and releases available to its other licensees and customers. Upgrades and releases will be managed as per the Company's published Update Release Policy, see Vitruvi Update & Release Policy.

5.8   Planned Downtime. The Company reserves the right to schedule downtime (**"Planned Downtime"**) inside and outside of Working Hours. The Company will use reasonable efforts to schedule any Planned Downtime outside of Working Hours, where permitted, and will only schedule Planned Downtime inside of Working Hours where required to maintain data security and uptime commitments. Any Planned Downtime will be communicated to Users at least seven (7) calendar days in advance, unless otherwise approved by the Customer.

5.9   Service Outage. If the Customer experiences Product Unavailability within Working Hours, the Company will take all steps necessary to inform the Customer and keep them up to date on the status. This includes:

a)   The Company will notify Priority Contacts (defined in Section 5.13) if downtime occurs.

b)   The Company will provide a link to a server status page which provides real time updates on the status of servers.

c)   The Company will provide status updates every thirty (30) minutes to Priority Contacts.

d)   Upon resolution of issue, the Company will issue an email within four (4) hours to all Priority Contacts, with a resolution report.

5.10   Technical Support. The Company will provide technical support to Users via the methods outlined below. The Customer will make all reasonable attempts to resolve support issues and assign priority before contacting Company support.

a)   Vitruvi Assistant: requests submitted through the Product's in application support request window;

b)   Email: emails sent to support@vitruvi.cc; and

c)   Phone: phone calls to the product support line at 1-877-357-8839.

5.11   Technical Support Hours. Technical support will also be available to all Users during Working Hours.

5.12   **Extended Support.** If required, we will provide support for Extended Working Hours, for an additional monthly charge, as defined on the Order Form.

5.13   **Customer Responsibilities.** The Company will require the following from the Customer :

    a) A list of at least two (2) Office Users having administrator access, and their contact information (including emails and phone numbers). These Users will be listed as the Customer's main points of contact between the Company and the Customer for any critical issues, and will be designated as the Priority Contacts.

    b) If submitting a ticket, a User will provide a detailed description of the issue as well as screenshots where possible.

5.14   **Response Time.** If the Customer raises a support issue with the Company, the Company will respond in a timely fashion, based on the response time measures outlined below. The Company is deemed to have responded when the Company has replied to the Customer's initial support request and provided either a solution or a request for further information. Response times are measured based on elapsed time, from the moment the Customer submits a support request.

    a) Response Times are dependent upon the severity of the issue (as defined in section 5.15) as shown in the table below:

		Objectives			
		Initial Response Time	**Action Plan Released**	**Update Frequency**	**Escalation Level (Owner)**
Severity Level	**Critical**	30 minutes	1 hour	As per Action Plan	5
	High	1 hours	4 hours	As per Action Plan	3
	Medium	4 hours	N/A	on progress	1
	Low	4 hours	N/A	on progress	1

b) Where Extended Working Hours **have** been defined on the Service Order:

   (1) Response times for requests related to Severity Critical, will be measured **outside of** Extended Working Hours for all issues identified **inside of** Extended Working Hours, and updates will be delivered to Priority Contacts through a phone call and through email.

   (2) Response times for all other issues will be measured **inside of** Extended Working Hours.

c) Where Extended Working Hours **have not** been defined on the Service Order:

   (1) Response times for requests related to Severity Critical, will be measured **outside of** Working Hours for all issues identified **inside of** Working Hours, and updates will be delivered to Priority Contacts through a phone call and through email.

   (2) Response times for all other issues will be measured **inside of** Working Hours.

5.15   **Severity Levels.** Severity levels are defined as follows:

a) Critical: Mission critical business process(es) affected, services down or unavailable.

b) High: Business processes are interrupted or blocked.

c) Medium: Business processes can continue with significant manual intervention.

d) Low: Business processes can continue, quality of user experience may be impacted.

5.16   **Escalation Management.** Support tickets will be escalated as defined in Section 5.14, or based on the following criteria:

a) Recommendation by the owner of the support ticket;

b) A ticket has not had a first response within the timelines outlined in Section; 5.14

c) User is unsatisfied with the level of support received; or

d) upon User request.

Level of Escalation	Escalation To
1	Helpdesk Support Representative, responsible for the case
2	Helpdesk Lead
3	Customer Success Manager
4	Product Manager
5	Vice President

5.17 **Hardware and Technical Specifications.** To access the Product the Customer will require Users to have access to laptops, desktops, tablets, phones or other hardware in accordance with the specifications below (collectively, the "**Access Hardware**"). The Customer acknowledges the risk of the Customer Data loss that may occur as a result of loss of or damage to a User's Access Hardware that accesses the Product after entry of the Customer Data by a User and prior to connecting the Access Hardware to the internet to allow the Customer Data to sync with the Servers. The Customer releases the Company for claims arising therefrom. The Company is not responsible for reconstruction, replacement, repair or recreation of lost Customer Data on an individual user's Access Hardware if such data has not synced with the Servers.

Web Access Requirements:

a) It is recommended that the latest release of these browsers are used:

(1) Google Chrome version 56 or above;

(2) Mozilla Firefox version 45 or above.

b) The minimum supported display resolution for web access is 1366 x 768.

Mobile Access Requirements:

c) iOS® devices

(1) operating system versions 9.0 or above;

(2) No vintage or obsolete phone technologies (as classified by Apple - https://support.apple.com/en-ca/HT201624)

d) Android® devices

(1) operating system versions 4.4 or above;

(2) Standard Android fonts and sizing

(3) No vintage or obsolete phone technologies

5.18 **Access and Uptime Exclusions.** The Company will endeavor to use commercially reasonable practices to rectify issues in a timely manner, however there are several circumstances under which this Agreement does not apply:

a) Force Majeure (defined in Section 7.15) events; and

b) the Agreement does not apply when the problem has been caused by: (i) the Customer using the Product in a way that is not recommended or supported; (ii) the Customer making unauthorised changes to the configuration or setup of the Product; or (iii) the Customer preventing the Company from performing required maintenance and update tasks.

5.19 **Product Requests.** Requests for additional functionality in Vitruvi can be submitted through the [Vitruvi Support website](). If additional functionality is required on a customer defined schedule, a formal request will need to be submitted and may incur a cost at the Company's discretion.

6 JURISDICTION

6.1 **Applicable Laws/Jurisdiction.** This Agreement will be construed and interpreted in accordance with the applicable laws of the Province of Alberta and will be treated in all respects as a contract of the Province of Alberta. The Customer and the Company attorn to exclusive jurisdiction of the Alberta Courts in Calgary except insofar as a court of another jurisdiction is requested to enforce the restrictive covenants in this Agreement.

7 GENERAL LEGAL TERMS

7.1 **Responsibilities of the Company over Data**

a) Without limiting the Company's obligations under Section 7.5 [Confidential Information], the Company shall use commercially reasonable efforts to ensure the security, integrity and confidentiality of any Customer Data and other proprietary information transmitted or stored on the Servers, including, without limitation: (i) maintenance of independent archival and backup copies of the Customer's Data (backups maintained up to a maximum 30 days); and (ii) protection from any network attack and other malicious, harmful or disabling data, work, code or program. The Company shall also use commercially reasonable efforts to protect against any anticipated threats or hazards to the security or integrity of the Customer Data; protect against unauthorized access to or use of the Customer Data;

ensure the proper disposal of the Customer Data; and ensure that all subcontractors of the Company, if any, comply with all of the foregoing.

b) Notwithstanding the foregoing, Customer understands and acknowledges that from time to time, the Servers may be inaccessible or inoperable for various reasons, including, but not limited to, equipment malfunctions, upgrades or modifications, or other causes beyond the control of the Company, including but not limited to interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "**Downtime**"). Company shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability and in the case of any scheduled Downtime, if applicable, Company shall use commercially reasonable efforts to provide at least forty eight (48) hours' advance notice to Customer.

c) The Company's safeguards for the protection of Customer Data shall include: limiting access of Customer Data to authorized Users; securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; implementing network, device application, database and platform security; securing information transmission, storage and disposal; implementing authentication and access controls within media, applications, operating systems and equipment; securing information transmission, storage and disposal; implementing authentication and access controls within media, applications, operating systems and equipment; encrypting Customer Data stored on any mobile media; encrypting Customer Data transmitted over public or wireless networks; segregating Customer Data from information of the Company or its other customers so that Customer Data is not commingled with any other types of information; and providing appropriate privacy and information security training to the Company's employees.

d) **Disaster Recovery.** Company shall have in place a comprehensive disaster recovery plan, which shall provide for the recovery of all core systems operations, within (twenty-four) 24 hours from a declared disaster.

e) **Technology.** Customer Data will be hosted on Servers as noted in the Order.

7.2 **Responsibilities of the Customer.** Customer will:

a) adhere to Section 3 [Use and Limitations of Use] of this Agreement;

b) use the Software as authorized, in accordance with Company's operating instructions and the Documentation; and

c) to the best of their ability, make available to Company, all information, facilities and services reasonably required by Company to enable it to perform the Services.

d) equip its Users with computers, web browsers and mobile devices that meet the minimum technical specifications as set out in section 5.17.

7.3   Service and Modifications. The Customer will not allow anyone other than the Company to modify, repair or alter the Product. If required, the Customer will co-operate with the Company in the diagnosis, investigation, correction, maintenance or replacement of the Product (including providing the Company reasonable access to the Customer's facilities and hardware).

7.4   Intellectual Property Rights.

a) The Company shall retain all title, copyright, trade secrets, patents, trademarks and other proprietary rights in the Company Intellectual Property, Technology, Software, Documentation and all modifications, enhancements, and other works derivative of the Company Intellectual Property, Technology, Software or Documentation, including, without limitation, any enhancements or customizations. The Customer does not acquire any rights, express or implied, in the Company Intellectual Property, Technology, Software or Documentation, other than those specified in this Agreement. The Customer agrees not to create derivative works of the Software or Documentation.

b) **Feedback**. The Parties agree and acknowledge that any Feedback is provided voluntarily by the Customer. In the event the Customer provides the Company with Feedback, the Customer hereby grants to the Company a perpetual, royalty-free, worldwide right to use such Feedback for the limited purpose of improving and creating derivative works of the Company's Product (notwithstanding the foregoing, the foregoing right shall not apply or extend to any portion of Feedback provided by the Customer which is the Customer's Confidential Information), and the obligations of confidentiality set forth in this Agreement shall supersede and have priority over any Feedback usage rights.

7.5   Confidential Information.

a) Each Party shall receive and hold, and shall cause its employees, agents, contractors or representatives to receive and hold, all Confidential Information of the other Party absolutely secret, undisclosed, in trust and in confidence, with efforts no less than the degree of care that the receiving party exercises in protecting its own Confidential Information and in any event with a reasonable degree of care. All originals, copies and other forms of Confidential Information, however and whenever produced, shall be and remain the sole property of the disclosing party.

b) The receiving party: (a) shall not, directly or indirectly, deal with, use, exploit or disclose Confidential Information of the disclosing party, or any part

thereof, to any person or entity or for any purpose whatsoever (including, but not limited to, in any manner that would benefit any competitor of the disclosing party) except as expressly permitted hereunder or unless and until expressly authorized in writing to do so by the disclosing party; (b) shall not reveal or disclose Confidential Information of the disclosing party to any person within or outside the receiving party's organization, except for those representatives of the receiving party or its Affiliates who have a need to know in order to fulfil the obligations or exercise the rights granted herein and who have signed written confidentiality agreements or otherwise assumed confidentiality obligations no less restrictive than the obligations of the receiving party provided herein with respect to the Confidential Information; (c) shall use Confidential Information of the disclosing party only to the extent necessary to fulfill the receiving party's obligations or exercise its rights under this Agreement, and otherwise only with the disclosing party's express written authorization or except as required by applicable law provided however, that prior to any unauthorized use or disclosure of Confidential Information that is required by law, the receiving party shall provide the disclosing party with reasonable prior notice of any disclosure of Confidential Information required by law and, if requested by the disclosing party, shall permit and cooperate with the disclosing party to obtain a protective order or similar protection for the disclosing party.

c) The receiving party shall upon termination or expiry of the Agreement or at any time if the disclosing party so requests, at the option of the disclosing party either return or destroy all Confidential Information, and shall confirm to the disclosing party in writing that the receiving party has done so.

d) In the event of a breach of this Section 7.5, monetary damages will not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, either Party shall be entitled to seek injunctive or other equitable relief against such breach.

e) The obligations in this Section 7.5 will survive termination or expiry of this Agreement. Disclosure by a Party of its Intellectual Property or the Confidential Information shall not constitute the loss of the disclosing Party's ownership in or to such Intellectual Property and Confidential Information. Each Party acknowledges that all disclosures made by a disclosing Party relating to the Intellectual Property and the Confidential Information of the disclosing Party are communicated to the receiving Party solely on a confidential basis and as trade secrets, in which the disclosing Party has a substantial investment and a legitimate right to protect against unlawful disclosure.

7.6   Representations and Warranties

a) Company represents and warrants that: (a) it has sufficient right, title and interest in and to the Software and Documentation to license such Software and Documentation to Customer free and clear of all restrictions, liens and encumbrances that may conflict with or adversely affect Customer's rights under this Agreement; (b) all reasonable precautions have been and will be taken to ensure that the Software will not contain any virus, worm, Trojan horse malicious device or other disabling or damaging computer code, (collectively, "**Viruses**") that may damage, harm, detrimentally interfere with, or otherwise adversely affect the Software or Customer's use of the Software or any system, hardware, software or equipment with which the Software may be operated or any related data, or facilitate unauthorized access to or use of any of those items; (c) it will exercise in performing its obligations hereunder that standard of care and skill normally exercised by suppliers expert in the provision of services similar to the services provided under this Agreement; (d) it will comply with all applicable laws in performing its obligations hereunder; (e) all services provided hereunder will be provided in a competent and professional manner, conforming to recognized industry standards, by individuals with suitable training, experience, and skill.

b) Except as set out in this Agreement, the Company does not represent that the Customer's use of the Technology will be secure, timely, uninterrupted or error-free or that the Technology will meet the Customer's requirements or that all errors in the Services or Documentation will be corrected or that the overall system that makes the Technology available will be free of viruses or other harmful components. Except as set out in this Agreement, the Company makes no warranties or conditions, express or implied, including without limitation, those of merchantability, satisfactory quality, course of performance, course of dealing or usage of trade, fitness for a particular purpose or non-infringement of third party rights. The Technology is provided to the Customer on an "as is" and "as available" basis, and is for the Customer's internal business use only.

7.7   Indemnification and Limitation of Liability

a) To the fullest extent permitted by applicable law, each party's aggregate liability to the other in respect of all claims (whether in contract, delict or tort) shall not exceed an amount equal to the total fees paid by the Customer within the twelve (12) month period immediately preceding the occurrence of the event that is the subject of the claim. The foregoing limitation of liability shall not apply to the following: (i) Customer's payment obligations; and (ii) damages arising from personal injury or death due to site visitations at the Customer's premises or work sites.

b) To the fullest extent permitted by applicable law, neither party shall be liable for any indirect, incidental or consequential loss, damage, cost or expenses of any kind whatever and however caused, whether arising under contract, tort, delict (including negligence) or otherwise, loss of production, loss of or corruption of data (excluding Customer Data), loss of profits or of contracts, loss of operation time, loss of goodwill, loss of anticipated profits or anticipated savings, even if such party has been advised, knew or should have known of their possibility. This limitation will apply even if any remedy fails of its essential purpose. For the purposes of this article, loss includes a partial loss or reduction in value as well as a complete or total loss.

c) The Company shall defend and indemnify the Customer and its Affiliates against a claim that the Software furnished and used within the scope of this Agreement infringes any Canadian or U.S. copyright or patent provided that: (a) the Customer and its Affiliates notifies the Company in writing within 15 days of the claim; (b) the Company has sole control of the defense and all related settlement negotiations; and (c) the Customer and its Affiliates provides the Company with the assistance, information and authority necessary to perform the Company's obligations under this Section. Reasonable out-of-pocket expenses actually incurred by the Customer and its Affiliates in providing such assistance shall be reimbursed by the Company. The Company shall have no liability for any claim of infringement based on: (a) use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software that the Company provides to the Customer and its Affiliates but only in so far as the Customer was aware that there was a more current release available; or (b) the combination, operation or use of any Software furnished under this Agreement with software, hardware or other materials not furnished by the Company (including without limitation integration add-ons) if such infringement would have been avoided by the use of the Software without such software, hardware or other materials. In the event the Software is legally held or are believed by the Company to infringe, the Company shall have the option, at its expense, to: (a) modify the infringing Software to be non-infringing; (b) obtain for the Customer and its Affiliates a license to continue using the infringing Software; or (c) terminate the license for the infringing Software and refund the fees paid for Software for the monthly license period. This Section 7.7 states the Company's entire liability and the Customer and its Affiliate's exclusive remedy for Software infringement.

d) To the fullest extent permitted by applicable law, in no event shall the Company (or its employees, agents, suppliers and licensors) be liable for any indirect, incidental, special or consequential damages or damages for loss of profits, revenue, loss or inaccuracy of data or use incurred by the licensee or any third party, whether in an action in contract or tort, under any theory

in contract, negligence, strict liability or other legal or equitable theory, or, except for the indemnification of the licensee for claims of infringement under Section 7.4 for cost of procurement of substitute goods, technology or services, even if the Customer or any other person has been advised of the possibility of such damages. Except for the indemnification of the Customer for claims of infringement under Section 7.4 and 7.5, the Company's (and its employees', agents', suppliers' and licensors') liability for damages hereunder with respect to any subject matter of this Agreement or terms and conditions related hereto under any theory in contract, negligence, strict liability or other legal or equitable theory shall in no event exceed the amount of fees paid by the Customer under this Agreement, in the aggregate. The provisions of this Agreement allocate the risks between the Company and the Customer, and the parties hereby agree to their reasonableness. The Company's pricing reflects this allocation of risk and the limitation of liability specified herein.

7.8   **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be properly given if delivered personally, by electronic mail, or by prepaid courier service or certified or prepaid registered mail, addressed as follows (or to such other address as provided by one Party to the other Party in writing):

To the Company:

Fresnel Software Corporation
Suite #700, 140 10th Avenue SE
Calgary, AB T2G 0R1
Attention: Customer Contracts
E-mail: customercontracts@vitruvi.cc

To the Customer:

Your address as provided on the Order Form, or as recorded and updated in our Vitruvi subscription account information for you. We may give electronic notices by general notice via the Services and may give electronic notices specific to you by email to your e-mail address(es) on record in our account information for you or through the notifications center of the Services. You must keep all of your account information current.

Any such notice shall be deemed to have been received: (i) on the date of delivery if delivered by hand; (ii) one (1) business day after delivery if delivered by courier; (iii) one (1) business day after delivery if delivered by electronic mail or electronically through the Services; (iii) one (1) business day following receipt of confirmation of delivery if sent by certified or prepaid registered mail.

7.9   **Amendment or Waiver.** All modifications, amendments and supplements to this Agreement must be made in writing and signed by both the Customer and the Company. No waiver by either the Customer or the Company of any provision of this Agreement or of any breach of this Agreement shall be effective or binding unless such waiver is in writing, and any such waiver shall not limit or affect such party's rights with respect to any future breach.

7.10   **Assignment and Enurement.** The Customer may not assign this Agreement without the prior written consent of the Company. The Company shall not unreasonably withhold such consent, except in the event of the sale of all or substantially all of Customer's assets or shares by way of merger or acquisition, in which case Company consent shall not be required. The Company may assign this Agreement upon written notice to the Customer. This Agreement shall enure to the benefit of and be binding upon the Company and the Customer and their successors, assigns, and representatives.

7.11   **Entire Agreement.**   This Agreement, along with the appended schedules referenced in this Agreement, constitutes the entire agreement between the Customer and the Company in respect of the matters addressed in this Agreement. Except as otherwise specified in this Agreement or in writing by the Company after the date of this Agreement, to the extent of any conflict or inconsistency between the terms of this Agreement, the schedules appended hereto and any other agreement or document between the Customer and the Company or otherwise related to the Customer's engagement with the Company, this Agreement shall govern to the extent of such inconsistency or conflict.

7.12   **Severability.** The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

7.13   **Further Assurances.** The Parties will from time to time sign and deliver all such further documents as the Company may reasonably require in order to effectively carry out the full intent and meaning of this Agreement.

7.14   **Taxes.** Each Party shall pay its own federal, state, county or local sales, property, investment, use and/or other applicable taxes arising out of this Agreement and each Party shall defend and indemnify the other for all claims for tax liabilities.

7.15   **Force Majeure.** In the event that either party hereto shall be delayed or hindered or prevented from the performance of any act required hereunder, other than a payment obligation, by reason of strikes, lock-outs, labor troubles, inability to procure materials or services, failure of power, riots, insurrection, war

or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (collectively, "**Force Majeure**"), such party shall immediately provide notice to the other party of such delay, and performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

7.16 **Survival.** The provisions of Sections 7.4 [**Intellectual Property Rights**], 7.5 [**Confidential Information**], and 7.7 [**Indemnification and Limitation of Liability**] of this Agreement shall remain in full force and effect and survive the termination of this Agreement, for any reason.

7.17 **Independent Contractors.** The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship or have the right to bind the other party in any way without the prior written consent of such party, except as specifically provided in this Agreement.