

**Agreement Between**  
**INTELECOM Intelligent Telecommunications, Inc.**

**and**

**LAS POSITAS COLLEGE**

This agreement (“Agreement”) is made effective as of **December 18, 2019** (“Effective Date”) by and between INTELECOM Intelligent Telecommunications, Inc. (“INTELECOM”), a non-profit corporation and joint powers authority of the Southern California Consortium for Community College Television, with offices at 2930 Fletcher Drive, Room 119, Los Angeles, CA 90065, and **Las Positas College**, with its principal place of business at **3000 Campus Hill Drive, Livermore, CA 94551** (“Participant”).

**WITNESSETH**

WHEREAS, INTELECOM specializes in the design, development and distribution of educational materials and solutions;

WHEREAS, INTELECOM and Participant agree to the following terms regarding the funding, design, development and distribution of a digital platform and smartphone application for use by student veterans enrolled at colleges and universities and known as myVRC (“App”).

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Participant’s Obligations**

- A. Participant agrees to purchase, in advance of development, the rights to use the App and to cooperate in accordance with the terms and provisions set forth in this Agreement.
- B. Participant shall have the right to assign one (1) representative to an App development team, whose function shall be to critique and comment on all aspects of the App during development, including but not limited to features, content, accessibility, functionality, user interface, and graphic design.

**2. INTELECOM’s Obligations**

- A. INTELECOM shall be responsible for the design, development, production and timely delivery of the App in conjunction with the development team, project partners and subcontractors.
- B. INTELECOM shall be responsible for travel and other costs (e.g. mileage) for Participant’s assigned representative, for up to two development team meetings.
- C. INTELECOM shall develop a strategic marketing plan to market and sell the App to appropriate markets through telemarketing, direct mail, direct sales, conference attendance and presentations, and other means.

- D. INTELECOM recognizes and acknowledges the importance of keeping the App current and up-to-date. Evaluative feedback from the marketplace and from professionals in the field will be sought on a regular basis.

### **3. Funding Support**

- A. Participant shall pay a **one-time** advance purchase fee (“Fee”) to INTELECOM according to Schedule A of the Agreement. Participant agrees to remit the Fee to INTELECOM within 30 days of the execution of this Agreement.
- B. No refunds will be issued unless INTELECOM terminates development after the Fee has been paid, in which case it shall be due and returnable to Participant in full.

### **4. Rights Granted**

Subject to the conditions and limitations set forth herein, and in consideration of the Fee paid to INTELECOM, Participant shall have a non-exclusive, non-transferable license to use the App, and all versions of the App as may be developed, on an in perpetuity or perpetual use basis.

### **5. Acceptable Use Policy and Terms of Service, FERPA, 508 Compliance**

- A. An Acceptable Use Policy and Terms of Service for the App are attached as Schedule B and constitute part of this Agreement.
- B. INTELECOM shall ensure that all features and functionality of the App comply with the Family Educational Rights and Privacy Act (FERPA).
- C. INTELECOM is committed to making its products and services compliant with the accessibility standards of Section 508 and shall ensure that the App produces an accessible experience for disabled users.

### **6. Copyrights, Trademarks, Derivative Works**

- A. All rights of copyright and trademark in and to the App as may apply shall reside solely with INTELECOM. Participant agrees to make best efforts to ensure that no part of the materials developed and published hereunder shall become part of the public domain.
- B. Participant and INTELECOM agree to negotiate in good faith regarding the development of any derivative products based on the App.

### **7. Representations and Indemnities**

- A. Participant and INTELECOM agree as follows:
  - a. Each party has full power, authority and legal right to execute and deliver this Agreement and to transfer the rights and licenses granted hereunder and to perform and observe the provisions hereof.
  - b. The execution and performance of this Agreement has been fully authorized by all necessary corporate action.

- c. Neither party shall be responsible for any obligations, expenses, liabilities, or commitments of the other to third persons in the performance of this Agreement.
  - d. Neither party has received notice or has knowledge that any of the materials developed and published hereunder, whether in existence or come into existence: infringes upon or violates any rights of third parties or any copyrights; is libelous; or violates any right of privacy or personal or proprietary right, including trade secrets of anyone. Nothing in this Agreement shall be construed as demonstrating an intent that any part of the materials developed and published hereunder shall become part of the public domain.
  - e. There is no action or suit, or proceeding pending or threatened against either party which, to the best of either parties knowledge, would affect its performance hereunder with respect to the App.
- B. Each party shall indemnify and hold harmless the other party and its licensees, employees, officers, trustees and assigns, from and against any loss, damage, cost, liability or expense, including reasonable attorney's fees, sustained or incurred by the other party by reason of any claim, demand, suit or recovery in connection with the breach or alleged breach of any material terms in this Agreement or with respect to its performance of this Agreement and the publication of materials hereunder, except for such liability caused by the indemnified party's active negligence or willful misconduct.
- C. Parties hereto shall give each other prompt written notice of any claim, suit, or demand arising from the performance of this Agreement. Each party shall have the right to bring legal proceedings against or defend legal proceedings brought by third parties for copyright infringement or other claims or other actions arising out of this Agreement. Each party agrees, at the other's request, to reasonably assist, cooperate with and/or participate with the other or its attorneys in any such action versus a third party.

## **8. Termination**

### **A. For Breach**

- a. Once the project is formally initiated, either party may terminate this Agreement for breach by the other provided the party desiring to terminate furnishes the alleged breaching party with written notice documenting the nature of the breach and allows said party sixty (60) days in which to cure any such breach to the reasonable satisfaction of the non-breaching party. In the event of a breach of contract on the part of INTELECOM, INTELECOM shall reimburse Participant for all monies paid under Section 3.
- b. Either party may, at its discretion, cancel this Agreement for any or all of the following reasons:
  - i. Either party's refusal or inability to continue performance under this Agreement, any voluntary or involuntary dissolution of the other, voluntary or involuntary declaration of bankruptcy, or general assignment for the benefit of creditors of either party;
  - ii. The quality of work rendered by INTELECOM and/or its subcontractors is unacceptable or not up to industry standards, and the alleged deficient party has

been given at least one opportunity to revise unacceptable materials within ninety (90) days and thereby reasonably cure the defects therein to the other's satisfaction;

iii. The timeliness of performance by either party or its subcontractors is such that in the other party's opinion performance hereunder cannot be completed in accordance with the agreed upon schedule and the final acceptance date, or by such other mutually acceptable date.

c. Cancellation by either party pursuant to Section 9(A) shall be termination for breach and in all events each party shall have all remedies provided by law or equity.

B. Force Majeure: Neither party shall be liable for any delay or failure in performing its obligations hereunder if caused by a factor beyond such party's reasonable control, including, without limitation, acts of God, acts of terrorism, fire, unanticipated and extreme acts of government, or other casualty, provided the affected party makes best efforts to promptly resume performance. In the event that the affected party cannot resume performance within thirty (30) days, then the other party may, without penalty or liability, terminate this Agreement upon written notice.

## **GENERAL PROVISIONS**

### **9. Notices**

Any and all notices and other communications to either party hereunder shall be in writing and deemed delivered (i) upon receipt if by hand, email (where expressly provided herein) or overnight courier and (ii) three (3) days after mailing by first class, certified mail, postage prepaid, return receipt requested, to the addresses set forth on the first page hereof or to such other address for a party as shall be specified by like notice.

### **10. Choice of Law**

If any action is brought arising out of or relating to this Agreement, including, but not limited to, any claim for breach of the same, interpretation of the same, cancellation or specific performance, or any tort actions relating thereto, said actions shall be brought in the appropriate court in the State of California, County of Los Angeles.

### **11. Meet and Confer Requirement**

In the event of any dispute, claim, question or disagreement arising out of or relating to this Agreement, prior to initiating legal action, and as a condition precedent to being entitled to file such legal action, the parties hereto shall use their best good faith efforts to settle such disputes, claims, questions or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

### **12. Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

**13. Assignment**

Neither party may assign, sublicense or otherwise transfer (voluntarily, by operation of law, or otherwise) this Agreement, in whole or in part, or any right, interest, benefit or obligation under this Agreement, without the prior written consent of the other party. All of the provision of this agreement shall be binding upon and inure to the benefit of each party’s successors in interest and permitted assigns. Any attempt to assign this Agreement other than in accordance with this Section shall be null and void.

**14. Entire Agreement**

This Agreement and any exhibits, schedules and amendments hereto, constitute the entire understanding between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, whether oral or written, regarding such subject matter. There are no other understandings, agreements, or representations relied upon by either party with respect to the subject matter herein, which are not included herein. This Agreement may be modified only in writing signed by both parties. Licensee’s invoices may be submitted for administrative purposes only, but the terms and conditions contained therein shall be of no force and effect.

**IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.**

**For Las Positas College**

**For INTELECOM Intelligent  
Telecommunications, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date:

### Schedule A

The one-time, advance purchase fees listed below constitute the Fees and are based on student veteran population per college.

<b>Student Veteran Population (based on annual VRC Funding Certification)</b>	<b>Per College, One-Time Advance Purchase Fee ("Fee")</b>
1-499	\$4,000 in-perpetuity *
500-999	\$7,000 in-perpetuity
1000+	\$10,000 in-perpetuity

\* A 10% discount shall be applied to the Las Positas College one-time advance purchase fee, for a reduced total of \$3,600.

## Schedule B

### ACCEPTABLE USE POLICY AND TERMS OF SERVICE FOR myVRC

BY CLICKING ON THE "SUBMIT & CONTINUE" BUTTON OR BY DOWNLOADING, INSTALLING OR USING ANY OF myVRC, YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE, THE ACCEPTABLE USE GUIDELINES, AND THE PRIVACY STATEMENT ("RULES").

Use of your myVRC Account. The myVRC Services are for the educational, personal, non-commercial use of registered users only. You are responsible for all use of your myVRC Services and for the security of your login identification, your password, myVRC personal profile, and any information you disseminate through use of myVRC Services or through other Internet services.

Consequences for Violation. Violations of the Rules, or applicable laws and regulations, may result in revocation of a user's access to myVRC technology and/or college discipline, up to and including suspension, expulsion, or being reported to law enforcement. myVRC reserves the right, but is not obligated, to prohibit any conduct or to remove any materials or content in violation of the Rules or which myVRC believes in its sole discretion to be illegal or potentially harmful to others or may expose myVRC to harm or liability. myVRC may suspend or terminate your use of myVRC Services for any reason at any time, including if it determines that you have failed to comply with any of the Rules. myVRC reserves the right to change your user name if, in myVRC's sole discretion, it is inappropriate or infringes on the rights of a third party.

Prohibited Conduct. Users are prohibited from using myVRC technology for improper purposes, including, but not limited to, use of myVRC to:

- Access, post, display, or otherwise use material that is confidential, copyrighted, discriminatory, libelous, defamatory, obscene, sexually explicit, encourages others to violate the law, or can be harmful to children.
- Bully, harass, intimidate, or threaten other users, or other individuals ("cyberbullying"), or post anything that could be construed as harassment or disparagement of others based on their race, ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs.
- Disclose, use, or disseminate personal identification information (such as name, address, telephone number, Social Security number, or other personal information) of another user or other person with the intent to threaten, intimidate, harass, or ridicule that person ("doxxing").
- Intentionally "hack," disrupt, harm myVRC technology, data, or college operations.
- Engage in or promote any practice that is illegal, unethical or violates any law or college policy, administrative regulation, or college practice, such as selling or purchasing illegal items or substances.
- Deleting, copying, modifying, or forging other users' names, or data; disguising one's identity, or impersonating other users.

**If you suspect any violation of these Terms of Service by another user, please immediately notify campus authorities.**

Transmission and Receipt of Content. Using myVRC allows you to post or send content that can be viewed by others ("User Generated Content"). myVRC exercises no control over such User Generated Content. You may only post or send User Generated Content on the myVRC Site or through myVRC Services that you created or that you have permission to post or send. You may not post User Generated Content that violates the Rules.

You agree that we are not liable for User Generated Content that is provided by others. We have no duty to pre-screen User Generated Content, but we have the right to refuse to post, edit, or deliver submitted User Generated Content. We reserve the right to remove User Generated Content for any reason, but we are not responsible for any failure or delay in removing such material. We reserve the right to block any user's access to any Content or services of myVRC in our sole discretion.

Disputes may arise between you and others or between you and myVRC related to content or commerce, including User Generated Content. Such disputes could involve, among other things, defamation; fraud; bullying; or the use or misuse of information. You agree that all claims, disputes or wrongdoing that result from, or are related in any way to, the content of information that you post, transmit, re-transmit or receive through myVRC Services are your sole and exclusive responsibility.

Registration Information. You must register for myVRC using your own name. During registration, you will be asked to provide the user name or number you wish to use as your login identification. If the login identification you request is not available you will be asked to supply another login identification.

Storage. myVRC may assert limits on the usage of the myVRC that include, without limitation, the period of time your messages will be retained; the number, size and type of messages and attachments you may send and receive; and the amount of space allocated to your message storage. Messages in inactive or terminated accounts may be deleted in accordance with myVRC policies.

Updates. You may be required to install any updates, enhancements or upgrades to the Software provided by myVRC, although myVRC is not obligated to provide such updates, enhancements or upgrades.

Legal Actions. These Rules will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. The exclusive personal jurisdiction of and venue for all disputes arising out of these Rules shall be the state and federal courts located in Los Angeles, California, USA and you consent to such exclusive jurisdiction and waive all objections to such jurisdiction and venue.

#### How to Contact Us

You may contact us by email at [myvrc@intelecom.org](mailto:myvrc@intelecom.org).

Privacy. We will not sell or rent your personal information to anyone. Authorized personnel may conduct searches of myVRC electronic information systems, at any time and without notice when deemed appropriate.

Change to Rules. myVRC may change the Rules and the scope of myVRC Services, in whole or in part, at any time.

Liability Over Content. You acknowledge that neither the myVRC developer nor your college has any control or liability over content.



Indemnification of myVRC. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD myVRC AND ITS DEVELOPERS, SUPPLIERS, SPONSORS, PARTNERS AND AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES AND COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RELATING TO YOUR BREACH OF ANY OF THESE RULES OR USE (BY YOU OR ANY THIRD PARTY) OF myVRC SERVICES THROUGH THE myVRC ACCOUNT ASSIGNED TO YOU, EXCEPT TO THE EXTENT SUCH CLAIMS DIRECTLY RESULT FROM myVRC'S OWN GROSS NEGLIGENCE. THE FOREGOING INDEMNIFICATION OBLIGATION SHALL SURVIVE ANY TERMINATION OF myVRC SERVICES PROVIDED TO YOU.

Limitation of myVRC Liability. IN NO EVENT SHALL myVRC OR YOUR COLLEGE BE LIABLE UNDER ANY SECTION OF THESE TERMS OF SERVICE OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY FOR UNFUNCTIONABILITY OF THE myVRC, OR ANY DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOST PROFITS, LOSS OF DATA OR INFORMATION OF ANY KIND OR LOSS OF BUSINESS GOODWILL OR OPPORTUNITY) WHETHER OR NOT myVRC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.