PICTUREPARK

Agreement for the Picturepark Cloud Service

Last changed: 30 March 2022

This Agreement governs the use of the Picturepark software used as a Cloud Service and Documentation as defined herein.

The parties to this Agreement are you or the entity you represent, including but not limited to your principals, employees, agents, Affiliates or contractors, or, if no such entity is designated by you, you individually ("Customer", "you", "your", "yours", "user") as named in the Order Documents and the Vision Information Transaction entity named in the Order Documents, our Affiliates and Sub-processors, principals and employees ("Picturepark", "We", "us" or "our").

BY USING THE CLOUD SERVICE OR DOCUMENTATION YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT INCLUDING ALL RELATED DOCUMENTS, INCLUDING WITHOUT LIMITATION THE SLA, ORDER DOCUMENTS, ACCEPTABLE USE POLICY, AND DATA PROCESSING AGREEMENT, WHICH ARE INCORPORATED BY REFERENCE INTO THIS AGREEMENT AND ARE HEREINAFTER REFERRED TO TOGETHER AS "AGREEMENT", IN THE LANGUAGE IT IS WRITTEN; YOU CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT AND YOU ARE DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, YOU SHALL NOT PURCHASE OR USE THE CLOUD SERVICE.

Definitions

1   **"Cloud Service"** means the Software provided by us and used by you via Software-as-a-Service (SaaS) with its SDK, API, and other components under the name "Picturepark Content Platform", "Picturepark DAM" or "Picturepark".

2   **"Documentation"** means our written materials or electronic files which relate to the Cloud Service including, but not limited to, system requirements, user manuals, help systems, release notes, specifications or training materials, that have been made available to you.

3   **"Affiliate"** means any corporation or other business entity, now or hereafter existing, who directly or indirectly controls, is controlled by or is under common control with one of the contracting parties.

4   **"Sub-processor"** means a third-party subcontractor engaged by us who will process Customer Data for delivering Technical Support, or providing the technical infrastructure, software development, features or components of the Cloud Service, or delivering other professional services related to the Cloud Service.

5   **"Reseller"** means a Picturepark reseller who purchases Cloud Services from us and resells the Cloud Service to its own customers, in its own name using its own terms and conditions.

6   **"Partner"** means a Picturepark partner who is authorized to sign Proposals for the Cloud Service on our behalf and in strict accordance with this Agreement or Reseller and who can provide you Technical Support and professional services, if authorized and certified.

7   **"Order Documents"** means our proposals, order confirmations and our other licensing documents which detail the Subscription Plan, licensed features, prices, payment schedules and other specific terms related to your purchase of and licensed use of the Cloud Service (or parts thereof) based on which you exclusively place your order and which specifically exclude any other terms, purchase order form or documents provided by you.

8   **"Subscription Plan"** means our basic product offerings for the Cloud Service as defined on https://picturepark.com/plans and the SLA which details eligible features, the level of Technical Support or SLA Warranties available, and other specific benefits or limitations for your licensed use of the Cloud Service.

9   **"Technical Support"** means our limited assistance related to the Cloud Service to verify potential Defects, provide Defect resolution and respond to your Support Queries as defined in the SLA.

10 **"Service Level Agreement"** ("SLA") means the SLA Exhibit of this Agreement which defines the warranties for our Technical Support and the Cloud Service.

11 **"New Versions"** means "Upgrades" and "Updates" of the Cloud Service provided by us from time to at our sole discretion.

12 **"Acceptable Use Policy"** ("AUP") means the common terms which all users of the Cloud Service must agree to and follow as published online and changed by us from time to time.

13 **"Customer Data"** means all your files, content, metadata, Personal Data, Confidential Information and any other data stored or processed via the Cloud Service or for providing you Technical Support as per the terms of this Agreement.

14 **"Not for Resale"** "Beta", "Preview" (collectively "NFR"), means the Cloud Service provided and used for the purpose of evaluation, testing, proof of concept (POC), feature preview versions, or similar.

15 **"Region"** defined for the purpose of this Agreement are: "Europe" which means the UK and the European Economic Area (EEA) and Switzerland, and "Switzerland" which means Switzerland only. "USA" or "United States" means the United States of America.

16 **"Data Processing Agreement" or "DPA"** means the data processing Agreement Exhibit to this Agreement, which sets out the obligations of the parties in relation to the collection and processing of Customer Data.

Use of Cloud Service

17 **Non-exclusivity, no other terms.** We grant you a non-exclusive worldwide right and license to access and use the Cloud Service and any Documentation as further described in this Agreement and in accordance with the Order Documents. Order Documents must be signed by us or an authorized Partner, and you. NO TERMS OTHER THAN THIS AGREEMENT SHALL APPLY TO THE CLOUD SERVICE AND SLA. ANY TERMS CONTAINED IN DOCUMENTS THAT CONTRADICT OR AMEND THE TERMS OF THIS AGREEMENT ARE HEREBY EXPRESSLY REJECTED UNLESS AUTHORIZED BY US IN WRITING.

18 **Acceptable use.** You shall use the Cloud Service strictly according to the Acceptable Use Policy. You are responsible for ensuring that all users to whom you provide access to the Cloud Service have read and agreed to the AUP prior to using it.

19 **Use under NFR or for free.** You acknowledge and agree that if provided for free or under "Not for resale" terms, the Cloud Service may be limited in time, by features or other restrictions, and IS PROVIDED TO YOU "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE", AND SUBJECT TO MANDATORY APPLICABLE LAW, ALL SLA, WARRANTY, GUARANTEE OR LIABILITY OBLIGATIONS ARE EXPRESSIVELY EXCLUDED AND DISCLAIMED.

20 **Documentation.** Documentation for the Cloud Service is provided in generic form and does not cover specific use cases or custom configurations. You may copy, distribute and change our Documentation under the Creative Commons BY-SA 4.0 license unless such right is expressively excluded in the Documentation. No warranty is given for any Documentation modified by you or third parties.

21 **Third Party Software.** You acknowledge that the use of the Cloud Service requires you to use certain installed or cloud-based third-party software ("Third Party Software") such as operating systems, web browsers, runtimes, plugins, web or cloud services, or similar that are subject to the terms and conditions of their corresponding licensors, and provision of such Third-Party Software & Services is hereby excluded from this Agreement and the purchase price. Additionally, the Cloud Service contains and uses open source third party software components. Use of such open source components are credited in the Cloud Service, where required under the applicable open source licenses and you acknowledge that your use of such open source components shall be subject to the applicable third-party licenses. We can provide you with a list of all open source components upon request.

22 **No modification, no reverse engineering.** You shall not modify, adapt, port, translate, reverse engineer, disassemble, decompile or otherwise attempt to discover the source code of the Cloud Service unless such code is provided with the corresponding license declaration permitting you to do so. You shall not remove, modify or overwrite any product label, product identification, copyright notices, the AUP, this Agreement, privacy declarations and corresponding link references from the Cloud Service.

23 **Restrictions for AVC/H.264 video format**. Unless you have licensed the AVC/H.264 codec for corresponding use through separate agreements, you agree not to use the Cloud Service for video services with AVC/H.264 video output formats where any end user has to pay for such videos on a title-per-title or subscription basis and these videos have a play length of more than 12 minutes each, or where renumeration is from other sources of free television such as broadcasting over the air, via satellite or cable transmission.

24 **Intellectual Property**. The Cloud Service and associated materials such as Documentation, logos, designs etc. are the sole and exclusive property of us and, our licensors or suppliers. Except as expressly stated, we do not grant you any intellectual property rights in the Cloud Service or any such associated material.

New Versions & Sub-processors

25 **Use of most current version.** You are entitled to use the Cloud Service in the latest official version with all fees for New Versions included in the price for the Cloud Service. This is not inclusive of all new features of New Versions. We may provide New Versions from time to time at our sole discretion and you agree that you are required to use such latest New Version of the Cloud Service at all times.

26 **Modifications through New Versions.** All New Versions of the Cloud Service are subject to this Agreement. You acknowledge and agree that New Versions may add, eliminate or modify features as well as, change system requirements of the Cloud Service, Third Party Software, SDK components and Subscription Plans, and provide bug-fixes. We shall give you reasonable prior notice if we intend to substantially modify the Cloud Service. If the New Version will or has substantially modified the Cloud Service to your disadvantage you may terminate this Agreement in accordance with section 50 by giving notice of termination up to thirty (30) days after the New Version has been updated. After expiry of this period you shall be deemed to have accepted the New Version if not terminated by you. No modifications to the Cloud Service resulting from New Versions shall be deemed to be material changes permitting you to terminate pursuant to Section 49.

27 **Use of Sub-processors**. You acknowledge and agree that we may engage Affiliates or Sub-processors to assist in the provision of the Cloud Service or parts thereof, and Technical Support, in accordance with the terms of the DPA. We remain responsible at all times for compliance with the terms of this Agreement by our Affiliates and Sub-processors.

Personal & Confidential Information

28 **Data controller.** You are and will remain at all times the data controller, and you have appointed us to act as your data processor by providing you with the Cloud Service. Each party undertakes to comply with its respective data protection obligations in relation to Customer Data as set out in the DPA.

29 **Ownership of Customer Data.** You retain all right, title, and interest in and to your Customer Data. We acquire no rights in Customer Data other than the right to process Customer Data as necessary to provide the Cloud Service, Technical Support or other services to you as defined in this Agreement and the DPA.

30 **Confidential information.** Each party may be given access to confidential data (collectively "Confidential information") from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the receiving party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party and for which written evidence can be provided; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

31 **Obligations.** Each party shall hold the other's Confidential Information in confidence and, unless required as per Section 30, not make the other's Confidential Information available to any third parties, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, affiliates, agents or Sub-processors in violation of the terms of this Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by third parties other than Affiliates or Sub-processors.

32 **Notice of disclosure**. In the event that either party is required to disclose Confidential Information pursuant to a court order, law or regulation, it shall, if permitted, provide the other party with notice thereof to give such party sufficient opportunity to take steps to prevent the disclosure.

33 **Use of names**. The parties agree to use each other's name for public statements or any required notices only as expressly granted by the other party, and to coordinate in good faith on developing its content.

34 **Storage types, options & regions**. Customer Data will be stored using Storage Types and Backup Options as defined for your purchased Subscription Plan, and is processed only in accordance with the DPA and this Agreement. If not defined in the Order Documents, the region for Storage Types and Backup Options is Switzerland.

35 **Recovery of Customer Data.** Subject to the SLA Warranties defined for the Storage Types or Backup Options you have purchased, we warrant to restore Customer Data at no cost to you where it had been lost or destroyed through our fault. If Customer Data is lost, destroyed or deleted through your fault, we will attempt to restore it within a time and for a reasonable fee, as mutually agreed.

36 **Export of Customer Data.** You are able to export your Customer Data via the Cloud Service. You are additionally entitled to request a simple standard export of your Customer Data at any time, specific custom formats are explicitly excluded. We will provide such export for a handling fee of CHF/USD/EUR 2000 per up to 4 TB of Customer Data, including costs for storage media but excluding costs for shipping, customs, and similar fees. Such export shall be executed no later than 30 days after you have order from us.

Warranties

37 **Limited Warranties**. Unless otherwise specified in this Agreement, we warrant that the Cloud Service will perform during the Term as per the terms in this Agreement, the Documentation and the SLA Warranties for the Subscription Plan you have purchased ("Warranty"). If we cannot make the Cloud Service substantially perform as warranted, you are entitled to terminate this Agreement for cause as defined in section 49.

38 **WARRANTY DISCLAIMER.** THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY US AND STATES YOUR SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY. WE MAKE NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR OTHERWISE IN ANY COUNTRY OR JURISDICTION, RELATED TO OR ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE PROVISION OF THE CLOUD SERVICE UNDER THIS AGREEMENT. THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE CLOUD SERVICE AND TECHNICAL SUPPORT AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, YOU UNDERSTAND AND AGREE THAT THE CLOUD SERVICE AND ANY MATERIALS OR OTHER SERVICES FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS OR LIFE SUPPORT SYSTEMS.

Indemnification

39 **Indemnification by us.** Subject to the provisions of Section 43 of this Agreement, we shall indemnify and defend you against claims made by an unaffiliated third party that the Cloud Service infringes a third party's intellectual property rights or makes unlawful use of its trade secret, except to the extent a claim or award is based on: (a) our use of Customer Data in accordance with the terms of this Agreement; or (b) any modifications of the Cloud Service that is not performed by or on behalf of us; (c) the combination, operation, or use of the Cloud Service with any other products, services or equipment not provided by us or branded as our products or services, where there would be no Infringement Claim but for such combination; (d) your use of the Cloud Service other than in accordance with the terms and conditions of this Agreement; (e) any open source software included in the Cloud Service; and (f) any Cloud Service provided for free or NFR.

40 **Indemnification by you**. You shall indemnify and defend us and our Affiliates against any claims made by an unaffiliated third party that: (a) Customer Data infringes the third party's intellectual property rights or makes unlawful use of its trade secret; (b) arise from your violation of this Agreement.

41 **Remedies**. Should the Cloud Service become, or in our sole opinion be likely to become, the subject of a claim under section 39, we may at our sole discretion and at our own expense: (a) obtain the right for you to continue to use the Cloud Service; or (b) modify the Cloud Service to become non-infringing. If we determine, acting reasonably that these options are not commercially reasonable, we may terminate your rights to use the Cloud Service according section 49 and refund to you any unused advance payments for the Cloud Service.

42 **Obligations**. Each party must notify the other promptly of a claim made related to sections 39 and 40. The party seeking protection must: (a) give the other sole control over the defense and settlement of the claim; and (b) give reasonable help in defending the claim. The party providing the protection shall perform its obligations at its sole cost and expense and shall reimburse the other for reasonable out-

of-pocket expenses that it incurs in giving that help and pay the amount of any resulting adverse final judgment (or settlement that the other consents to). This section 42 states the indemnifying party's entire liability and the indemnified party's sole remedy with respect to the infringement, violation, or misappropriation of any intellectual property rights of any third-party or unlawful use of a trade secret arising from or relating to this Agreement.

Limitation of Liability

43 **LIMITATION OF LIABILITY**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 44 AND 45, THE AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT PAID UNDER THIS AGREEMENT FOR THE CLOUD SERVICE (OR PARTS THEREOF) GIVING RISE TO THAT LIABILITY DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE TIME THE LIABILITY AROSE. EACH PARTY HEREBY RELEASES AND FOREVER DISCHARGES THE OTHER PARTY FROM ANY AND ALL OBLIGATIONS, LIABILITIES, CLAIMS, OR DEMANDS IN EXCESS OF THE FOREGOING LIMITATION. THE PARTIES ACKNOWLEDGE THAT OTHER PROVISIONS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION.

44 **EXCLUSION**. NEITHER PARTY WILL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, EVEN IF A PARTY KNEW THAT SUCH DAMAGES WERE POSSIBLE.

45 **Exceptions**. Nothing in this Agreement shall limit a party's liability caused by its fraud, willful misconduct or gross negligence if such liability cannot be limited as per section 43 under applicable law.

46 **Liability Insurance**. We have in place with a reputable insurer and will maintain during the Term of this Agreement insurance to cover our liabilities under this Agreement. We shall provide you with evidence of such insurance cover at your request.

Term, Termination, Suspension & Modification

47 **Term.** If not defined in the Order Documents, this Agreement will commence on the date of purchase or when you start using the Cloud Service, whichever is earlier, and will continue for a period of 12 months ("Initial Term"), with automatic renewals for additional 12 months periods (each a "Renewal Term"; collectively "Term"), until terminated by either party pursuant to the termination provisions herein.

48 **Termination for convenience.** Subject to the Term, and if not defined otherwise in the Order Documents, either party may terminate this Agreement with effect from the end of a Term by giving at least ninety (90) days prior written notice to the other party.

49 **Termination for cause.** Either party has the right to terminate this Agreement for cause if the other party defaults on any of its material obligations, provided that the non-defaulting party has warned the other party in writing of the material breach and provided that the defaulting party has failed to remedy such breach within thirty (30) calendar days after receiving such notice. If we are in material breach of this Agreement with failure to remedy and you terminate this Agreement for cause we shall refund your unused advance payments for future use of the Cloud Service within thirty (30) days. Our right to terminate for cause is also governed by Section 51 below, in the event that your account has been suspended as described therein.

50 **Termination due to our modifications**. You have the right to terminate this Agreement by giving us prior written notice if you do not agree to our modifications of the Cloud Service through New Versions as per section 26. Your sole remedy for such termination shall be the refund of unused advance payments for future use of the Cloud Service (if any). If you do not agree to our modifications and you do not terminate as set out above, all New Versions of the Cloud service are deemed accepted.

51 **Temporary suspension and termination.** We may temporarily suspend or limit your rights to use the Cloud Service if in our reasonable view you or your use of the Cloud Service: (a) poses a substantial security risk for the Cloud Service or any third party; (b) results in substantial performance or other degradations of the Cloud Service caused by your overuse or wrong use of the Cloud Service; (c) may subject us or a third party to material liability; (d) may be fraudulent or violate applicable law; (e) you are in breach of this Agreement; (f) you are subject of any bankruptcy, liquidation, dissolution or similar proceeding; or (g) you are more than sixty (60) days in delay of payment. During the temporary suspension, you remain responsible for fees and charges that you have incurred during the period of suspension unless such suspension proves unjustified in which case your sole remedies shall be a pro-rated credit of payments made for the purchased Cloud Service during the period of temporary suspension. We will give you at least five (5) business days prior written notice before we suspend, except where we reasonably believe we need to suspend immediately in order to mitigate or limit damages. If we have to suspend the Cloud Service for you more than twice in a calendar year and the suspensions are justified then we may terminate this Agreement for cause within ten (10) days after the second suspension begun.

52 **Modifications of this Agreement.** We may modify this Agreement at any time by giving you at least ninety (90) days prior written notice. After expiry of this notice period, you are automatically bound by the terms of the modified Agreement if you continue to use the Cloud Service thereafter. If you do not agree with the modifications you must terminate this Agreement within thirty (30) days of receiving our written notice. Excluded from the foregoing are: (a) changes to prices which shall become effective solely upon renewal (including automatic renewal) of existing subscriptions or new orders; and (b) changes required by law which become effective immediately by when we notify you about such changes if no other effective date was provided in such notification. Your sole remedy for such termination shall be the refund of unused advance payments for future use of the Cloud Service (if any).

53 **Survival.** Any terms of this Agreement which by their nature should survive termination or expiry, in particular sections 24, 30, 31, 33, 38, 39 and 40, shall survive the termination or expiry of this Agreement for any reason.

Miscellaneous

54 **Advance payment.** Unless otherwise defined in the Order Documents, payment for the Cloud Service is due by when the Term begins with advance payments for the Term. All fees will be settled in the currency specified in the Order Documents. Payment of undisputed invoices will be due and payable thirty (30) days from the date of invoice.

55   **Governing Law/Jurisdiction.** This Agreement shall be governed by, enforced by and interpreted in all respects by laws in force in: (a) the State of New York, United States, if you purchase the Cloud Service from our legal entities in the United States; or (b) the State of Canton Aargau, Switzerland, if you purchase the Cloud Service from our legal entities registered in any other country of the world, as evidenced by our company name and address in the Order Documents. The respective state and federal courts located in New York City, New York, United States, shall apply for New York law governed matters and the city of Aarau, Canton of Aargau, Switzerland, shall apply for Swiss law governed matters. Any disputes will be settled in either English or German language at the choice of the claiming party. In any event, this Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A TRIAL BY JURY.

56   **Severability.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

57   **Notices.** Any notices under this Agreement shall be in writing, sent via email or certified mail or courier where sent internationally to the business or email addresses as provided in the Order Documents with a copy sent via email to legal@picturepark.com. Notices shall be deemed effective on the earlier of the date of receipt or the fourth day after being deposited in the mail or given to a courier for dispatch.

58   **No Agency.** You and we are independent contractors. This Agreement does not create an agency, partnership, or joint venture.

59   **Complete Agreement.** This Agreement and all referenced Exhibits, Documents and Proposals are the entire Agreement concerning its subject matter and supersede any prior or concurrent communications and Agreements including any non-disclosure or confidentiality Agreements entered into between the parties.

60   **Conflicts**. In the event of any inconsistency between the Order Documents with the terms of this Agreement (and any amendments to the terms of this Agreement) the following shall apply: Amendments shall prevail if mutually agreed between you and us in writing. In the event of any inconsistency between the terms of this Agreement and the Order Documents, the terms of the Order Document shall prevail.

61   **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

62   **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement that is due to any cause beyond the reasonable control of such party, including, without limiting the generality of the foregoing, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, including phone, electricity, Internet or other communications systems, strike (excluding your or our employees), riot, war, insurrection, terrorism, export control regulations, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction. If the force majeure continues for more than 14 days, either party may terminate this Agreement without further liability to the other.

63   **Compliance with Laws.** We will comply with all laws applicable to our provision of the Cloud Services excluding any laws applicable to you or your industry that are not generally applicable to comparable cloud service providers. You will comply with all laws applicable to your use of the Cloud Service and Customer Data, including any laws applicable to you or your industry.

64   **Spelling.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural. The various captions and section headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any of the provisions of this Agreement.

PICTUREPARK

Service Level Agreement (SLA) for the Picturepark Cloud Service

Last changed: 30 March 2022

Definitions

1. **"Defect"** shall mean a reproducible error, defect, bug or malfunction of the Cloud Service arising from regular use according to the Documentation. The Defect must be covered under this SLA and reproducible using the latest version of the Cloud Service. Defects are classified at our sole reasonable discretion into Critical Defects or other Defects.

2. **"Critical Defects"** shall mean Defects that cause the Cloud Service to become completely inoperable or in-accessible to all Users and no work around is available.

3. **"Defect Resolution"** shall mean a bug-fix, patch, correction code, update, upgrade or other modification, procedure, routine or workaround that corrects a Defect or eliminates the practical adverse effects of a Defect to a reasonably tolerable amount.

4. **"Availability"** is the percentage value of the total time the Cloud Service is available without Critical Defects during a calendar month from which Tolerable Maintenance is excluded. The warranted Availability is defined per subscription plan in Table A.

$$Availability = \frac{\text{Effective Cloud Service availability during calendar month}}{(\text{Total time of calendar month} - \text{Tolerable Maintenance time in that calendar month})}$$

5. **"Tolerable Maintenance"** means the number of hours per calendar month as defined per Subscription Plan in Table A during which we may perform maintenance on the Cloud Service that is excluded from Availability. If possible, such maintenance will be performed outside EMEA support hours and with at least 24 hours' notice.

6. **"Support Query"** shall mean your query for Technical Support via online form, e-mail or support phone line, filed by your Support Contacts or end users.

7. **"Escalation support"** shall mean your eligibility to escalate Critical Defects with our 24/7 global escalation support which use might be charged without prior notice at 200% of our standard rates if your support escalation reasonably proves unjustified.

8. **"Recovery Point Objective" ("RPO")** means the time period beginning with the confirmed storage of your Customer Data in the Cloud Service and ending with the completed replication of such Customer Data via our Cloud Service to a redundant site from which it can be restored in its most recent version, as defined in Table A and Table B of this SLA.

9. **"Support Response Time" ("SRT")** is defined as the average time period beginning with our receipt of your Support query and ending with our delivery of a first non-automated response within our Support Hours during a calendar month, as defined in Table A.

10. **Support regions & Support hours.** Technical Support is available per region ("Support Hours") and all Support Response Times defined in this SLA are subject to these Support Hours, as defined in this SLA. Support Hours for Europe are from Monday to Friday, 8 AM to 6 PM Central European Time (CET) excluding Swiss statutory holidays ("EMEA Support"), and Support Hours for the Americas are from Monday to Friday, 6 AM to 4 PM Eastern Time (EST) excluding U.S. federal holidays ("Americas Support"). If not defined otherwise in the Order Documents, support hours for EMEA Support only apply.

11. **"Support Contacts"** are defined as the users you had previously registered with us for filing Support Queries and responding to our Technical Support personnel, limited to the number of users at a time as defined in Table A.

12. **"Best Effort"** means that we do our reasonable best to provide you the quality of service as indicated and subject to our sole discretion. Features or qualities defined in this Agreement or SLA which are indicated as "Best Effort" are strictly excluded from our SLA Warranties.

Service Level Warranties & Limitations

13. **SLA Warranties.** Via this SLA, we warrant to you Support Response Times for Technical Support during Support Hours as well as Availability of the Cloud Service and Recovery Point Objective (RPO) for the Cloud Service according to Table A and Table B, as applicable for your Subscription Plan ("SLA Warranties").

14. **Verification of your Support Query**. We will use reasonable efforts to qualify if your Support Query is eligible for Technical Support and if warranted Support Response Times apply. If no solution can be provided with our first response then we will inform you about the estimated resolution time for your Support Query. If your Support Query is not eligible for Technical Support then we might use reasonable efforts at our sole discretion for providing you further assistance directly or via referring you to our partners, if possible.

15. **Limitations.** We shall not be liable for any breaches of the terms of the Agreement or this SLA relating to: (a) Defects due to factors outside our reasonable control such as failure of upstream infrastructure providers; (b) Defects due to components, modules or cloud services provided by unaffiliated third parties; (c) Defects in and due to components for which warranties have been explicitly excluded in the Agreement, SLA, Order Documents or Documentation; (d) Where you have modified or used the Cloud Service and components thereof such as the SDK or API in violation of the terms of the Agreement, Subscription plans, Order Documents or Documentation, our reasonable instructions or guidance; (e) Where you are not using the latest version of the Cloud Service or you do not comply with system requirements; (f) Where you have not purchased a Subscription Plan with corresponding SLA Warranties; (g) Where the Cloud Service is provided to you for free or under NFR terms; (h) Where you have not paid the fees for the Cloud Service when due; (i) Where

your Support Query is not filed through a registered Support Contact and we cannot validate the identity and authority of the person filing a Support Query with reasonable efforts; (j) Where your Support Query can be answered by consulting the Documentation; (k) Where your Support Query constitutes a request for consultancy, training, configuration change or delivery of other professional services; or (l) Where otherwise excluded under the terms of this Agreement.

Your Obligations

16 **First level support to end-users.** You will provide qualified first-level support for adequately addressing internal queries from your end-users in order to exclude queries that are not qualified for Technical Support.

17 **Filing a Support Query.** Unless otherwise defined in the Order Documents, you will file Support Queries strictly in accordance with instructions provided on https://picturepark.com/support.

18 **Cooperation for Technical Support.** For the sole purpose of facilitating our obligations for providing you with Technical Support, you shall: (a) fully cooperate in promptly providing us with all reasonably requested information so we can verify, reproduce and classify a Defect; (b) support us in verifying your identity and authority for cooperation on your Support Query; (c) allow and provide us with full, free-of-charge and reasonably performing remote access to your computer for reproducing potential defects; (d) promptly and at no cost to us implement reasonably required actions for Defect resolution; and (e) ensure that any integrated systems and data are not affected, or backed up and can be restored, before you apply changes to the Cloud Service based on our advice, or we apply such changes after you have approved us to do so on behalf of you.

19 **Charges.** Except as otherwise defined in this Agreement, we will always inform you in advance if your Support Queries constitute a request for professional services or if expenses will occur for which we will charge you.

20 **Claiming for breach of SLA Warranties**. If you believe that we are in breach of the SLA Warranty and you wish to exercise your right to terminate pursuant to Section 49 of the Agreement you must inform us of the breach of Warranty in writing by sending notice to our business or email addresses as defined in the Order Documents with a copy to legal@picturepark.com within 10 days of the date on which the SLA Warranty was not met. You must provide details regarding and substantiating your claim including but not limited to, detailed descriptions and the duration of the Defects, copies of your Support Queries as well as our responses, logs of missed Availability or Support Response Times, and the affected URL(s). You must provide us with any other information that we reasonably request after receipt of your notice to enable us to assess the facts of the case.

21 **Judgment**. We will use all information reasonably available to assess your claim and make a good faith judgment in relation to a breach of the SLA Warranty. Our judgment shall be final and binding.

Table A) SLA Warranties per Subscription Plan

Subscription Plan	Standard or Starter	Premium	Enterprise
Storage Type (see Table B for description)	Multi-site	Multi-site	Multi-site
Availability of Cloud Service per calendar month	Usually min. 99% (Best Effort)	Min. 99.5%	Min. 99.9%
Support Response Time (SRT)	Usually max. 24 Hours (Best Effort)	Max. 6 Hours	Max. 2 Hours
Recovery Point Objective (RPO) from Multi-site Storage	-	Max. 24 Hours	Max. 24 Hours
Priority Recovery (resulting in minimized RTO)	No	No	Yes
Tolerable Maintenance per month	Usually max. 32 hours (Best Effort)	Max. 24 Hours	Max. 16 Hours
Support Contacts (max)	Max. 2	Max. 5	Max. 10
Escalation support	No	Yes	Yes
End User Support	No	No	Yes (Best effort)

Table B) Descriptions and SLA Warranties for Storage types and Backup Options

Storage Types

"Multi-site"

Customer Data is stored in multiple segregated sites within one Region, with redundant online copies of Customer Data replicated periodically from a primary to at least a secondary physically separated site.

Built for a disaster recovery scenario (DRS) with a fatal failure in the primary site and potential loss of all Customer Data therein, resulting in a restore of Customer Data from the secondary site.

"Single-site"

Customer Data is stored in a single site with basic data-protection features for Customer Data solely provided in a limited way by underlying components of the data storage devices (no backup, no data replication).

Built for a disaster recovery scenario (DRS) where fatal failures of single underlying components of the storage device might at best result in a prevention or limitation of loss of Customer Data through in-built technologies of such storage device.

Customer data can only be restored by you via your backups that you had created using your tools and fully independent from us, or Customer data can be restored from us via our Backup Options, if you had been purchased such option from us.

Backup Options

"Suisse Safe"

Periodic replication of Customer Data onto a tertiary site where Customer Data is backed-up on encrypted offline backup media stored in a safe located in Switzerland.

All offline backup media are kept with a retention period of ninety (90) days and remain under direct control of us, providing a recovery option for Customer Data independent from the primary or secondary site's storage and Sub-processors.

Protective measures are in place designed for reducing the risk of loss of Customer Data via ransomware and potentially other attacks via malware or computer virus, fire, earthquake, lightning, electromagnetic pulses (CME, EMP), and similar disasters (provided under Best Effort provisions).

Built for a disaster recovery scenario (DRS) with fatal failures in our primary or secondary sites and a loss of all Customer Data processed and stored via such Storage Types, resulting in the sole option to restore Customer Data from Suisse Safe backups.

Recovery Point Objective (RPO) for Suisse Safe: max. 48 hours.