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Picturepark Cloud Agreement

Last changed: December 20, 2017

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 ("you", "your", "yours", "user") as named in the Proposal and the Vision Information Transaction entity named in the Proposal, 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, ACCEPTABLE USE POLICY, DATA PROCESSING AGREEMENT AND PRIVACY POLICY, WHICH ARE INCORPORATED BY REFERENCE INTO THIS 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) under the title "Picturepark" including any installable Picturepark software provided through the Cloud Service.

2   **"Documentation"** means our written materials or electronic files which relate to the Cloud Service including, but not limited to, system requirements, user manuals, 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. As used herein, "control" means (a) the power, by ownership of voting equity, contract or otherwise, to elect a majority of the board of directors or other governing body of the subject entity or to otherwise direct the management and policies of the subject entity, or (b) the record or beneficial ownership, directly or indirectly, alone or in combination with one or more Affiliate(s), other than by way of security interest only, of more than 50% of the voting rights, income or capital of the subject entity; and "controlled" has a corresponding meaning.

4   **"Sub-processor"** means a third party subcontractor engaged by us who will process Customer data for delivering Technical Support, providing the technical infrastructure or specific features and components of the Cloud Service, or delivering you professional services related to the Cloud Service as requested by you from us.

5   **"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, and who can provide you Technical Support and professional services, if authorized and certified. Partners and their certifications are published on www.picturepark.com.

6   **"Proposal"** means our proposals and our other licensing documents which detail the license metrics, subscribed features and plans, costs, payment and other specific terms related to the Cloud Service (or parts thereof) based on which you place your order.

7   **"Technical Support"** means our limited help and advice regarding your use of the Cloud Service and our limited assistance to verify and potentially resolve problems with the Cloud Service.

8   **"Service Level Agreement"** or "SLA" defines warranties for Technical Support and Cloud Service Availability, and corresponding compensation if our warranties are not met.

9   **"New Versions"** means "Upgrades" and "Updates" of the Cloud Service provided by us from time to time. "Upgrade" means a replacement of the then-current Cloud Service version with a newer, materially changed or enhanced version as signified by a change in either or both of the first two (2) digits of the four (4)-digit version number. "Update" means a maintenance version of the Cloud Service that mainly contains immaterial changes or enhancements, error corrections or fixes for the then-current version of the Cloud Service as signified by a change in either or both of the last two (2) digits of the four (4)-digit version number.

10   **"Acceptable Use Policy"** or "AUP" defines 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.

11   **"Customer data"** means all files, content, metadata, Personal Data, Confidential Information and any other data stored or processed via the Cloud Service as requested by you as the Data Controller.

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

13 **"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" which means the United States of America.

14 **"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

15 **Non-exclusivity, no other terms.** We grant you the non-exclusive worldwide right to access and use the Cloud Service as further described in this agreement and in accordance with the Proposal. Proposals must be signed by us or an authorized Partner, and you. NO TERMS OTHER THAN THIS AGREEMENT SHALL APPLY FOR THIS CLOUD SERVICE AND SLA. ANY TERMS CONTAINED IN ORDER DOCUMENTS THAT ARE DIFFERENT FROM OR EXTEND THIS AGREEMENT ARE HEREBY EXPRESSLY REJECTED UNLESS AUTHORIZED BY US IN WRITING.

16 **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.

17 **Cloud Service used for free or NFR.** 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 ALL SLA, WARRANTY OR LIABILITY OBLIGATIONS ARE EXPRESSIVELY EXCLUDED AND DISCLAIMED.

18 **Documentation.** Documentation for the Cloud Service is provided in generic form and does not cover specific use cases or custom configurations. We warrant as per the Documentation provided with the Cloud Services. You may copy, distribute and change our Documentation under the Creative Commons BY-SA 4.0 license unless such right is not expressively excluded in the Documentation. Any such modified Documentation is not warranted.

19 **Third party software.** You acknowledge that the use of the Cloud Service requires 3rd party software as defined in the Documentation such as operating systems, web browsers, runtimes or 3rd party cloud services that are subject to the terms and conditions of their licensors, and hereby excluded from this agreement and the purchase price. Additionally, the Cloud Service contains and uses open source 3rd party software libraries which are credited in the Cloud Service and for which a list can be provided upon request. You shall not use the Cloud Service or corresponding parts thereof if you do not agree to these 3rd party conditions and terms.

20 **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, this agreement, the AUP or Privacy Policy declarations and corresponding link references from the Cloud Service.

21 **Restrictions for AVC/H.264 video format**. You agree not to use the Cloud Service for video on demand services where any User has to pay for videos on a title-per-title basis if these videos feature an AVC/H.264 output format and have a play length of more than 12 minutes each, and you have not licensed this codec for such use through separate agreements.

22 **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 herein, we do not grant you any intellectual property rights in the Cloud Service or any such associated material.

New Versions, Service Level Agreement

23 **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. 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.

24 **Modifications through New Versions.** All New Versions of the Cloud Service are subject to this agreement. You acknowledge and agree that New Versions may be subject to changes to the terms and conditions of this agreement and that they may add, eliminate or modify features as well as change system requirements. If we do substantially modify the service, we shall notify you reasonably in advance and if you do not agree with a New Version that substantially modifies the Service, you may terminate this agreement as per section 49 within 30 days after the New Version has become effective.

25 **Warranties via Service Level Agreement**. If you purchase the optional SLA, we warrant that the Cloud Service and Technical Support will perform as stated in this agreement and the SLA. The SLA is defined in an Exhibit and incorporated herein by reference. EXCEPT AS PER THE LIMITED WARRANTIES DEFINED IN SECTION 36 NO SERVICE LEVEL WARRANTY IS PROVIDED IF NO SLA IS PURCHASED AND YOU MAY RECEIVE ONLY LIMITED TECHNICAL SUPPORT SUBJECT TO OUR SUPPORT AVAILABILITY AND PROVIDED AT OUR SOLE DISCRETION.

26 **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 provide you Technical Support, in accordance with the terms of the DPA Exhibit and incorporated herein by reference. We remain responsible at all times for compliance with the terms of this agreement by our Affiliates and Sub-processors.

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Personal & Confidential Information

27 **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. You will secure and maintain all rights in Customer data necessary for us to provide the Cloud Service to you without violating the rights of any third party or otherwise obligating us to you or to any third party. Each party undertakes to comply with its respective obligations in relation to Customer Data as set out in the DPA.

28 **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 or Technical Support to you.

29 **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.

30 **Obligations.** Each party shall hold the other's Confidential Information in confidence and, unless required as per Section 29, 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.

31 **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.

32 **Use of names**. The parties agree to use each other's name for public statements or any required notices only after prior approval of the other party, and to coordinate in good faith on developing its content.

33 **Hosting infrastructure & regions**. You acknowledge and agree that a Sub-processor is providing us the required technical infrastructure for hosting the Cloud Service and Customer data ("Hosting infrastructure"). Customer data will be stored in the Region as defined in this agreement and ordered based on the Proposal, and is processed only in accordance with the DPA. If not defined in the Proposal, the region is Europe.

34 **Recovery of Customer data.** Subject to the warranties defined for the Hosting type or Backup option you have ordered, we warrant to restore Customer data from backups where such Customer data is lost or destroyed through our fault at no cost and as defined in the SLA. If Customer data was lost, destroyed or deleted through your fault, we will attempt to restore Customer data within a delivery time and for a charge as mutually agreed.

35 **Export of Customer data.** You are entitled to request a simple standard export of your Customer data at any time, database dumps explicitly excluded. We will provide such export for a handling fee of CHF/USD/EUR 2'000 per up to 4 TB of Customer data, including costs for storage media but excluding costs for shipping and customs. The export shall be executed no later than 30 days after you have instructed us to do so.

Warranties

36 **Limited Warranties**. Unless otherwise specified in this agreement, we warrant that the Cloud Service will substantially perform as per the terms in this agreement and the Documentation during the Term ("Warranty"). If we cannot make the Cloud Service operate as warranted, you are entitled to terminate this agreement for cause. In case you have purchased and paid an optional SLA you receive additional warranties and remedies for breach of warranties as detailed in the SLA. Warranty claims must always be made in writing during the applicable period of warranty to the business or email addresses as provided in the Proposal with a copy to legal@picturepark.com.

37 **WARRANTY DISCLAIMER.** THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY US AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR US, OUR AFFILIATE'S, SUB-PROCESSOR'S, PARTNER'S, PRINCIPAL'S AND EMPLOYEE'S 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 ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Indemnification

38 **Indemnification by us.** Under the terms of this agreement, we shall indemnify and defend you against claims made by an unaffiliated third party that the Cloud Service infringes the 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) Customer data or modifications you made to the Cloud Service; (b) your use of our

trademarks without our express prior written content; (c) your redistribution of the Cloud Service to, or use for the benefit of, any unaffiliated third party; (d) Cloud Services provided for free or NFR.

39 **Indemnification by you**. You shall indemnify and defend us 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.

40 **Remedies**. Should the Cloud Service furnished under this agreement become, or in our sole opinion be likely to become, the subject of a claim under section 38, we may at our sole discretion and at our own expense (a) purchase any right required for continued use of Cloud Service, (b) modify the existing Cloud Service so it is less likely to cause infringements or (c) replace the Cloud Service with a substantially functional equivalent. If these or other options are not commercially reasonable, we may terminate your rights to use the Cloud Service and refund any unused advance payments for the Cloud Service.

41 **Obligations**. Each party must notify the other promptly of a claim made related to sections 38 and 39. 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 will 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). The parties' respective rights to defense and payment of judgments or settlements under this section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

Limitation of Liability

42 **Limitation of Liability**. To the fullest extent permitted by applicable law and subject to section 43 and 44, 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.

43 **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 or Confidential Information, even if a party knew that such damages were possible.

44 **Exceptions**. Nothing in this agreement shall limit a party's liability for death or personal injury caused by its negligence, fraud, willful misconduct or gross negligence. The limitations will not apply to violations of the other's property right and section 38 and 39.

45 **Insurance**. We will maintain insurance at a level adequate to cover all of our potential liabilities under this agreement throughout the Term and shall provide evidence of such insurance at your request.

Term, Termination & Suspension

46 **Term.** If not defined in the Proposal, this agreement will commence at the date of purchase or by when you start using the Cloud Service, whichever comes 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"), unless cancelled or until otherwise terminated by either party pursuant to the termination provisions herein.

47 **Termination for convenience.** Subject to the Term and if not defined in the Proposal, either party may terminate this agreement or the SLA by the end of each calendar month by giving written notice to the other party of at least ninety (90) days prior to the effective date of termination.

48 **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 then 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 50 below, in the event that your account has been suspended as described therein.

49 **Termination due to modifications**. You have the right to terminate this agreement by giving us prior written notice of at least ten (10) days if you do not agree to our modifications of the Cloud Service through New Versions or our modifications of this agreement; as per section 24 and section 58. 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 by when the modified agreement or New Versions of the Cloud Service become effective then you become automatically bound to all modified terms and conditions, and all New Versions of the Cloud service are deemed accepted.

50 **Temporary suspension and termination.** We may temporarily suspend your right 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) may subject us or a third party to material liability; c) may be fraudulent and violate applicable law; d) you are in breach of this agreement; e) you are subject of any bankruptcy, liquidation, dissolution or similar proceeding; or f) you are more than thirty (30) days in delay of payment. During the temporary suspension, you remain responsible for fees and charges that you have incurred through the date 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 notice before we suspend, except where we reasonably believe we need to suspend immediately. 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.

51   **Survival.** Any terms of this agreement which by their nature should survive termination or expiry, in particular sections 22, 29, 30, 32, 37, 38 and 39, shall survive the termination or expiry of this agreement for any reason.

Miscellaneous

52   **Advance payment.** Unless otherwise defined in the Proposal, payment for the Cloud Service and SLA is due by when the Term begins with advance payments for the Term.

53   **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 your legal entity registered in the United States, Mexico or Canada or (b) the State of Canton Aargau, Switzerland, if you purchase the Cloud Service from your legal entity registered in any other country of the world, as evidenced by your company name and address in the Proposal. The respective state and federal courts located in New York City, New York, United States, shall apply for New York law and the city of Aarau, Canton of Aargau, Switzerland, shall apply for Swiss law. 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.

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

55   **Notice.** Any notices required or permitted to be given pursuant to this agreement shall be in writing, sent via email or certified mail with return receipt requested to the business or email addresses as provided in the Proposal 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.

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

57   **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. In the event of any inconsistency between this agreement and amendments of this agreement, the amendments shall prevail if mutually agreed between you and us.

58   **Modifications of this agreement.** We may modify this agreement at any time by giving you written notice at least ninety (90) days prior to the effective date. You are automatically bound to such modified agreement if you continue to use the Cloud Service after the effective date. If you do not agree with the modified agreement then you shall terminate this agreement using your termination rights due to modifications, as defined in section 49. 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 or reasonably unforeseeable changes by our Hosting infrastructure suppliers which become effective immediately by when we notify you about such changes if no other effective date was provided in such notification.

59   **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

60   **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.

61   **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 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.

62   **Singular and Plural**. Reference to the singular includes the plural and vice versa.

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Picturepark Service Level Agreement (SLA)

Last changed: December 20, 2017

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 Service Levels according to their severity as defined in Table A.

2   **"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 you to a reasonably tolerable amount.

3   **"Support Query"** shall mean your query for Technical Support.

4   **"Availability"** is defined as the total number of minutes the Cloud Service is available in a calendar month without Priority 1 Defects (defined in Table A) divided by the total number of minutes less minutes used for Maintenance (as defined in section 5 of the SLA) during that calendar month.

$$\frac{Effective\ availability\ during\ month}{(Total\ time\ of\ month - Maintenance\ time)}$$

Your warranted Availability is defined in Table B based on your ordered Hosting type.

5   **"Maintenance"**. After giving you prior notice of at least 24 hours, we may carry out Maintenance to the Cloud Service. Whenever reasonably possible, maintenance shall take place outside Support hours. Tolerable maintenance is excluded from Availability as defined in Table B.

6   **"Reaction time"** is defined as the period of time beginning with receipt of your Support query and ending with our delivery of a first non-automated response, as warranted in Table A.

7   **"Resolution time"** is defined as the period of time beginning with receipt of your Support query and ending with Defect resolution, as warranted in Table A.

8   **Support regions and hours.** Technical Support is available per region ("Support Hours") and all Reaction and Resolution times defined in "Hours" or "Days" 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"). Limited to Priority 1 Defects only, we provide you with 24/7 global escalation support which use might be charged if your support escalation reasonably proves unjustified. If not defined else in the Proposal, support hours for EMEA Support apply.

Service Level Warranties & Limitations

9   **SLA Warranties.** Through this SLA we warrant to you Reaction and Resolution times for Technical Support during the Support Hours according to Table A as well as the Availability of the Cloud Service according to Table B corresponding to your ordered Hosting type and Backup option.

10 **Classifications.** You will pre-classify your Support Query when filing it according to Table A and we will use reasonable efforts to verify, and inform you of our initial assessment and classification within the Reaction Time.

11 **Limitations.** Strictly excluded from the SLA and any warranties provided herein are the following situations: (a) Defects due to factors outside the reasonable control of us such as failure of upstream infrastructure providers; (b) Defects due to components, modules or cloud services provided by unaffiliated 3rd parties; (c) Defects in and due to components for which warranties have been explicitly excluded in the Proposal; (d) you have modified or used the Cloud Service inconsistent with the terms of this agreement or Documentation, our reasonable instructions or guidance; (e) you are not using the latest version of the Cloud Service or you do not comply with our system requirements; (f) you have not purchased an SLA or not paid any fees for the Cloud Service or SLA when due; (g) the Cloud Service is provided to you for free or under NFR terms; (h) your Support Query is not filed through a registered Support Contact and we cannot validate the identity and authority of the requestor with reasonable efforts; (i) your Support Query can be answered by consulting the Documentation; (j) your Support Query constitutes a request for consultancy, configuration change or delivery of other professional services; or (k) other limiting factors as defined in this agreement

Your Obligations

12 **First Level Support & Support Contacts**. You will provide internal first-level support for adequately addressing your end-user questions before escalating Support queries to us through your Support Contacts. Unless otherwise defined in the Proposal, Technical Support is only warranted to Support Contacts you had previously registered, limited to a maximum of two (2) Support Contacts at a time.

13 **Reporting a Defect.** Unless otherwise defined in the Proposal, your Support Contacts will report Defects according to instructions and through the form provided on http://www.picturepark.com/support.

14 **Cooperation.** For the sole purpose of facilitating our Support obligations, 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; (d) promptly and at no cost to us implement reasonably required actions for Defect resolution; and (e) ensure that corresponding systems and data are backed up and can be restored before applying changes based on our advice.

15 **Charges.** We will always inform you in advance if your Support Query constitutes a professional service or expenses are incurred for which we will charge you.

SLA Credits

16 **SLA Credits**. SLA Credits credited towards future use of the Cloud Service under this agreement are your sole and exclusive remedy for any violation of this SLA and in addition to your other rights under this agreement.

17 **SLA Credit Calculation**. SLA Credit calculation is based on your fees paid or payable for the Cloud Service (or the affected part thereof) during the period in which a Defect effectively occurs ("Credit base"). SLA Credits shall be calculated by applying the corresponding percentage (or a pro-rata fraction thereof) as defined in Table A or Table B to the Credit base.

$$Credit\ base \times SLA\ Credits\ in\ \%$$

By way of example and not limitation, if your warranted Availability is 99.9% and the Cloud Service has been unavailable for three hours in a calendar month with 720 hours in total, then the effective availability during this calendar month has been 717 hours or 99.58% which is 0.32 percentage points below warranted Availability. If we compensate you each percentage point below warranted Availability with SLA Credits of 20%, then you become eligible for SLA Credits of 6.33% of the amount you had paid us for the Cloud Service. For permanent loss of Customer data and by way of example and not limitation, if after a disaster we can only restore 900 GB instead of your 1000 GB stored on a warranted Backup option, then you are eligible to receive SLA Credits equivalent to 1200% of the amount paid or payable that calendar month for storage of these 100 GB of lost Customer data.

18 **SLA Credit Limitations**. In aggregate for Availability, Reaction and Resolution times, SLA Credits shall in no event exceed your fees actually paid or payable for the Cloud Service during the period in which a Defect effectively occurs. For permanent loss of Customer data stored on Hosting types or Backup options with corresponding warranties (as defined in Table B), SLA Credits on aggregate shall in no event exceed 1200% of your fees actually paid or payable for the storage of lost Customer data during the one single month in which the Customer data was lost. All SLA Credits are strictly limited in aggregate to the limitations on liabilities defined in this agreement.

19 **Claiming for SLA credits**. To submit a claim, you must send it in writing to our business or email addresses as defined in the Proposal with a copy to legal@picturepark.com within at least 10 days after the date the warranted Availability, Defect resolution time or Reaction time was not met. You must provide us with all reasonably requested details regarding and substantiating your claim, including but not limited to, detailed descriptions and durations of the Defect(s), copies of your Support Queries as well as our responses, logs of experienced effective Availability or Reaction times, and the affected URL(s).

20 **Judgment**. We will use all information reasonably available to validate your claim and make a good faith judgment per the definitions of this agreement on whether the SLA and Service Levels apply to the claim. Our judgment shall be final and binding.

Table A) Service Levels with warranted Reaction & Resolution Times

Service Levels	Basic SLA		Premium SLA		SLA Credits
	Reaction time	Resolution time	Reaction time	Resolution time	
Priority 1: Critical Defect that causes the Cloud Service or its critical core components such as login, search, download or share to become completely inoperable or in-accessible, severely affecting all Users and all Customer data.	Immediate reaction and continuous efforts for Defect resolution		Immediate reaction and continuous efforts for Defect resolution		Defined per Hosting type or Backup option in Table B
Priority 2: Major Defect which materially distorts your use of the Cloud Service by severely limiting a core component or function, effectively affecting the majority of Users and Customer data. Potential workarounds, if applicable, cause substantial side-effects and can only be applied temporarily.	4 h	20 days	2 h	10 days	10% for each Day of delay
Priority 3: Medium Defect which materially distorts your use of the Cloud Service by severely limiting a non-core component or function, effectively affecting many Users and Customer data.	8 h	60 days	4 h	30 days	5% for each Day of delay
Priority 4: Minor Defect not classified as Critical, Major or Medium such as tolerable limitations to certain components or functions, isolated performance or non-reproducible issues of Cloud Service, minor compatibility issues for supported web-browser, file conversion issues for few files of generally supported formats, and similar.	24 h	-	12 h	Tentatively scheduled for a future New Version	-

Table B) Warranties for Critical Defects per Hosting type and Backup option

Description	Warranties & SLA Credits
Hosting type "Multi-site" Customer data is stored on the Hosting infrastructure in multiple segregated sites within one Region, with redundant online copies of Customer data replicated from a primary to at least a secondary site. Additionally, the primary site features basic data-redundancy for Customer data provided by underlying components of the Hosting infrastructure. 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.	99.9% Cloud Service Availability. Up to 16 hours of Maintenance per calendar month. Customer data restored with Recovery Point Objective (RPO) < 60 minutes. SLA Credits: 20% for each percentage point below warranted Availability. NO WARRANTIES OF ANY KIND FOR LOSS OF CUSTOMER DATA ARE MADE FOR THIS HOSTING TYPE.
Hosting type "Single-site" Customer data is stored on Hosting infrastructure in a single site with basic data-redundancy for Customer data solely provided by underlying components of the Hosting infrastructure. Built for a disaster recovery scenario (DRS) where fatal failures of single underlying components of Hosting infrastructure might result in a restore of Customer data through in-built technologies of such components or via Backup options.	99.5% Cloud Service Availability. Up to 16 hours of Maintenance per calendar month. SLA Credits: 10% for each percentage point below warranted Availability. NO WARRANTIES OF ANY KIND FOR LOSS OF CUSTOMER DATA ARE MADE FOR THIS HOSTING TYPE.
Backup option "Suisse Safe" Periodic replication of Customer data from the primary site onto another site where Customer data is backed-up on encrypted offline media stored in a Swiss safe. All offline backup media are kept with a retention time of six (6) months and remain under direct control of us, providing a recovery option for Customer data independent from the primary site's Hosting infrastructure and Sub-processors. Built for a disaster recovery scenario (DRS) with fatal failure of any of our Hosting types with loss of all Customer data stored on such Hosting infrastructure, resulting in a restore of Customer data from "Suisse Safe" backups.	100% of Customer data restored with Recovery Point Objective (RPO) < 48 hours. SLA Credits: 1200% for permanently lost Customer data.