

Picturepark Professional Services Agreement

Last changed: December 20, 2017

This general agreement for Picturepark services ("Agreement") governs all our services such as consultation, project management, configuration, installation, system integration and training ("Professional Services") as well as related sample materials, documents, forms, templates or explanatory materials or files ("Documentation").

The parties in this Agreement are yourself, or the legal entity you represent including, but not limited to, your directors, managers, employees, representatives, associated companies or contractual partners or, if none of these entities are named by yourself, you personally ("you", "your", "yours", "user") and the Vision Information Transaction entity named in the order form completed by the parties ("Picturepark", "we", "us" or "our").

THROUGH YOUR COMMISSIONING OF OUR PROFESSIONAL SERVICES OR THROUGH YOUR USE OF OUR DOCUMENTATION YOU CONFIRM THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT WHICH INCLUDES WITHOUT LIMITATION OUR [PRIVACY POLICY](#) AND [DATA PROCESSING AGREEMENT](#) AND ALL OTHER DOCUMENTS REFERRED TO IN THIS AGREEMENT. WITH YOUR ORDER YOU AGREE TO BE BOUND BY ALL THE TERMS OF THIS AGREEMENT AND ALL DOCUMENTS REFERRED TO HEREIN AND INCORPORATED BY REFERENCE AND YOU GIVE YOUR ASSURANCE THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT.

Professional Services

- Offers & Order Placement.** Our quote is a non-binding definition of the Professional Services and conditions that we have offered you (collectively "Offer"). Your orders may be placed both verbally or in writing with reference to our Offer and are only valid as accepted and contractually agreed upon after we provide you with written confirmation. All other conditions in an order that differ from or extend those defined in our Offer and this Agreement are hereby expressly rejected if not approved by us in writing. In the event of any inconsistency between this Agreement and the Offer, the mutually signed Offer shall govern concerned provisions.
- Service Delivery.** We commit to a competent and diligent fulfilment of your order and the safeguarding of your interests to the best of our knowledge and beliefs. We will inform you regularly regarding the progress of the work and will inform you in writing immediately of any circumstances that may interfere with the fulfilment of the contract. You have a right of control and information over all parts of the order. Your contribution is preconditioned and corresponding obligations on your part are regulated in our Offers or detailed project plans. Delays and additional work and expenses caused by deficient or incorrect completion of your defined obligations shall be borne by you. Professional Services can be performed by us or via sub-contractors commissioned by us ("Partner"). We undertake to name the commissioned Partners at your request and to contract them with no less restrictive obligations than we hereby assure you, especially with regards to confidential information and personal data.
- Change Management.** During service delivery both parties can suggest changes to the agreed upon delivery of Professional Services in writing. In the event of a requested change ("Change request") the addressee of the enquiry has to notify the requestor in writing within a reasonable time period, whether the change is possible and which effects this will have on the agreed upon contract, especially with regards to costs and delivery dates. The change only becomes effective by written agreement of both parties.
- Statement of Acceptance.** Your acceptance of our delivery of Professional Services will always be logged in writing. You are obligated to provide a statement of acceptance of our delivery as soon as we have notified you of the completion of the work or completed parts thereof. If you do not provide a statement of acceptance although obligated to do so, then the corresponding deliveries of Professional Services are considered automatically accepted 14 days after handover or declared completion. Our delivery of Professional Services also counts as accepted once you use them productively.
- Invoicing.** The issuing of invoices, unless otherwise defined in the Offer, occurs monthly, or after delivery and according to the payment plan for fixed price Offers. Unless otherwise defined in the Offer, invoices are payable within 30 days after date of invoice. All prices are net prices in the currency as indicated, excluding sales, value added or other applicable taxes, fees, tariffs or expenses.
- No Exclusivity.** We grant you the non-exclusive right to use results arising from our delivery of Professional Services such as concepts and guidelines for data structures and business procedures, software configurations, user guides or concepts as well as client specific solutions, for the purpose stated in the Offer.
- Software & Intellectual Property.** Our Professional Services are usually rendered in connection with software or Software-as-a-Service products ("Software"), which are subject to completely separate agreements and contracts. The Software and all accompanying materials such as documentation, logos, designs etc., are at all times the sole and exclusive property of ourselves and our licensors or sub-contractors. Unless expressly stated otherwise in these separate Software agreements we do not grant you any intellectual property rights in or to such software and accompanying materials.

Confidential Information

- 8 **Data Protection & Confidential Information.** Each party may be given access to private, confidential or personal identifiable 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.
- 9 **Obligations.** Each party shall hold the other's Confidential Information in confidence and, unless required as per Section 8, not make the other's Confidential Information available to any third party, 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 or agents 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 any third party.
- 10 **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.

Warranty & Liability

- 11 **Limited Liability.** Unless otherwise specified in this Agreement, we warrant that our delivery of Professional Services materially meets the requirements as defined in the Offer and in this Agreement. If we have repeatedly failed to rectify and cannot provide you the Professional Services as warranted, and if your complaint is legitimate, then you are entitled to terminate this Agreement for cause. Warranty claims must always be made in writing during the applicable period of warranty, which ends with acceptance of our delivery as set out in section 4, to the business or email addresses as provided in the order with a copy to legal@picturepark.com. Warranty rights for defects reported later are deemed forfeited.
- 12 **WARRANTY DISCLAIMER.** THE FOREGOING LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY US AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR US, OUR PARTNER'S AND OUR SUPPLIER'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.
- 13 **Limitation of Liability.** To the fullest extent permitted by applicable law and subject to section 15, the aggregate liability of each party under this Agreement is limited to direct damages up to the amount effectively paid for our delivery of Professional Services under your order and this Agreement. 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.
- 14 **Exemption from Liability.** Neither of the parties is liable for indirect, special and/or incidental damages or consequential loss or loss through lost profit, revenue, business interruption or the loss of business information or data, not even when one party was aware that such damages could occur.
- 15 **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.
- 16 **Insurance.** We ensure adequate insurance in order to meet our obligations arising from this Agreement.

Data Protection

- 17 **Obligations.** To the extent that personal data is processed in the use or provision of the Professional Services, the parties acknowledge that we (and our Partners) are data processors and you are a data controller and the parties shall comply with their respective statutory data protection obligations and their contractual obligations set out in our Data Processing Agreement.

Miscellaneous

- 18 **Inconsistency.** In the event of any inconsistency between the terms of this Agreement and any documents referred to in it, the terms of the Agreement shall prevail followed by the terms of the Data Processing Agreement, the Privacy Policy and then any other documents in the order they are referred to in the Agreement.
- 19 **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 order our Professional Services from your entity registered in the United States, Mexico or Canada or (b) the Canton of Aargau, Switzerland, if you order our Professional Services from your entity registered in any other country of the world, as evidenced by the your company name and address in the order form. 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 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.
- 20 **Severability.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

- 21 **No Agency.** You and we are independent contractors. This Agreement does not create an agency, partnership, or joint venture.
- 22 **Modifications of this Agreement.** We may modify this Agreement at any time by giving notice through simple written communication or public release. You are automatically bound to such latest modified Agreement for any further order of our Professional Services.
- 23 **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- 24 **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, Internet or other communications systems, strike, 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.