# PICS DocLib HOSTED SERVICES AGREEMENT

“**Customer**” refers to the entity that has executed a Quote (as defined below) with PICS DocLib, LLC, a Delaware limited liability company with offices located at 1807a W 16th Street Wilmington DE 19806 (“**PICS**”). This Hosted Services Agreement (“**Agreement**”) is valid for the Quote which references this Agreement.

## DEFINITIONS.

* 1. “**Affiliate**” is an entity that controls, is controlled by or shares common control with Customer, where such control arises from either
1. a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.
	1. “**Customer Data**” means all electronic data or information submitted by Customer to the Subscription Services or Document Indexing Services.
	2. **“Documentation”** means PICS’ current user manuals, operating instructions and installation guides generally provided with the Software to its licensees.
	3. **“Document Indexing Services”** means conversion of any printed or typed text contained in Customer Data submitted by Customer to PICS pursuant to an Quote, agreed to by the parties, under this Agreement.
	4. “**Professional Services**” means the service(s) named and described in an Quote for the purchase of such Professional Service.
	5. “**Quote**” means (i) the agreed ordering document for the purchase of the Services, (ii) that is subject to this Agreement, and (iii) that identifies the particulars of the purchase and fees to be paid.
	6. “**Quote Term**” means the term set forth in each Quote for Customer’s authorized use of the Subscription Services and Document Indexing Services.
	7. “**Software**” means the proprietary software identified on an Quote for use with the Subscription Services.
	8. “**Subscription Services**” means the hosted service which packages web-based access and the right-to-use the Software and associated reference, user and technical guides. One or more of PICS’ subscription services offerings may be ordered pursuant to the terms of this Agreement.
	9. “**User**” means individuals (i) who are authorized by Customer to use and access the Subscription Services, (ii) for whom subscriptions to the Subscription Services have been purchased, and (iii) who have been assigned unique user identifications and passwords by Customer.
2. **SCOPE.** Subject to Customer’s payment of applicable fees, PICS will provide Customer with access to the Document Indexing Services, Subscription Services and with the Professional Services (together, the “**Services**”) as set forth in this Agreement and the applicable Quote. This Agreement contemplates the execution by the parties of one or more Quotes. Quotes may be entered under this Agreement by and between PICS and Customer or an Affiliate of Customer. With respect to an Quote, the terms “PICS” and “Customer” as used in this Agreement will be deemed to refer to the entities that execute that Quote, the Quote will be considered a two party agreement between such entities, and PICS will separately invoice the Customer named in the Quote for the associated subscription fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Quotes.

## DOCUMENT INDEXING SERVICES. Subject to the terms of this Agreement and the applicable Quote, PICS shall provide Document Indexing Services to Customer based upon the number of documents processed per month as set forth in an Quote.

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## SUBSCRIPTION AND PROFESSIONAL SERVICES.

* 1. **Access Rights.** Subject to the terms of this Agreement, PICS hereby grants to Customer a worldwide, non-exclusive, non- transferable, non-sublicenseable, limited license for Customer to access and use the Subscription Services during the Quote Term in accordance with the terms of this Agreement, solely in connection with the operation of the internal business of Customer, and any other restrictions or usage rights set forth in a Quote. Customer is responsible for Users’ compliance with this Agreement.
	2. **Users.** In the event the Subscription Services are provided to Customer on a per User basis, the number of Users for which a subscription is being purchased will be set forth in an Quote. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be re-designated to new Users replacing former Users who no longer require ongoing use of the Subscription Services. However, such re-designation may not be used to circumvent limitations on sharing User subscriptions. Unless otherwise specified in the relevant Quote, (ii) the term of the additional User subscriptions shall be coterminous with the expiration of the subscription term in effect at the time the additional Users are added; and (iii) pricing for the additional User subscriptions shall be prorated for the remainder of the subscription term in effect at the time the additional Users are added.
	3. **PICS Responsibilities.** PICS will (i) provide the Subscription Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) maintain administrative, physical, and technical safeguards for the protection of the security and integrity of the Subscription Services and the Customer Data consistent with standards in PICS’ industry and the manner it protects its own data; (iii) provide the support described in **Exhibit A**, attached hereto (“**Support**”) to Customer for the Subscription Services, which may be changed by PICS upon prior notice to Customer; and (iv) provide the service level commitments for the Subscription Services as described in **Exhibit B**, attached hereto (“**Service Level Commitments**”).
	4. **Customer Responsibilities and Restrictions. (a)** Except for PICS’ obligations in Section 4.3, Customer will be responsible for maintaining the confidentiality of the passwords assigned to Customer. Customer will immediately notify PICS if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. Customer will be responsible for any and all activities made under Customer’s account, including without limitation any fees incurred under Customer’s password-protected account. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Subscription Services, and notify PICS promptly of any such unauthorized access or use, (ii) comply with all applicable laws in using the Services. **(b)** Customer and Users will not (i) modify, copy or create derivative works based on the Services; (ii) create Internet “links” to or reproduce any content forming part of the Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Subscription Services or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Subscription Services; (iv) interfere with or disrupt the integrity or performance of the Subscription Services; (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material via the Subscription Services; (vii) send or store viruses or malicious code via the Subscription Services; (viii) attempt to gain unauthorized access to the Subscription Services or its related software, systems, platforms or networks; (ix) use any components provided with the Services separately from the Services; or (x) remove or modify any PICS logos or branding in the Subscription Services.**(c)** Customer hereby grants PICS a worldwide, nonexclusive, and limited license during the term of this Agreement to store, copy, transmit, and display Customer Data solely as necessary for PICS to provide the Subscription Services in accordance with this Agreement. Subject to this limited license, PICS acquires no right, title, or interest from Customer under the Agreement in or to Customer Data. Customer is solely responsible for the content of the Customer Data. Customer shall ensure that the provision by or on behalf of Customer of the Customer Data complies with all applicable laws and regulations. PICS shall not knowingly disclose Customer Data to any third party. PICS shall be entitled to rely on the accuracy and completeness of such Customer Data. All Customer Data submitted by Users or Third-Party Contractors (as defined in Section 4.5 below) will be deemed to have been submitted by Customer. PICS’ inability to deliver timely data due to the failure of Customer’s system or network shall be the responsibility of Customer. Data transmission failures due to problems with third party or intermediary systems or networks shall be the responsibility of neither party.
	5. **Third Party Contractor User.** Customer may make the Subscription Services available, via a password, to third-party contractors used by Customer to assist in Customer’s permitted operations hereunder (“**Third-Party Contractor**”). Such Third-Party Contractors are entitled to use the Subscription Services only for Customer’s permitted operations hereunder and subject to all of the restrictions for use of the Subscription Services applicable to Customer, as set forth in this Agreement. Customer agrees that any such Third-Party Contractor has been informed of this Agreement and will comply with the terms and conditions of this Agreement, including but not limited to the terms governing Confidential Information, to the same extent as if the Third-Party Contractor were an employee of Customer. Any password provided to any Third-Party Contractor will be disabled immediately upon the conclusion of such Third-Party Contractor’s services for Customer.
	6. **Professional Services.** Customer may purchase Professional Services via an Quote. In the event of any conflict, discrepancy or inconsistency between an Quote and the terms of this Agreement, the terms of this Agreement shall govern, except as to scope of work, consulting fees (including currency), travel expenses and payment terms, for which the Quote shall govern. Unless otherwise expressly specified in the applicable Quote, the fees for Professional Services shall be calculated on a time and materials basis, using PICS’ hourly rates current when the Professional Services are performed. PICS’ hourly rates do not include taxes or out-of-pocket expenses, which shall comply with PICS’ current travel policy.

## FEES AND PAYMENT.

* 1. **Fees.** The fees payable for the Services will be set forth in the Quote. The fees will be invoiced in accordance with the relevant Quote and are due within thirty (30) days from date of invoice. The unpaid balance of any late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.
	2. **Taxes.** Customer will pay or reimburse PICS or, when required by law, the appropriate governmental agency, for taxes of any

kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on PICS’ net income or arising from the employment relationship between PICS and its personnel) imposed in connection with the fees paid for the Services, which are exclusive of these taxes.

* 1. **Temporary Suspension of Subscription Services.** In addition to its other rights and remedies, PICS reserves the right, without liability to the Customer, to suspend any and all access to the PICS Subscription Services if (a) Customer’s account becomes more than thirty (30) days past due until all accounts are paid in full, or (b) there is an operational problem relating to Customer’s use of the Subscription Services (e.g., Customer attempts to upload a file that PICS has determined contains a virus or is corrupted, or in PICS’ reasonable determination, prevents or impedes Customer’s use of the Subscription Services or otherwise interferes with or jeopardizes the integrity, operations or security of the Subscription Services, PICS’ network or systems, or any third party systems with which PICS is interconnected. In such an event, PICS shall promptly notify Customer of the suspension, explaining the reasons therefor, which notice may be via email or telephone.

## TERM AND TERMINATION.

* 1. **Term. (a) Agreement.** This Agreement commences on the Effective Date and will remain in effect unless terminated pursuant to Section 6.2 below. **(b) Quote(s).** Each Quote will commence on the start date specified in the relevant Quote and continue for the Quote Term specified therein. **(c) Automatic Renewal.** Unless and until terminated by either party in accordance with this Agreement or either party provides written notice of non-renewal to the other party at least sixty (60) days prior to the scheduled each of the then-current Quote Term, the Quote Term of each Quote shall automatically renew and be extended upon its expiration for a period of the same duration of as the Quote Term specified on such Quote, at PICS’ then-current fees.
	2. **Termination. (a) Termination for Convenience.** Upon thirty (30) days advance written notice, either party may terminate this Agreement for its convenience; however, such termination will have no effect on Quotes executed by the parties prior to its effective date, including but not limited to payment obligations contained therein, and such Quotes will remain in full force and effect under the terms of this Agreement; **(b) Termination for Cause.** Either party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. (**c) Suspension of Services for Cause.** In addition to its other rights and remedies, PICS reserves the right, without liability to Customer, to immediately suspend any and all access to the Services if Customer commits a material breach of this Agreement or any relevant Quote until such material breach is cured. If such material breach is (i) unable to be cured, or (ii) is not cured within 10 business days, then PICS may immediately terminate the Agreement and/or the affected Quote.
	3. **Effects of Termination.** Upon termination pursuant to 6.2(b) and (c) above, all rights and licenses granted herein will terminate and Customer will make no further use of the Services. No termination will relieve Customer of the obligation to pay any fees accrued or payable to PICS. Upon written request by Customer made within thirty (30) days after the effective date of termination, PICS will make available to Customer a file containing the Customer Data. After such thirty-day period, PICS shall have no obligation to maintain or provide any Customer Data and will thereafter delete Customer Data.

## PROPRIETARY RIGHTS AND CONFIDENTIALITY.

## Proprietary Rights. PICS, or its licensors retain all right, title and interest to the Services and all related intellectual property and proprietary rights. The Services are protected by applicable copyright, trade secret, industrial and other intellectual property laws. PICS owns all right, title and interest in all software, programming, documentation, templates, questionnaires, methodologies, models, charts, reports and any other items used to deliver the Services or made available to Customer as a result of the Services (“ Services Items”) and access to and use of the relevant Services Items will be governed by the terms of this Agreement. PICS reserves any rights not expressly granted to Customer. “Confidential Information” means all proprietary or confidential information that is disclosed to the recipient (“Recipient”) by the discloser (“Discloser”), and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its customer-related and financial information, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to PICS, and its licensors, the Services; and (iii) the terms of this Agreement, including without limitation, pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient’s possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is or was independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser’s Confidential Information to Recipient’s employees and agents who have a need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement.

## Notification Obligation. If the Recipient becomes aware of any unauthorized use or disclosure of Discloser’s Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser’s Confidential Information, the Recipient will not disclose the Discloser’s Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser’s Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Notwithstanding the foregoing, Customer agrees that PICS may include Customer’s name on customer lists.

## Customer Data. As between PICS and Customer, Customer owns all rights, title and interest in and to Customer Data. Customer Data is deemed Confidential Information under this Agreement. Customer is responsible for complying with all legal requirements, including applicable privacy laws and regulations, relating to the collection, use, processing and transfer of Customer Data. Customer acknowledges and consents that Services provided may require Customer Data to be transferred to a country outside of Customer’s country or the country where the Customer Data originated.

## Suggestions. Customer agrees that PICS shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any PICS products or services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or Users relating to the Services.

## WARRANTIES.

## Subscription and Professional Services. PICS warrants, for Customer’s benefit alone: (a) during the Quote Term the Software will perform in material conformance with the Documentation, and (b) for a period of thirty (30) days from the performance of Professional Services, the Professional Services will have been performed in a competent, professional and workmanlike manner in material accordance with generally accepted industry standards.

## Exclusive Remedies. As Customer’s sole and exclusive remedies and PICS’ sole liability for a failure of the Software or Professional Services, as applicable, to conform to their respective warranties set forth in Section 8.1, and as PICS’ entire liability for breach of those warranties, if Customer notifies PICS in writing and in reasonable detail of the nature and extent of such failure within the applicable warranty period, PICS will (a) in the case of a breach of the warranty in Section 8.1(a), use commercially reasonable efforts to correct such breach, and (b) in the case of a breach of the warranty in Section 8.1(b), re-perform the affected Professional Services. As an alternative to the foregoing remedies, as Customer’s sole and exclusive remedies and PICS’ sole liability, PICS may elect to terminate this Agreement (and/or the applicable Quote) and in such event PICS will refund to Customer (i) in the case of breach of the warranty in Section 8.1(a), the Subscription Services fees paid during the current Quote Term for the affected non-conforming Subscription Services, including prorated Subscription Services fees paid in advance for the then-remaining or unexpired portion of the Quote Term for the affected non-conforming Subscription Services, and (ii) in the case of breach of the warranty in Section 8.1(b), the fees paid for the portion of such Professional Services giving rise to the breach.

## Disclaimer. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION 8, PICS AND ITS LICENSORS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES OR USE THEREOF. PICS AND ITS LICENSORS HEREBY EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

## LIMITS ON LIABILITY.

## DISCLAIMER OF DAMAGES. EXCEPT FOR A BREACH OF SECTION 4.4 AND EACH PARTY’S RESPONSIBILITIES IN SECTION 10, NEITHER PARTY ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE SERVICES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF, DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF ANY NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

## LIMITS ON LIABILITY. EXCEPT FOR A BREACH OF SECTION 4.4 AND EACH PARTY’S RESPONSIBILITIES IN SECTION 10, NEITHER PARTY SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEEDING THE AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE OCCURRENCE OF LIABILITY.

## INFRINGEMENT CLAIMS.

## Indemnification by PICS. Subject to the terms of this Agreement, if a third party asserts a claim against Customer asserting that Customer’s use of the Software in accordance with this Agreement violates that third-party’s United States patent, trade secret or copyright rights (“Infringement Claim”), then PICS will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer based on infringement by the Software. If PICS believes the Software may violate a right, then PICS will, at its expense: (a) modify the Software, or (b) procure the right to continue using the Software, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Software and issue a pro-rata refund for the unexpired pre- paid portion of such Subscription Services.

## Indemnification by Customer. Subject to the terms of this Agreement, if a third party asserts a claim against PICS asserting that the Customer Data or Customer’s use of the Services in violation of this Agreement violates that third-party’s privacy rights, United States patent, trade secret or copyright rights, or otherwise harms the third party (“Claim”), Customer will, at its own expense: (a) defend or settle the Claim; and (b) indemnify PICS for any damages finally awarded against PICS based on the Claim.

## Neither party’s obligations under this Section will apply if: (a) the indemnifying party’s legal department does not receive prompt, detailed written notice of the Infringement Claim/Claim from the party being indemnified, (b) the indemnifying party is not able to retain sole control of the defense of the Infringement Claim/Claim and all negotiations for its settlement or compromise, (c) the indemnifying party does not receive all reasonable assistance from the party being indemnified. Neither party will bind the indemnified party to a monetary obligation in a settlement or compromise, or make an admission on behalf of the indemnified party, without obtaining that party’s prior consent.

## This section contains each party's exclusive remedies and the indemnifying party's sole liability for Infringement Claims/Claims, respectively.

1. **EXPORT CONTROLS**. Customer will cooperate with PICS as reasonably necessary to ensure compliance with the laws and regulations of the United States and all the relevant countries, relating to exports (including “deemed” exports and “deemed” re-exports as defined by the Export Administration Regulations) and re-exports (“Export Laws”). Customer may not import, export, re-export or transfer, directly or indirectly, including via remote access, any part of the Services or any other PICS information or technology in violation of any such laws and regulations, or without any written governmental authorization required under applicable laws. In particular, but without limitation, none of the software or the underlying information or technology may be downloaded or otherwise exported or re- exported, directly or indirectly, (a) into (or to a national or resident of) any country to which the United States government has imposed trade sanctions denying the export of any products; (b) to anyone on the US Treasury Department’s list of Specially Designated Nationals or Other Blocked Persons, the US Commerce Department’s Denied Parties List, the US Commerce Department’s Entity List, or the US Commerce Department’s Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use.
2. **GOVERNING LAW.** This Agreement is governed by the substantive laws in force, without regard to conflict of laws principles, in the State of Delaware. Any dispute regarding this Agreement will be heard in the state or federal courts having jurisdiction in New Castle County, New Jersey, U.S.A. and Customer agrees that Customer shall be subject to the personal jurisdiction of such courts.
3. **MISCELLANEOUS TERMS.** PICS is not liable for its failure to perform any of its obligations under this Agreement during any period in which performance is delayed by Customer or circumstances beyond PICS' reasonable control, including accidents, severe weather events, acts of God, actions of any government agency, pandemic, acts of terrorism, cybersecurity incidents, or the stability or availability of the Internet or portions thereof (each, a **“Force Majeure Event”**). The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. This Agreement, including any Exhibits and Quotes constitutes the entire agreement between Customer and PICS and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written concerning the Services. There are no third party beneficiaries to this Agreement; Customer is not entering into a contractual relationship with PICS’ licensors and PICS’ licensors and hosting providers have no liability to Customer. PICS reserves the right to modify this Agreement at any time upon reasonable notice to Customer. Customer may not assign or transfer this Agreement or the Services to a third party, whether by merger or otherwise. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. Any additional or conflicting terms of any Customer purchase order are rejected by PICS and do not apply.

Each party hereto warrants and represents that this Agreement constitutes the legal, valid and binding obligation of such party as of the Effective Date.

## EXHIBIT A

**SUPPORT TERMS AND CONDITIONS**

## Definitions.

* 1. **“Error”** means either (a) a failure of the Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or restriction in the use of, the Software, and/or (b) a problem requiring new procedures, clarifications, additional information and/or requests for product enhancements.
	2. **“Maintenance Release”** means Updates and Upgrades.
	3. **“Update"** means a subsequent release of the Software which PICS generally makes available for Software licenses at no additional license fee. Updates shall not include any release, option or future product which PICS licenses separately.
	4. **“Upgrade”** means a revision of the Software released by PICS to its end user customers generally, during the Quote Term, to add new and different functions or to increase the capacity of the Software. Upgrade does not include the release of a new product or added features for which there may be a separate charge.
1. **Updates.** PICS will make commercially reasonable efforts to provide an Update designed to solve or by-pass a reported Error. The Update may be provided in the form of a temporary fix, procedure or routine, to be used until a Maintenance Release containing the permanent Update is available. PICS shall reasonably determine the priority level of Errors, pursuant to the following protocols, which are subject to the Service Level Commitments in **Exhibit B**:
	1. Severity 1 Errors: A Severity One Error means the (i) production system is severely impacted or completely shut down, or (ii) system operations are down. PICS promptly initiates the following procedures: (1) assigns specialist(s) to correct the Error on an expedited basis; (2) provides ongoing communication on the status of an Update; and (3) begins to provide a temporary workaround or fix.
	2. Severity 2 Errors: A Severity Two Error means (i) the production system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced material system interruptions. PICS assigns a specialist to begin an Update, and provides additional, escalated procedures as reasonably determined necessary by PICS Support staff. PICS exercises commercially reasonable efforts to provide a workaround or include a fix for the Severity 2 Errors in the next Maintenance Release.
	3. Severity 3 Errors: A Severity Three Error means there (i) are errors in fully operational production systems, (ii) is a need to clarify procedures or information in Documentation, or (iii) is a request for a product enhancement. PICS may include an Update in the next Maintenance Release.
2. **Maintenance Releases.** During the Quote Term, PICS shall make Maintenance Releases available to Customer if, and when PICS makes any such Maintenance Releases generally available to its customers. If a question arises as to whether a product offering is an Upgrade or a new product or feature, PICS’ opinion will prevail, provided that PICS treats the product offering as a new product or feature for its end user customers generally.
3. **Conditions for Providing Support.** PICS’ obligation to provide Support is conditioned upon the following: (a) Customer makes reasonable efforts to correct the Error after consulting with PICS; (b) Customer provides PICS with sufficient information and resources to correct the Error; and (c) Customer procures, installs and maintains all equipment, telephone lines, communication interfaces and other hardware necessary to access the Subscription Services.
4. **Support Process**: PICS will provide Support during the Quote Term 24x7, 365 days a year through the PICS software support help desk.
5. **Exclusions from PICS’ Support Services.** PICS is not obligated to provide Support in the following situations: (a) the Software has been changed, modified or damaged (except if under the direct supervision of PICS); (b) the Error is caused by Customer’s negligence, hardware malfunction or other causes beyond the reasonable control of PICS; (c) the Error is caused by third party software not licensed through PICS; or (d) Customer has not paid the Subscription Services fees when due. Further, PICS shall not be obligated to provide Maintenance Releases or Support for any third party products that are, or may be integrated into the Software.

## EXHIBIT B

**SERVICE LEVEL COMMITMENTS**

Unless as otherwise defined below, all capitalized terms shall have the meaning set forth in the Agreement.

1. **Subscription Services Availability.**
2. **Definitions.**

“Available Minutes” means the total number of minutes in a calendar month during which the Subscription Services are available for Users to access the Subscription Services.

“Availability Percentage” for a calendar month means the Available Minutes for such month divided by the Maximum Available Minutes for such month.

“Downtime” means the time beginning when Customer files a trouble ticket with PICS notifying PICS that Users are unable to access and use the Subscription Services until the time the Subscription Services are once again accessible by Users. Downtime is monitored and measured by PICS.

“Maximum Available Minutes” means the total number of minutes in a calendar month that the Subscription Services may potentially be available. Maximum Available Minutes do not include the number of minutes of that month spent on any Planned Maintenance .

“Planned Maintenance” means regularly scheduled maintenance by, or on behalf of PICS.

1. **Subscription Services Uptime Metrics.** The guaranteed Availability Percentage for the Subscription Services will be 99.9% 24x7 on a monthly basis during the Quote Term. For purposes of measurement,

2.1 PICS agrees to provide Customer a monetary credit for failing to meet the Availability Percentage set forth below. The credit shall be equal to the following applicable percentage of the Subscription Services fees payable based on one-twelfth (1/12) of the annual Subscription Services fees for the month in which said service level was not met, and shall be credited to Customer’s invoice for the following year of the Quote Term. Credits shall be only applied to Customer’s subsequent invoice, and shall not be provided as a refund.

|  |  |
| --- | --- |
| Site Availability in Month | Percentage of Monthly Fees  |
| 99.1% - 99.9% | 5% |
| 98.1% - 99% | 10% |
| 97.1% - 98% | 15% |
| 96.1% - 97% | 20% |
| below 96.1% | 25% |

2.2 Specifically excluded from the Availability Percentage calculation provided herein is:

1. Planned Maintenance (defined below);
2. the availability or the correct functioning of the data center or Internet worldwide infrastructure beyond PICS’ control;
3. the availability or the correct functioning of Customer’s infrastructure including network connectivity, hardware, or software;
4. voluntary down periods initiated by Customer;
5. down periods due to Force Majeure Events;
6. Customer’s breach of its obligations under the Agreement, which breach causes the Subscription Services to be unavailable;
7. An exclusion from Section 6 of **Exhibit A** applies;
8. issues associated with Customer Data uploaded to the Software by Customer or Users (including damages caused by viruses and other malicious code contained in Customer Data uploaded to the Subscription Services by Customer or Users);
9. down periods resulting from misuse by Users (e.g., an unapproved hack or denial of service attack initiated by an User); and/or
10. illegal third-party activity (e.g., virus attack or network intrusion attempts).
11. **Maintenance Period.** PICS reserves the right to perform Planned Maintenance; maintenance that occurs outside of this time frame will not be considered Planned Maintenance for purposes of calculating the Availability Percentage unless agreed to in advance by Customer. This maintenance may prevent the Subscription Services from being accessed by Users during this time period. Regularly scheduled maintenance shall also include maintenance periods for Upgrade and Update migration and other major maintenance events, but shall not include maintenance performed on an emergency basis. PICS will provide Customer with prior notice of Planned Maintenance and will reasonably work with Customer to schedule the same.
12. **Support Issue Severity Levels, Response Times, Issue Resolution, and Escalation**

When Errors are reported by Customer to PICS, PICS will make commercially reasonable efforts to respond and resolve the Error as set forth in the table below, subject to Customer’s obligations set forth in **Exhibit A**. The severity level assigned to support issues will be determined by Customer, however PICS reserves the right to reclassify the severity level upon email notice to Customer with supporting detail. Customer-requested enhancements, customization, and modifications are not considered support issues according to the table below. Response targets are initiated once a trouble ticket is submitted by Customer. Error severity levels are defined in **Exhibit A**.

Response Time Table/Severity Level Codes

| ERROR SEVERITY LEVEL | NORMAL FEEDBACK (during live technical support hours and off-hour support hours) |
| --- | --- |
|  | PICS Response Target | PICS Resolution Target |
| 1 | Direct connection to PICS support personnel or a response within 30 minutes. | 8 hours from the time call is answered by PICS support personnel. Resolution is defined as Customer being provided with a work-around or Update that resolves the Error.  |
| 2 | Direct connection to PICS support personnel or a response within 2 hours. | 2 business days from the time call is answered by PICS support personnel. Resolution is defined as Customer being provided with a work-around or Update that resolves the Error. |
| 3 | Direct connection to PICS support personnel or a response within 8 hours. | 5 business days from the time call is answered by PICS support personnel. Resolution is defined as Customer being provided with a work-around or Update that resolves the Error, or a response to information questions is provided, as applicable. |

Specifically excluded from the Service Level Commitments in this Section B are the following conditions, however PICS will use commercially reasonable efforts, when possible, to assist Customer with resolution:

1. issues associated with Customer Data uploaded to the Software by Customer or Users (including damages caused by viruses and other malicious code contained in Customer Data uploaded to the Subscription Services by Customer or Users);
2. down periods resulting from misuse by Users (e.g., an unapproved hack or denial of service attack initiated by an User);
3. illegal third-party activity (e.g., virus attack or network intrusion attempts;
4. the Error is caused by Customer’s negligence, hardware malfunction or other causes beyond the direct control of PICS;
5. the Error is caused by third party software not licensed through PICS.
6. **Exclusive Remedy for Repeated Failures of Service Level Commitments**

In the event PICS fails to comply with a Service Level Commitment in Sections A or B above for three (3) consecutive calendar quarters during the Quote Term, then Customer’s exclusive remedy, at Customer’s option, shall be to (1) terminate the Quote upon thirty (30) days prior written notice, or (2) request a meeting with PICS to renegotiate the terms of this **Exhibit B**, and the parties shall work in good faith to renegotiate such terms as mutually-acceptable to the parties.