

**PICKNIK  
TERMS AND CONDITIONS**

Last Updated: December 14, 2022

These Terms and Conditions (these “**Terms**”) are a legal agreement between PickNik, Inc. a Delaware corporation with offices located at 4730 Walnut Street, Suite 106, Boulder, Colorado 80301 (“**PickNik**”) and the customer purchasing PickNik product and services (“**Customer**”) through PickNik’s website or an order, proposal, statement of work, or similar document incorporating these Terms by reference (each an “**Order**”). These Terms and the Order are referred to collectively as the “**Agreement**”.

If you are agreeing to these Terms on behalf of a third party entity, you represent and warrant that you have sufficient right to bind such third party to these Terms, in which case, all references to “Customer” in these Terms shall be references to such third party.

In the event of a conflict between these Terms and the terms of an Order, the Terms will control unless the conflicting term of the Order expressly states otherwise.

PickNik and Customer agree as follows:

**1. DEFINITIONS.**

**1.1 “Background Technology”** means and all tools, programs, designs, processes, formulas, techniques, improvements, inventions, works of authorship, software, data, know-how, ideas, methodologies, specifications, code libraries, algorithms, protocols, routines, subroutines, network systems, machine learning models, trade secrets, and other technology which: (a) are created, developed, owned, or licensed by PickNik prior to the Effective Date; (b) are created, developed, owned, or licensed by PickNik during the term of this Agreement but outside its scope; or (c) have general applicability to PickNik’s business and which are not based on any Customer Confidential Information; and all modifications or derivatives of any of the foregoing.

**1.2 “Confidential Information”** means the terms and conditions of this Agreement and all information related to a party’s or its suppliers’ business, financial affairs, or operations, including information related to business plans, technology, source code, product or service development plans, beta versions, schematics, prototypes, pricing, techniques and methods, and other confidential or proprietary information in any form or medium (e.g., written, verbal, electronic, visual) which is either marked or identified as “confidential” or “proprietary” or which the Receiving Party (as defined below) knew or reasonably should have known was confidential or proprietary to the Disclosing Party (as defined below) based on the nature of the information or the circumstances of disclosure.

**1.3 “Documentation”** means the documentation published by PickNik and provided to Customer for the Software.

**1.4 “Effective Date”** means the date of the Order, whether through the website or otherwise.

**1.5 “Intellectual Property Rights”** means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and similar Confidential Information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

**1.6 “Licensed Software”** means PickNik’s proprietary software products licensed to Customer pursuant to a Software Order, including Software Agents, but specifically excluding the software accessed over the Internet in connection with the Software Service.

**1.7 “Open Source Software”** means the computer source code, library(ies), and program(s), including any documentation and/or materials associated therewith, that is(are) publicly available for use, modification, enhancement, or inspection.

**1.8 “Perpetual Licensed Software”** means Licensed Software licensed on a perpetual basis pursuant to a Software Order.

**1.9 “Professional Services”** means those development, installation, upgrade, training, prototyping, implementation, configuration, customization, analysis, consulting, professional and other services, and assistance to be provided by PickNik to Customer pursuant to a Statement of Work, but specifically excluding the Software Service.

**1.10 “Robot Platform”** means the specific robot platform identified with which the Software may be used.

**1.11 “Services”** means the Professional Services, Software Service support, Support & Maintenance, and other services to be provided under this Agreement, but specifically excluding the Licensed Software or Software Service.

**1.12 “Software Agent”** means Licensed Software intended to be installed on a Robotic Platform.

**1.13 “Software”** means the Software Service or Licensed Software, as applicable.

**1.14 “Software Order”** means an Order for Software and any Software Support & Maintenance.

**1.15 “Software Service”** means the provision of access over the Internet to the functionality of PickNik’s software products and services ordered by Customer, in either case as described in a Software Order.

**1.16 “Statement of Work”** means an Order, or portion of an Order, for the performance of Professional Services.

**1.17 “Support & Maintenance Term”** means the period during which PickNik will provide Maintenance & Support for the Software.

**1.18 “Warranty Period”** means the Initial License Term or, with respect to Perpetual Licensed Software, ninety (90) days from Customer’s receipt of the applicable Perpetual Licensed Software.

## **2. SOFTWARE LICENSE.**

**2.1 Software Service.** The following terms apply only to the Software Service. If PickNik is providing Perpetual Licensed Software under a Software Order, the terms of Section 2.2 apply.

**(a) Software Service Subscription.** Subject to the terms of this Agreement, PickNik grants to Customer, during the applicable License Term (as defined below), a non-exclusive, non-transferable right to remotely access and use the Software Service, solely for Customer’s internal business purposes relating to the use of an applicable Robot Platform and strictly in accordance with the Documentation. Unless otherwise set forth in a Software Order, Customer may not make the Software Service available to any third party other than Customer’s affiliates, contractors, and agents using the Software Service on Customer’s behalf as permitted herein.

**(b) Software Agent.** In connection with a Software Order for Software Service, PickNik will make available to Customer a Software Agent. Subject to this Agreement, PickNik grants to Customer, during the License Term, a non-exclusive, non-transferable, and non-sublicensable license to: (i) install and use the Software Agent in executable form on the number of Robot Platforms for which Customer has purchased a license (as indicated in the Software Order) and solely in connection with Customer’s use of the Software Service; (ii) make one (1) copy of the Software Agent solely for backup or archival purposes; and (iv) copy and reproduce the Documentation provided to Customer solely for the purposes of facilitating Customer’s permitted use of the Software Service.

**(c) Software Service Support & Maintenance.** Subject to Customer’s payment of all applicable fees, PickNik will provide Support & Maintenance for the Software Service during the License Term. PickNik may install Updates to the Software Service automatically.

**2.2 Perpetual Licensed Software.** The following terms apply only to Perpetual Licensed Software. If PickNik is providing Software Service under a Software Order, the terms of Section 2.1 apply.

**(a) License.** Subject to these Terms and the Software Order, PickNik grants to Customer, a perpetual non-exclusive, non-transferable, and non-sublicensable license to: (i) install and use the Licensed Software in executable code form on Customer’s servers and workstations, solely for Customer’s internal business purposes relating to the use of an applicable Robot Platform, (ii) install and use the Software Agent in executable form on the number of Robot Platforms for which Customer has purchased a license (as indicated in the Software Order), (iii) make one (1) copy of the Licensed Software solely for backup or archival purposes; and (iv) copy and reproduce the Documentation provided to Customer solely for the purposes of facilitating Customer’s permitted use of the Licensed Software. Unless otherwise set forth in a Software Order, Customer may not make the Licensed Software available to any third party other than Customer’s affiliates, contractors, and agents using the Licensed Software on Customer’s behalf as permitted herein.

(b) **Perpetual Licensed Software Support & Maintenance.** Subject to Customer's payment of all applicable fees, PickNik will provide Support & Maintenance for the Perpetual Licensed Software, during the period set forth in the Software Order, commencing on the first day of the License Term. Unless otherwise provided in the Software Order such Support & Maintenance Term will automatically renew for successive one (1) year terms, unless a party provides written notice of its intent not to renew at least ninety (90) days prior to the end of then-current Support & Maintenance Term. Customer is required to install each Update to Licensed Software within 30 days of it becoming available for installation.

**2.3 Delivery, Acceptance, and Installation of Licensed Software.** PickNik will deliver the Licensed Software to Customer as mutually agreed to by the parties. Without limiting the warranties in these Terms, the Licensed Software will be deemed accepted upon delivery. Unless otherwise provided herein or mutually agreed by the parties, Customer is responsible for installing and integrating the Licensed Software on the Robot Platform and computers and with its systems in accordance with the Documentation and any instructions provided by PickNik.

**2.4 Support & Maintenance.** "Support & Maintenance" means: (a) support during regular PickNik business hours for the then-current release of the Licensed Software licensed by Customer hereunder, and (b) rights to updates, enhancements or modifications which PickNik incorporates into and makes a part of the general release Licensed Software and does not separately price or market (each an "Update"). PickNik may charge Customer on a time and material basis for problem resolution services that exceed PickNik' standard Support & Maintenance, including: (a) when a problem has been created due to Customer error and/or neglect; (b) when such problem is associated with third-party or pre-requisite software; (c) when such problem is associated with client hardware modifications or replacements or network issues; (d) during a system installation, upgrade, or conversion; or (e) when support is required at times other than PickNik' normal business hours.

#### **2.5 Trial Software; Configuration Period**

(a) **Trial Software.** PickNik may make available certain Software or Software features on a no-charge basis and/or may identify Software or Software features as "Trial", "Lite", "Alpha", "Beta", "Preview", "Evaluation" or other identifiers with similar meanings (each, "**Trial Software**"). Trial Software may be generally available or may be made available by invite only. Despite anything to the contrary in this Agreement: (a) Customer may choose to access or use Trial Software in its sole discretion; (b) Trial Software may not be supported and may be changed at any time without notice; (c) Trial Software may not be as reliable or available as the Software; (d) Trial Software may not have been subjected to the same testing, auditing, or quality assurance measures to which other Software has been subjected; and (e) PICKNIK WILL HAVE NO LIABILITY ARISING OUT OF OR IN CONNECTION WITH TRIAL SOFTWARE – CUSTOMER'S USE OF TRIAL SOFTWARE IS AT ITS OWN RISK.

#### **(b) Configuration Period.**

(i) **Acceptance Criteria.** If a Software Order specifies that there shall be an initial configuration period for the Software, then the terms and conditions of this Section 2.5 and any other provisions which specifically reference a "Configuration Period" shall govern any such Configuration Period (as hereinafter defined) and shall control to the extent of any conflict with the other terms and conditions of these Terms and the Software Order, but solely to the extent of the conflict and solely for the duration of the Configuration Period. For purposes of this Agreement, the "**Configuration Period**" means the period of time beginning on the Effective Date of the Software Order (which Software Order specifies that there shall be an initial configuration period) and ending on the date all configuration milestones specified therein ("**Acceptance Criteria**") have been achieved.

(ii) **License Term Commencement.** During any Configuration Period, any references to perpetual or term-based rights or licenses in any of the applicable sections of these Terms or the Software Order (e.g., any references to the License Term) shall be construed as rights or licenses that are limited to the Configuration Period only. The parties acknowledge and agree that: (i) unless and until the Acceptance Criteria have been met, no rights or licenses granted to Customer hereunder shall continue beyond the Configuration Period; and (ii) immediately upon the achievement of such Acceptance Criteria the Configuration Period will terminate, all applicable License Terms shall commence, and all terms and conditions of these Terms and the Software Order shall apply with full force and effect.

(c) **Exclusions.** The parties further acknowledge and agree that the following sections of these Terms shall not apply to any Trial Software or during any Configuration Period: Sections 2.3, 7.2, and 11. All other Sections of these Terms and the Software Order shall apply as set forth in, and subject to, this Section 2.5.

**2.6 Third-Party Products.** The Software is intended to operate in conjunction with certain third-party products (“**Third-Party Products**”). Customer understands and agrees that PickNik makes no representation, warranty, or claim related in any way to any Third-Party Products. Customer further understands and agrees that any updates, upgrades, or other modifications to Third-Party Products, whether by Customer or any other party, may cause disruption in the functionality of the Software and Customer’s use thereof, and PickNik is not responsible for any such disruption.

**2.7 Open Source Software.** Certain Open Source Software may be provided to Customer along with the Software. Each item of Open Source Software is subject to and licensed under the terms and conditions that accompany such Open Source Software and those licenses may vary from those set forth in this Agreement. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions applicable to the Open Source Software.

**2.8 Professional Services.** PickNik will perform the Professional Services agreed to in, and in accordance with, a Statement of Work. To the extent Customer and PickNik enter into a Statement of Work for Professional Services, the terms of Schedule A attached hereto shall apply.

**3. USERS.** Customer shall be responsible for the acts and omissions of each person authorized by Customer to access or use the Software (each a “**User**”). Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and shall notify PickNik promptly of any such unauthorized use. Customer is responsible for maintaining the confidentiality of all Users’ usernames and passwords, and is solely responsible for all activities that occur under these usernames. Usernames are unique to an individual User, and cannot be shared with any other User or person. Customer agrees (a) not to allow an unauthorized third party to use its account, usernames, or passwords at any time; and (b) to notify PickNik promptly of any actual or suspected unauthorized use of its account, usernames, or passwords, or any other breach or suspected breach of this Agreement by Customer or any User. PickNik reserves the right to terminate any username or password that PickNik reasonably determines may have been used in violation of this Agreement, or by an unauthorized third party or any User or individual other than the User to whom such username and password was originally assigned.

#### **4. FEES AND PAYMENT.**

**4.1 Fees.** Customer will pay to PickNik the fees set forth in the Order (“**Fees**”). Any Fees incurred by Customer after the Effective Date will be billed at the applicable PickNik pricing then in effect (including Fees for the Software and Services during any Renewal License Term (as defined below), additional User fees, and fees for any other service or item). Fees for adding additional Users will be paid by Customer upon the addition of such User, and Fees will be prorated through the end date of the then current License Term.

**4.2 Support & Maintenance Fees.** Fees for Support & Maintenance set forth in a Software Order, if any (“**Support & Maintenance Fees**”), are invoiced in advance of the applicable initial Support & Maintenance Term and each renewal Maintenance Term thereof. In the event Customer desires to reinitiate Support & Maintenance after the expiration or termination of any such Support & Maintenance Term, Customer shall be required to make an upfront payment equal to (a) all annual Support & Maintenance Fees that Customer would have been required to pay between the date of expiration or termination and the date of the reinstatement and (b) the current annual Support & Maintenance Fee.

**4.3 Expenses.** Customer shall reimburse PickNik for reasonable pre-approved expense for travel, lodging, and meals, and such other pre-approved costs and expenses PickNik may incur in connection with the performance of Services (“**Expenses**”). PickNik will provide documentation related to Expenses upon Customer’s request. Travel time will be billed as follows: 50% of total travel time from the departure from the office to arrival at the final destination (office, hotel, etc.) at the normal hourly rate, unless otherwise agreed by the parties. Per diem will also be included in any such travel costs.

**4.4 Payment Terms.** PickNik will invoice Customer for Fees and Expenses pursuant to the applicable Order and, unless otherwise specified in an Order, Customer will pay all Fees and Expenses within fifteen (15) days after receipt of the applicable invoice. Upon ten (10) days’ prior written notice and Customer’s failure to cure, PickNik reserves the right (in addition to any other rights or remedies PickNik may have) to suspend the Services, along with Customer’s and all Users’ access to the Software Service, if any Fees or Expenses are more than thirty (30) days overdue until such amounts are paid in full; and there shall be no abatement of Fees or Expenses during such period of suspension. All payments must be made in U.S. dollars. Outstanding balances shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per

month and the maximum rate permitted by applicable law, from the due date until paid, plus PickNik's reasonable costs of collection. All Fee and Expenses due hereunder are exclusive of, and Customer shall pay, all sales, use, ad valorem, and other taxes, export and import fees, customs, duties, and similar charges applicable to the transactions contemplated by this Agreement, except for taxes based upon PickNik's net income.

**4.5 No Set-Off or Deduction.** Every payment payable under this Agreement will be made in full without any set-off or counterclaim howsoever arising and will be free and clear of, without deduction of, or withholding for or on account of, any other amount which may be due and payable under this Agreement.

**5. EQUIPMENT.** An Order may reference certain Customer hardware or equipment ("**Equipment**") to be provided by Customer to PickNik in connection with the Services. Customer will deliver all such Equipment to PickNik, at Customer's sole cost and risk, after Effective Date. Customer's failure to deliver the Equipment promptly may delay performance of the Services and PickNik shall not be responsible for any such delay. Delivery to PickNik shall be DDP (Incoterms 2020) to a location in the U.S. identified by PickNik. Within ninety (90) days following the end of the Services requiring access to the Equipment, Customer shall coordinate and pay for return shipment of the Equipment, and provide PickNik with return shipping instructions. Such return shipping shall be EXW (Incoterms 2020), at Customer's cost and risk. If Customer fails to provide return shipping instructions, PickNik will provide Customer with notice of such failure. If within thirty (30) days following such notice Customer has failed to coordinate such return shipment and deliver return instructions, PickNik may, in its sole discretion and without liability, either continue to store the Equipment at Customer's cost at PickNik's then-current storage rates or dispose of the Equipment. All Equipment delivered to PickNik shall: (a) remain Customer's personal property; (b) be insured by Customer at an amount equal to its replacement cost; (c) be subject to removal at Customer's request and expense; and (d) be held at Customer's risk of loss. PickNik shall have no responsibility for any damage to or loss, theft, or destruction of any Equipment.

**6. TERM; TERMINATION.**

**6.1 Term; Termination.** The initial term of this Agreement will begin on the Effective Date and will continue for the period stated in the Order (the "**Term**") unless this Agreement is terminated earlier as set forth herein. Each Software Order will provide the duration of Customer's license of the Licensed Software or the period during which Customer may access and use the Software Service (in each case, the "**Initial License Term**"); provided, however, that if a Configuration Period is provided in the Software Order, the Initial License Term therefor will not begin until the applicable Acceptance Criteria has been met. Except for Perpetual Licensed Software, the Initial License Term will automatically renew for additional periods equal to the length of the Initial License Term (each a "**Renewal License Term**" and together with the Initial License Term, the "**License Term**"), unless either party provides notice of non-renewal to the other party at least ninety (90) days prior to the expiration of the then-current License Term. Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof. For the avoidance of doubt, Customer's failure to pay the Fees and Expenses due to PickNik within ten (10) days following the applicable invoice due date will constitute a material breach of this Agreement.

**6.2 Effects of Termination.** Upon termination or expiration of this Agreement for any reason: (a) any amounts owed to PickNik under this Agreement up to and through the effective date of such termination or expiration will be immediately due and payable; (b) all rights granted by PickNik to Customer in or to the Software Service will cease, and Customer must immediately discontinue use of the Software Service; and (c) all rights granted by PickNik to Customer in or to Licensed Software (other than Perpetual Licensed Software) will cease, and Customer must immediately discontinue use of such Licensed Software and remove such Licensed Software from Customer's Robot Platforms, servers, and workstations. If this Agreement terminates due to Customer's uncured breach, then any licenses to Perpetual Licensed Software shall also terminate, and Customer must immediately discontinue use of such Perpetual Licensed Software and remove such Perpetual Licensed Software from Customer's Robot Platforms, servers, and workstations. In addition, upon any termination or expiration, each party must return to the other party, or destroy, all of the other party's Confidential Information in that party's possession or control, including all copies thereof. For the avoidance of doubt, if any Fees under a Statement of Work are milestone-based, the amounts owed to PickNik under subpart '(a)' of the foregoing sentence shall include all Fees for work performed by PickNik toward such milestones up to and through the effective date of termination or expiration. Sections 1, 5, 7.3, 7.4, 8, 9, 10, 11, and 12 together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason.

**7. WARRANTY; DISCLAIMER.**

**7.1 General Warranties.** Each party represents and warrants to the other party that it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder.

**7.2 PickNik Software Warranties.** PickNik warrants to Customer that the Software, when used as permitted by PickNik and in accordance with the Documentation and this Agreement, will operate as described in the Documentation in all material respects. PickNik does not warrant Customer's use of the Software will be error-free or uninterrupted. For any breach of this warranty, PickNik will, at its own expense and as its sole obligation and Customer's sole remedy, use commercially reasonable efforts to correct any reproducible error in the Software reported to PickNik by Customer in writing during the applicable Warranty Period. This warranty shall not apply to, and PickNik shall have no obligation in connection with: (a) Customer's inability to use the Software due to minimum system requirements or other factors beyond PickNik's reasonable control, (b) any error, defect, or failure resulting from Customer's own implementation of the Software, (c) Customer's use of the Software other than as expressly permitted in this Agreement and the Documentation, or (d) Customer's own hardware, data, software, or network connection.

**7.3 Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, PICKNIK DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. THE SOFTWARE AND SERVICES ARE PROVIDED SOLELY AS THEY RELATE GENERALLY TO ROBOTIC THEORIES AND NOT FOR ANY SPECIFIC END USER PURPOSES. PICKNIK SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT, IN WARRANTY, INDEMNITY, OR OTHERWISE, FOR ISSUES ARISING IN CONNECTION WITH ANY VERSION OF THE SOFTWARE OTHER THAN ITS MOST CURRENT VERSION.

**7.4 Configuration Period and Trial Software Disclaimer.** NOTWITHSTANDING ANYTHING TO THE CONTRARY: (A) TRIAL SOFTWARE, AND ANY SOFTWARE AND SERVICES PROVIDED DURING A CONFIGURATION PERIOD, ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS WITHOUT ANY WARRANTY OF ANY KIND AND CUSTOMER AGREES THAT ITS AND ITS USERS' USE OF ANY OF THE SAME WILL BE AT CUSTOMER'S AND EACH USER'S SOLE RISK, RESPECTIVELY; AND (B) CUSTOMER'S SOLE AND EXCLUSIVE REMEDY (AND PICKNIK'S ENTIRE LIABILITY) FOR A BREACH OF THE APPLICABLE TERMS OF THIS AGREEMENT CONCERNING TRIAL SOFTWARE OR DURING THE CONFIGURATION PERIOD IS TO TERMINATE THE AGREEMENT.

## **8. CONFIDENTIALITY.**

**8.1 Protection.** The party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will limit access to and disclose the Confidential Information of the Disclosing Party to only those employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**8.2 Exceptions.** The Receiving Party's obligations under Section 8.1 above with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, use of, or reference to the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose certain Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) pre-approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that, to the extent legally permissible, the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**8.3 Return of Information.** Except as otherwise expressly provided in this Agreement, the Receiving Party will return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party in the Receiving Party's possession or control, and permanently erase all electronic copies of such Confidential Information, promptly upon the expiration or termination of this Agreement and upon any earlier written request of the Disclosing Party; provided that the Receiving Party shall not be required to destroy electronic records or files that have been created pursuant to the Receiving Party's automatic archiving and back-up procedures and of which the removal is not technically practical.

**8.4 Injunctive Relief.** Each party acknowledges that a breach or threatened breach of this Section 8 would cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, the non-breaching party shall have the right to seek immediate injunctive or other equitable relief in the event of a breach of this Section 8 by the other party or any of its employees or agents.

## **9. INTELLECTUAL PROPERTY; RESTRICTIONS ON USE.**

**9.1 Proprietary Rights in the Software and Services.** The Software, the Background Technology, and any deliverables developed under a Software Order (including in each case any updates or enhancements thereto) and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of PickNik and its licensors. All rights in and to the Software, Background Technology, or Services not expressly granted to Customer in this Agreement are reserved by PickNik. PickNik shall retain all right, title, and interest in and to any intellectual property rights developed by, or on behalf of, PickNik in the course of performing its obligations under this Agreement.

**9.2 Restrictions on Use.** Except as expressly permitted in this Agreement or as otherwise authorized in advance by PickNik in writing, Customer will not, and will not permit any third party to: (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Software to any third party; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (d) interfere with or disrupt in any manner with the operation of the Software or the servers or networks providing the same (or any portion thereof); (e) remove, alter, or obscure any proprietary notices (including copyright notices) of PickNik or its licensors displayed in connection with the Software; (f) otherwise use the Software except as expressly allowed under this Agreement; or (g) use the Software to:

- (i) interfere with the core functionality of PickNik's products or services;
- (ii) cause harm to any person or property;
- (iii) harm, defame, abuse, harass, stalk, threaten, endanger the safety of, or violate the legal rights (such as rights of privacy and publicity) of, any person or encourage any third party to do the same;
- (iv) perform an action with the intent of introducing any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature intended to harm the Software or any or any users of the same or users of any products or services using, embodying, or incorporating the Software;
- (v) access or control any robot or other product in a manner that could cause any harm, damage, or loss to any third party or property, other than in a legal manner in connection with a bona fide law enforcement action;
- (vi) in violation of any law, rule, or regulation, or in a manner that causes PickNik or any other person to be in violation of the same;
- (vii) tamper with the security of any of the hardware, software, or networks used by PickNik to make the Software or Services available or tamper with any user or customer accounts;
- (viii) disable, circumvent, or avoid any security device, mechanism, protocol, or procedure established by PickNik; or
- (ix) permit others to do any of the foregoing.

## **10. LIABILITY.**

**10.1 Limitation of Liability.** EXCEPT FOR A BREACH OF SECTION 8, SECTION 9.2, OR A PARTY'S FRAUD OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PICKNIK'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES PAID TO PICKNIK UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.

**10.2 Waiver of Liability for Customer's Use.** PICKNIK HEREBY EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY UNDERSTANDS AND AGREES, THAT PICKNIK WILL NOT BE LIABLE FOR ANY USES OF THE SOFTWARE. CUSTOMER HEREBY RELEASES AND FOREVER DISCHARGES PICKNIK FROM ANY ALL CLAIMS RELATED TO CUSTOMER'S USE OF THE SOFTWARE BEYOND THE EXPRESS WARRANTIES PROVIDED HEREIN.

**11. INDEMNIFICATION.** PickNik will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Software infringes any patent or copyright, or misappropriates any trade secret, of a third party, and PickNik will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying PickNik promptly in writing of such action; (b) giving PickNik sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at PickNik's request and expense, assisting in such defense. If the Software becomes, or in PickNik's opinion is likely to become, the subject of an infringement claim, PickNik may, at its option and expense, either (i) procure for Customer the right to continue using the Software, (ii) replace or modify the Software so that it becomes non-infringing, or (iii) terminate this Agreement upon written notice to Customer and (1) refund Customer the Fees paid for the Software (other than Perpetual Licensed Software) for the period following beyond the effective date of such termination, and (2) for Perpetual Licensed Software, refund Customer a portion of the Fees paid for such Perpetual Licensed Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the first day of the License Term. Notwithstanding the foregoing, PickNik will have no obligation under this Section 11 or otherwise with respect to any infringement claim based upon (A) any use of the Software not in accordance with this Agreement, the Documentation, or any other specifications published by PickNik, (B) any use of the Software in combination with other products, equipment, or software not provided or recommended by PickNik, (C) any use of any release of any Software provided under this Agreement other than the most current release made available to Customer, (D) any Open Source Software provided under this Agreement, or (E) any modification of the Software by any person other than PickNik or its authorized agents or subcontractors. Customer will defend, indemnify, and hold PickNik harmless from and against any claim, action, or demand suffered by PickNik arising in connection with the modification or misuse of the Software by Customer or any User. THIS SECTION 11 STATES PICKNIK'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

## **12. GENERAL**

**12.1 Non-Exclusive.** This Agreement shall not be construed to limit or prohibit PickNik in any manner or fashion in providing products or services of any type or nature to any other customer in its sole discretion.

**12.2 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement (including any license rights granted to Customer to the Software, or Background Technology) to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may, without the other party's consent, assign its rights and obligations under this Agreement to a parent, affiliate, or subsidiary, or to a successor in connection with a merger, acquisition, or sale of all or substantially all of its equity or assets to which this Agreement relates. Any purported assignment, delegation, or transfer of this Agreement not in accordance with this Section 12.2 shall be null and void. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

**12.3 Publicity.** Customer agrees that PickNik may use its name and logos in PickNik's promotional materials and client lists.

**12.4 Relationship of Parties.** The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

**12.5 Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.



**12.6 Notices.** All notices, consents, and approvals under this Agreement shall be in writing and may be delivered: (a) by PickNik to Customer to the physical or email address last provided by Customer by written notice; and (b) by Customer to PickNik to the physical address last provided by PickNik by written notice, with a copy to: legal@picknik.ai. Either party may change its physical and email address for notice by giving notice of the new physical or email address, as applicable, to the other party. All notices under this Agreement shall be deemed given when delivered, or three (3) days after being sent by government mail or globally-recognized carriers (such as FedEx or UPS), to the physical or email address of the party.

**12.7 Governing Law and Venue.** The laws of the State of Colorado govern this Agreement and any matters related to this Agreement, including the interpretation, construction, and enforcement of this Agreement, without regard to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The parties agree that the U.N. Convention for the International Sale of Goods is expressly excluded from, and does not apply to, this Agreement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement, including to interpret or enforce any provision of this Agreement, shall bring the legal action or proceeding only in the state or federal courts in Denver, Colorado. Each party consents and submits to the exclusive jurisdiction and venue of those courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement. Each party irrevocably waives (a) any objection that party may have to the venue of any such proceeding or legal action brought in those courts, and (b) any defense of inconvenient forum for the maintenance of a proceeding or legal action brought in those courts. Each party consents to process being served by any party to this Agreement in any action or legal proceeding by delivery in accordance with the notice provisions in this Agreement.

**12.8 Costs.** Except as otherwise agreed by the parties in writing, each party must bear its own costs arising out of the negotiation, preparation, and execution of this Agreement or any instrument or transactions entered into, under, or in connection with this Agreement.

**12.9 Interpretation.** The words “include”, “includes”, and “including” means “include”, “includes”, or “including”, in each case, “without limitation”.

**12.10 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.11 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**12.12 Modifications.** These Terms may be updated from time to time. Notwithstanding any such update, the version of these Terms in place as of the Effective Date of the Order shall continue to govern the provision of Software and Services under the Order unless otherwise agreed by the parties in writing.

**12.13 Entire Agreement.** This Agreement (including these Terms and the Order) constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral regarding such subject matter.

**SCHEDULE A**  
**Professional-Services-Specific Terms**

This Schedule A applies solely to the performance of Professional Services under a Statement of Work:

**1. PROFESSIONAL SERVICES; WARRANTIES.** PickNik will perform those Professional Services set forth in a Statement of Work. PickNik warrants to Customer that any Professional Services will be performed in a professional manner consistent with industry standards. PickNik shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of this warranty, re-perform the Professional Services which gave rise to the breach, or, at PickNik's option, refund the Fees paid by Customer for the portion of the Professional Services that did not fulfill such warranty, provided that Customer shall notify PickNik in writing of the breach within thirty (30) days following performance of the defective Professional Services specifying the breach in reasonable detail.

**2. PROFESSIONAL SERVICES FEES.** Costs shown in any Statement of Work for Professional Services are estimates unless otherwise stated. Customer will be billed for actual time applied, the total of which may be more or less than the total estimated amount. Customer will be charged at PickNik then-current hourly rates, or on the basis stated in the Statement of Work.

**3. INTELLECTUAL PROPERTY.**

**3.1 Ownership of Custom Software.** Unless specified otherwise in a Statement of Work and except as provided in this Agreement, Customer is and will be the owner of all right, title, and interest in and to all Intellectual Property Rights in any custom computer source code, libraries, and program(s), that PickNik is required to develop for Customer under a Statement of Work (excluding any Background Technology, Software, Open Source Software, or Open Source Contributions therein) ("**Custom Software**"). PickNik hereby assigns to Customer all of PickNik's right, title, and interest in and to the Custom Software. Customer hereby grants to PickNik a limited, non-exclusive license to use Custom Software solely to perform under this Agreement. To the extent that any Background Technology is incorporated into Custom Software, PickNik hereby grants to Customer a worldwide, perpetual, royalty-free, non-exclusive license to use the Background Technology exclusively as incorporated into Custom Software. PickNik reserves all rights in the Background Technology not expressly granted to Customer herein. For the avoidance of doubt, the foregoing shall not limit PickNik's ability to use, license, sell, or commercialize any Background Technology.

**3.2 Customer Plugins.** In connection with this Agreement, Customer may make available to PickNik certain software plugin developed by Customer or a third party on Customer's behalf ("**Customer Plugins**"). Customer hereby grants to PickNik a limited, non-exclusive license to use Custom Software and Customer Plugins solely to perform under this Agreement.

**3.3 Open Source Licensing.** If (a) any Statement of Work sets forth any contribution of Open Source Software to any Open Source Software projects, or (b) the parties agree to so contribute any Custom Software developed in furtherance of the Services or originally intended to constitute any portion of Custom Software, then such contributions will be made pursuant to the terms of such project (any such contributions, the "**Open Source Contributions**"). Customer hereby assigns to PickNik all right, title, and interest in and to all such Open Source Contributions, and all Intellectual Property Rights therein. PickNik shall contribute such Open Source Contributions to the relevant Open Source Software project. Customer shall license its use of such Open Source Contributions under the applicable Open Source Software licensing terms for such Open Source Contributions. Any necessary bug fixes or improvements to robotic software packages originating outside of Customer's private code repositories will be considered Open Source Contributions using the business-friendly BSD license<sup>1</sup>. Open Source Software release may benefit Customer by reducing feature maintenance overhead of forked packages through leveraging the broader community to maintain, test, and debug the applicable software without additional cost to Customer.

**4. DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, PICKNIK DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE CUSTOM SOFTWARE, BACKGROUND TECHNOLOGY, OPEN SOURCE SOFTWARE, AND OPEN SOURCE CONTRIBUTIONS. BECAUSE PICKNIK CANNOT CONTROL CUSTOMER'S NETWORKING OR FINAL PRODUCT, PICKNIK CANNOT AND DOES NOT WARRANT THAT THE CUSTOM SOFTWARE, BACKGROUND TECHNOLOGY, OPEN SOURCE SOFTWARE, OPEN SOURCE CONTRIBUTIONS, OR SERVICES OR ANY

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<sup>1</sup> <https://opensource.org/licenses/BSD-3-Clause>

TECHNOLOGIES RESULTING FROM ANY OF THE SAME WILL BE FREE FROM SECURITY VULNERABILITIES OR MALWARE OF ANY KIND AND PICKNIK IS NOT RESPONSIBLE OR LIABLE FOR CUSTOMER'S USE OF ITS ROBOT PLATFORM, THE CUSTOM SOFTWARE, BACKGROUND TECHNOLOGY, OPEN SOURCE SOFTWARE, OPEN SOURCE CONTRIBUTIONS, OR SERVICES

5. **NON-SOLICITATION.** Customer shall not, during the term of any Statement of Work and for one (1) year thereafter, solicit or hire or engage (whether as an employee, consultant, contractor, or otherwise) any person or entity who was employed or retained by PickNik during the previous two (2) years and with whom Customer had contact in connection with the Statement of Work (each, an "**Employee**"), except pursuant to a publicly advertised employment opportunity which is not directed specifically to any such Employees. Upon any breach of this section, Customer shall pay to PickNik an amount equal to all compensation paid or to be paid by Customer to the Employee during the first twelve (12) months after such Employee was hired or engaged by Customer ("**Liquidated Damages**"). The parties acknowledge and agree that PickNik's harm caused by Customer's breach of this section would be impossible or very difficult to accurately estimate as of the Effective Date, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such breach.