

Terms And Conditions

For The Provision Of Ipanema Services

IF YOU PURCHASE IPANEMA SERVICES FROM VIDENS, THESE TERMS AND CONDITIONS WILL GOVERN YOUR PURCHASE AND ONGOING USE OF OUR SERVICES. YOU WILL HAVE ACCEPTED AND SHALL BE BOUND BY THESE TERMS AND CONDITIONS BY EXECUTING OR SIGNING AN ORDER FORM THAT REFERENCES THESE TERMS AND CONDITIONS.

1. DEFINITIONS

"**Change Order Form**" means Videns' Change Order Form for the Services, in the form attached as Annex C.2 hereto.

"**Contract Term**" means the Contract Term stated on the Order Form during which the Services on the Order Form will be delivered by Videns. The Contract Term commences on the date of activation of the Service.

"**Customer**" means the company or other legal entity for which you are accepting these Terms and Conditions and Affiliates of that company or entity.

"**Force Majeure Event**" means a degradation of the performance of a Party's obligations under this Agreement due to a cause beyond the reasonable control of such Party, including acts of God, fire, flood, or other catastrophes; acts of government; national emergencies, insurrections, riots, war or acts of war or terrorism.

"**Order**" means an order for a Service specified in an Order Form that has been signed by duly authorized Customer personnel and accepted in writing by Videns.

"**Order Form**" means Videns' order form for the provision of the Services.

"**Service Commencement Date**" means the requested Service Commencement Date stated on the Order Form.

"**Services**" means the services to be provided by Videns to Customer as specified in an Order.

"**Software**" means computer programs in object code, as applicable, provided or to be provided by Videns pursuant to this Agreement, and excluding any proprietary software provided by Customer.

"**User**" or "**End User**" means all users of the Services under this Agreement, including Customer, its affiliates and any other entity or entities designated in an Order as the recipient of the Services.

"**Videns**" means Videns IT Services B.V. having its principal place of business at Orteliuslaan 850, 3528 BB Utrecht, The Netherlands.

2. ORDERING OF SERVICES, CHANGES AND RENEWAL

- 2.1 Customer will issue Orders and Videns will accept Orders for the provision of the Services only in the form of duly signed Order Forms. All executed Orders are non-cancellable and all amounts paid are nonrefundable.
- 2.2 The Services shall be provided for an initial period as defined under "Contract Term" in the relevant Order Form. The subscription period shall commence on the service activation

date. Videns shall send Customer a renewal Order Form at the latest 60 days prior to the end of the Order Term for an additional period equal to the expiring Order Term. The renewal Order Form shall contain the fees for the new subscription period. The renewal shall be deemed to be accepted by Customer, without confirmation, unless Customer gives notice by email of non-renewal at least 30 days before the end of the expiring Order Term.

- 2.3 Customer may request revisions or changes to Orders using a Change Order Form in respect of any upgrades, downgrades, re-configuration or re-location of any Services ordered. All Changes may be subject to Charges and other commercial considerations which will be detailed by Videns on the Change Order Form.
- 2.4 Unless specifically agreed otherwise, the Ipanema hardware products ("Equipment") provided in relation to the Service belongs to Videns. Customer may not sell, lease, abandon, or give away the Equipment; allow anyone other than Videns, Ipanema or its agents to service the Equipment; or permit any other person to use the Equipment, other than on Customer's behalf in connection with Customer's use of the Service. Customer will be directly responsible for loss of the Equipment. Upon expiration of the Contract Term or cessation of the Service for any other reason, Customer must return the Equipment to Videns in the same condition as when delivered to Customer, reasonable wear and tear excepted; and if Videns has not received the Equipment in such condition within 10 days thereafter, Customer will be deemed to have purchased the Equipment at Ipanema's list price, and will pay Videns upon invoice as provided in Section 3 hereunder.

3. CHARGES, INVOICES, PAYMENT AND TAXES

- 3.1 **Charges:** The Charges will be as agreed per the Order Forms and are based on Services purchased and not actual usage.
- 3.2 **Currencies:** Charges are quoted and payments are to be effected in the currencies stated on the relevant Order Forms.
- 3.3 **Delivery:** Unless specifically agreed otherwise, the delivery of all goods and any equipment required for or associated with the provision of the Service, will be DAP (Delivered At Place – Incoterms 2010).
- 3.4 **Invoicing:** Videns will commence invoicing of recurring Charges per Service and per Location as of the date of activation of each Service on each Location. If the Service is ready to be provisioned by Videns but cannot be provisioned on the requested Service Commencement Date for reasons due to the Customer, then Videns will commence invoicing 30 days after the requested Service Commencement Date. Videns will invoice all fixed recurring charges monthly in advance, all other recurring charges monthly in arrears. Videns will invoice all charges for one time Services 50% upon acceptance of the Order Form and 50% on completion of the Service.

- 3.5 **Payment:** All invoices are due and payable within 30 days of the date of receipt of the invoice. Payment will be made by wire transfer to the bank account nominated by Videns. Customer shall notify Videns within 30 days of the date of the invoice of any amount which it reasonably disputes. Failing to notify any disputes, Customer will be deemed to have accepted the amounts stated on the invoice. Customer shall have the right to withhold payment only of reasonably disputed amounts. Except in case of breach, payment obligations are non-cancellable and charges paid are non-refundable.
- 3.6 **Taxes:** The amounts listed in the Charges Schedule and on the Order Forms do not include taxes, including VAT, sales, excise duties, gross receipts and withholding taxes, universal service fund fee, and any similar tax or any government imposed fees or surcharges which may be applicable thereto and which will be invoiced to Customer in accordance with local law. Customer agrees to pay or reimburse Videns for all such taxes or fees, excluding tax on Videns income. In respect of withholding tax, Customer will pay such additional amounts as may be necessary, such that Videns receives the amount it would have received had no withholding been imposed. Videns will make reasonable efforts to inform Customer upon Customer's request of the taxes applicable to any Order, provided that Videns' failure to inform Customer will not bar Videns from requiring the payment or reimbursement of any such tax.
- 3.7 **Non-payment:** Failure by Customer to pay any charges in accordance with this Agreement, except for any amount disputed in accordance with Article 3.5, will entitle Videns to charge interest at the statutory rate of the outstanding balance from the date such payment was due until the date paid. Videns will be entitled to suspend the Service to which the non-payment relates, provided that (i) Videns will have given Customer a 90 days' notice of its intention to do so and (ii) Customer having failed to pay the overdue amounts during that time. The exercise of these remedies is without prejudice to Videns' other rights and remedies under this Agreement.

4. PUBLICITY AND TRADEMARKS

- 4.1 Customer permits Videns to identify Customer as a customer of Videns and to display Customer's logo in connection with identifying Customer as a customer of Videns.
- 4.2 Customer agrees to participate in a joint press release with Videns announcing Customer's use of Videns' Services. The press release shall be subject to the approval of Customer and Videns, which shall not be unreasonably withheld or delayed.
- 4.3 Videns shall not be entitled to publicise the fact that Customer is a customer of Videns for the Services without Customer's prior written consent.

5. INTELLECTUAL PROPERTY RIGHTS

All rights in inventions, patents, design rights, copyrights, trade marks, trade names, internet domain names, e-mail addresses, database rights, trade secrets, know-how, in each case, whether registered or unregistered, and any other intellectual property right whatsoever and wherever enforceable ("Intellectual Property Rights") in the Services are either owned by or licensed to Videns. Nothing contained in these Terms and Conditions will be deemed to convey any title or ownership interest in any Intellectual Property Rights to Customer or Users, nor are any rights or licenses granted under this Agreement with respect to any Intellectual Property Right, except as otherwise expressly provided in Article 6 or elsewhere in this Agreement.

6. SOFTWARE

If required to enable Customer to use a Service, Videns will grant

Customer and Users for the term of this Agreement a non-exclusive, non-transferable, revocable license to use Software strictly for such purpose. Customer agrees not to produce, copy (except for the purpose of retaining a back-up copy), alter, modify, or add to the Software or any part thereof, nor to attempt or to allow a third party to attempt to reverse engineer, translate or convert the Software from machine readable to human readable form, except as permitted by applicable law.

Ipanema Software furnished by Videns in relation to the Service is copyrighted and remains the property of Ipanema. The Customer's and End Users use of the Ipanema Products is governed by the terms of Ipanema's Software License Agreement which is attached in the Annex hereto.

7. INDEMNIFICATION

- 7.1 Subject to Article 5, Videns and/or its licensors, at its expense, shall indemnify, defend and hold Customer harmless against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives Videns written notice of the Claim; (b) gives Videns sole control of the defense and settlement of the Claim (provided that Videns may not settle any Claim without Customer's prior written consent and unless the settlement unconditionally releases Customer of all liability); and (c) provide to Videns all reasonable assistance.
- 7.2 Videns will have no obligation to defend Customer or to pay costs, damages or fees for any claim based on (a) use of the Service or of any part thereof other than the current unaltered Service provided by Videns, if such infringement would have been avoided by the use of the current unaltered Service provided by Videns; or (b) the combination, operation or use of a Service, or of any part thereof, with non-Videns services, equipment or software, if such infringement would have been avoided by not combining, operating or using such Service or part thereof with other such non-Videns service, equipment or software.
- 7.3 This section 7 states Videns' sole liability to, and the Customer's exclusive remedy against Videns for any type of Claim described in this section.

8. CONFIDENTIAL INFORMATION.

Customer and Videns agree for the duration of the provisioning of the Service by Videns and for 3 years thereafter to treat any confidential information regarding the Service and any other information provided by one party to the other party that would reasonably be understood to be confidential ("Confidential Information") as strictly confidential, and use such Confidential Information only for the purposes of using or provisioning the Service as permitted hereunder.

9. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 9.1 Neither Videns nor Customer will be liable, whether for negligence, breach of contract, misrepresentation or otherwise, for any indirect, incidental or consequential loss or damage, howsoever arising, including loss of use or loss of data or lost time, revenue, profits, goodwill, anticipated savings, or any business interruption of any kind, in each case even if advised of the possibility of such loss or damage.
- 9.2 Except for completing any payment obligations, neither Videns nor Customer will be liable for any delay or for the consequences

of any delay in fulfilling any of its obligations under this Agreement if such delay is due to a Force Majeure Event.

- 9.3 Except for completing any payment obligations, Videns' and Customer's liability, whether for negligence, breach of contract, misrepresentation or otherwise, for direct loss or damage under this Agreement will be limited, for each event or series of connected events, as follows: (a) for damage or destruction of tangible property, Euro 2,500,000; (c) for all other events, the Charges incurred under this Agreement in the 12 months immediately preceding the cause of action. The foregoing shall not limit the Customer's payment obligations under this Agreement.

- 9.4 Nothing in this Agreement will exclude or restrict any Party's liability for death or personal injury caused by negligence, or fraud or deceit.

10. GOVERNING LAW AND JURISDICTION

These Terms and Conditions and all matters arising from or in connection with the interpretation or enforcement of these Terms and Conditions will be governed exclusively by the laws of the Netherlands, without regard to its conflicts of laws provisions. Videns and Customer agree to submit to the jurisdiction of the competent court in the Netherlands.

Annex

Ipanema Software License Terms

TO USE THE IPANEMA SOFTWARE MODULES (THE "SOFTWARE"), THE END USER MUST BE GRANTED A LICENSE (THE "LICENSE") DIRECTLY BY IPANEMA TECHNOLOGIES ("IPANEMA") OR THROUGH A DULY AUTHORIZED RESELLER (THE "RESELLER"). THIS LICENSE IS DEFINED BY THE FOLLOWING TERMS:

GRANT OF RIGHTS TO USE AND INTELLECTUAL PROPERTY

The rights granted to the End User to use the software is non-exclusive, non-transferable, non-convertible and restricted to the use of the software for the exclusive purpose of installation and operation of the Ipanema System in accordance with the recommendations and instructions of Ipanema, issued in any form including the Ipanema technical documentation (the "Documentation").

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According to software modules, the right to use is associated with either a specific Ipanema System configuration or by a certain number of ISUs ("Ipanema Software Units") as described in the commercial proposal or the contract.

The right to use software modules bound to ISUs within an Ipanema System can be transferred by the End User to other such modules in the same Ipanema System as long as the corresponding total number of ISUs is not exceeded. Any other modification of the configuration will modify the already granted right to use and must be described in a subsequent commercial proposal or contract.

OPEN SOURCE LICENSES

Some components of the Ipanema software may be covered under

one or more of the open source licenses below. The Ipanema warranty for these modules apply as they are used embedded in the entire product. For licenses that require it, machine readable copies of modifications made by Ipanema are available upon request. Complete license texts can be found at the following addresses or by connecting to ip|engines (using the "license" command at login):

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- BSD 1.0 License – <http://opensource.org>
- GNU General Public License (GPL) – Version 2 and 3 – <http://www.fsf.org>
- GNU Lesser General Public License (LGPL) – Version 2.1 – <http://www.fsf.org>
- OpenSSL license – <http://www.openssl.org>

TERM AND TERMINATION

The grant of this License is dependent on payment of the Initial Software License Fee and of Software support fees. It shall be effective as of the shipment date of the Software license key and continue as long as the Software support fees are duly paid.

Should the End User fail to comply with any of the terms and conditions of this License, Ipanema or its Reseller shall be entitled to terminate the License. Such termination shall be effective fifteen (15) days after formal demand requiring correction of the breach shall have been sent by registered post with return receipt requested without the breach having been so corrected.

In the event of termination of this license, the End User shall immediately de-install the Ipanema software and pay to Ipanema or its Reseller all sums remaining due as at the date of termination.

SOFTWARE MEDIA WARRANTY

Ipanema warrants that original data supports are free from defects in materials and workmanship, assuming normal use, for a period of ninety (90) days from date of shipment.

Ipanema's sole and exclusive liability and the End User's sole and

exclusive remedy under this limited warranty shall be to replace the defective media on which the Software is recorded free of charge. This remedy is available only if Ipanema is promptly notified in writing, within the warranty period, upon discovery of the defect by the End User.

SOFTWARE WARRANTY

Ipanema warrants that the software performs substantially according to its documentation for a period of ninety (90) days from date of shipment of the software license key.

Ipanema's sole and exclusive liability and the End User's sole and exclusive remedy under this limited warranty shall be, at Ipanema's election, to provide corrective maintenance services to correct the Ipanema software if it doesn't perform as warranted within the warranty period or to replace it free of charge with a corrected version.

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THE LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, INCLUDING A BREACH OF A CONDITION OR FUNDAMENTAL TERM OR FUNDAMENTAL BREACH OR BREACHES. THE LIMITATIONS SHALL NOT APPLY TO CLAIMS FOR PERSONAL INJURY OR BODILY HARM CAUSED BY EITHER PARTY, OR PAYMENT OF AMOUNTS OWING BY THE END USER TO IPANEMA OR ITS RESELLER.

GOVERNING LAW

This License is governed by French law and any proceedings arising out of or in connection with this License shall be submitted to the Commercial Court of Paris, France.

SEVERABILITY

If any provision hereof is held invalid, the remainder shall continue in full force and effect.

END OF TERMS AND CONDITIONS FOR THE PROVISION OF IPANEMA SERVICES

VIDENS IT SERVICES B.V.

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