

# Topotheque terms of cooperation

## Preamble

By completing and submitting the online purchase order form, the partner (= the local operator of a Topotheque) and ICARUS as non-profit oriented associated enter into a **project partnership**, based on the mutually recognition of the following terms of cooperation:

## 1. Subject of the Agreement

1.1 The „Topotheque“ is a web service which allows the Partner to enter pictures, videos and audio material, to furnish them with metadata and to display them. Data entered by the Partner is stored, administered and made visible on a single Topotheque which will be established for the Partner.

1.2 The contract includes also the **technical maintenance** as well as the **scientific development** of the web service “Topotheque”.

1.3 Furthermore, the **provision of storage space** for the Partner in order to save the content of the Partner’s personal Topotheque as well as the **incorporation** of this Topotheque in the Web are subject to the present contract. Use of the web service “Topotheque“

## 2. Rights of use

2.1 ICARUS shall grant the Partner the simple rights of use of the web service “Topotheque“, which are necessary for using the services under the present contract.

2.2 In case ICARUS puts at the Partner’s disposal a software or web services developed by third parties, the Partner’s rights of use shall be limited to the scope of the rights of use which the third party has granted ICARUS.

2.3 All copyrights or other intangible property rights of the agreed services of the web service “Topotheque“ remain with ICARUS or its licensors (with regard to data and metadata: p. 6.1).

## 3. Duties of ICARUS

3.1 ICARUS undertakes to make the web service “Topotheque“ accessible to the Partner for use through a data network.

3.2 ICARUS undertakes to fulfil the provisions of the present agreement with regard to technical servicing and scientific maintainance the “Topotheque“.

3.3 Furthermore, ICARUS undertakes to provide third parties with the possibility to upload pictures, videos and audio material into this web service.

3.4 ICARUS will provide storage space in order for the Partner so store personal content.

3.5 In order to provide the Partner with access to the administration section of the web service “Topotheque” at any time, ICARUS shall assign a **username** and a **password** to the Partner.

3.6 Furthermore, during the upload of data, third parties must tick a box to accept the respective conditions of participation, which are enclosed to this contract as a form and constitute an integral part of this contract. The consent to the participation conditions given by the third party shall apply to all data uploaded by them.

3.7 ICARUS undertakes to provide the partner with a copy of the user manual.

3.8 ICARUS shall carry out a **training** with competent persons in charge, who have been named by the Partner (Topothequer).

#### **4. Duties of the Partner**

4.1 The Partner undertakes to provide, index and enable the content necessary to operate the web service “Topotheque”.

4.2 In the event of malfunctions during the use of the server within the scope of the present agreement, the Partner shall immediately inform ICARUS of these malfunctions.

4.3 The Partner undertakes to store neither illegal nor immoral contents in the storage space subject to the present agreement.

4.4 The Partner undertakes to hold harmless and indemnify ICARUS with regard to **claims of third parties**, independent of the legal nature, which may occur through illegal contents, stored by the Partner in the storage space subject to the present agreement.

4.5 In this context the Partner shall explicitly declare to **hold all intangible property rights for the use of data and files stored by them** (property rights, rights on their own picture, licences or lease permits). This shall not apply to data or files entered into the web service “Topotheque” by third parties (e.g. citizens).

4.6 With regard to quality assurance, the Partner shall be obliged to provide ICARUS with the name of a competent person (“**Person in charge of the Topotheque**”).

4.7 The Partner shall undertake **to write their own legal notice** for their “Topotheque”, as they are responsible for the contents visible thereon.

4.8 The Partner shall not be entitled to implement any kind of **advertisements** on the “Topotheque” without the prior written consent of ICARUS.

4.9 The partner undertakes to **act with appropriate accuracy and precision** when entering metadata and subject headings in order to assure the quality of the Topotheques as an overall project.

4.10 The Partner is not authorized to make the web service available to other operator, neither in return for payment nor free of charge.

4.11 The contractor, also project partner and subsequently topothequers must upload all of their data to the best of their knowledge and without harmful intentions via the server as provided by the web service.

## 5. Maintenance of the Topotheque web service

5.1 ICARUS shall continuously control the functional capability of the web service "Topotheque" and commit itself to **repair possible defects within an appropriate period of time**.

5.2 A **defect** exists if the web service "Topotheque" does not fulfil its function and its use has become impossible or at least restricted, whereas this is in particular the case, if data entered by the Partner into their "Topotheque" are not administered correctly or not visible.

## 6. Data hosting

6.1 **All property rights** and other **intangible property rights** of data entered remain with the **Partner** or their **licensors** or **third parties** (e.g. citizens).

6.2 The **Partner** continues to be **responsible for and entitled to** the power of disposition of their data entered. The Partner shall be entitled against payment of time invested pursuant to point 8.2, to require from ICARUS to provide all or some data, without retention right (independently of the legal reason) of ICARUS. The provision of data shall be made on data carriers or by data network transmission. However, the Partner has no right to maintain the web service "Topotheque".

6.3 ICARUS shall **back up data** once in 24 hours without warranty.

6.4 ICARUS shall **not be liable for the contents which the Partners are making available**. In particular, ICARUS shall not be obligated to control the contents with regard to law violations. Should third parties raise a claim against ICARUS for possible law violations arising from contents of their Internet presentations, the Partner shall be obligated - between partner and ICARUS and not towards third parties - to hold harmless and indemnify ICARUS for all expenses which arise from a possible breach of legislation. Furthermore, **ICARUS shall be entitled to withdraw contents which have been rejected by third parties from the network**, until a clarification of the actual legal position has taken place.

## 7. Interruption

7.1 Adjustments, supplements and modifications of the web service "Topotheque" as well as measures which serve to determine and repair functional defects, can lead to a temporary interruption or disturbance of accessibility.

7.2 Interruptions or disturbances of accessibility shall be **limited to 10 days/month**. In the event that interruptions or disturbances of accessibility exceed this period, the Partner shall be entitled to prematurely cancel the contract for cause. **Claims for damages by the partner shall be excluded**.

## 8. Payment

8.1 The Partner consents to participate in the expenses for servicing, maintenance and the continuous scientific development of the web service "Topotheque" as follows:

Partners in countries with a GDP (gross domestic product) of more than € 30.000 EUR per person (like Austria, Germany, Switzerland, etc.): for the instalment of the Partner Topotheque and the training of how to operate the web service "Topotheque" a one-time contribution of € 415 shall be paid. For covering the running costs a monthly contribution of € 47,50 to be issued yearly shall be paid.

Partners in countries with a GDP (gross domestic product) of less than € 30.000 EUR per person (like Hungary, Czech Republic, Estonia, etc.): for the instalment of the Partner Topotheque and for covering the running costs a yearly contribution of € 300 shall be paid.

8.2 Additional services which are not compulsory within the scope of the present contract, shall be carried out by the external IT company pachlerschatek on an hourly rate of € 90 plus tax. The settlement takes place between the Partner and above mentioned company.

8.3 The project fee is subject to indexation in accordance with the Consumer Prices Index 2010 as proclaimed by the Statistic Austria. The indexation clause is based on the index number calculated for the month September 2016. Fluctuations of 3% in any direction will be disregarded. In case the threshold gets surpassed, the entire index change will be taken into consideration. The new index number will form the basis upon which any further threshold transgressions will be calculated.

8.4 The project fee must be **paid in advance for the entire contract year** and is due by the first day of the first contract month unless a deviating payment agreement has been reached in written.

8.5 In case the Partner enters into default regarding payment, ICARUS is entitled to demand default interests of 4% per anno.

8.6 In case the Partner enters into default regarding payment for over a month, ICARUS is entitled to withdraw from the contract for exceptional reasons.

## 9. Warranty

9.1 ICARUS undertakes to repair **defects** in the web service "Topotheque" within an appropriate period. The repair of defects can lead to an interruption of the connection between the server of ICARUS and the Partner. During the time of interruptions or disturbances of accessibility of the web service "Topotheque" in line with the contract, the Partner is not bound to payment in case the interruptions or disturbances of accessibility persist for more than 10 days per month.

9.2 ICARUS shall **not be liable for the functional capability of the network connections** to its server in the event of electrical power outage and outages of servers which are not within its scope of influence.

9.3 ICARUS shall **not be liable / shall not give warranty for the possibility to use the card function at any time**, as this function is provided by third parties. Should the card function cease to work due to the existing licence agreement between ICARUS and the card service provider, ICARUS shall do its best to find a substitute for the card function. However, there is no obligation as to how this has to be done.

9.4 In the event that ICARUS shall not fulfil its obligation to remedy defects within an appropriate period of time, the Partner shall be entitled to withdraw from the present agreement upon granting 14 days of grace through written notice.

9.5 **Guarantee claims** of the Partner shall lapse within a period of 6 months, provided that the Partner is not a consumer in terms of the Austrian Consumer Protection Law /österreichischen Konsumentenschutzgesetzes (KSchG). In that case the legal time limit shall apply.

9.6 ICARUS shall not be liable for **data loss** – unless done with wilful intent.

## 10. Illegal contents

In the event that the Partner uses the storage space under this agreement against the contractual consent to abstain from storing illegal contents, the provider shall have the right to inhibit the access to such content through the Web by appropriate measures. Furthermore, ICARUS shall have the right to disclose the names and addresses (for notifications) of the Partners to third parties, in order to facilitate official and legal measures against the Partner.

## 11. Duration of contract

11.1 The contractual relationship shall begin with the signing of the agreement by all contractual parties. The contractual relationship shall be concluded for one year. The contract is automatically renewed for an additional year unless the contract is terminated in writing within a 3 months period of notice of the respective contractual relationship.

11.2 Each contractual party shall have the right to terminate the agreement prematurely due to the following important reasons: - In the event that a contractual partner – for any reason whatsoever – being their fault or not, will no longer be able to fulfil their obligations under this contract, - in the event that the contractual partner breaches significant provisions of the present agreement.

11.3 The **requirement of written form** is fulfilled by transmission of a certified letter to the address which the contractual partner has provided.

11.4 If the agreement is terminated, the Partner's Topotheque may remain online. Rights of use of the content will remain unaffected. Further editing on the part of the Partner or assigned topothequers will no longer be possible. Upon request of the Partner, ICARUS shall provide the entered contents to the Partner, in which case expenses shall be billed based on time invested, pursuant to point 9.1, by ICARUS to the Partner. ICARUS shall not be liable to automatically provide entered contents to the Partner, or store or file data beyond the time of validity of the agreement.

## 12. Data protection

The applicable legal data protection provisions are known to ICARUS. ICARUS shall fulfil the legal provisions of data protection in the applicable version.

## 13. Place of jurisdiction and applicable law

The present contract shall be subject to **Austrian law** only. This shall also apply to questions concerning the formation of the contract or legal consequences of after-effects. All disputes arising from the present agreement, including questions concerning its valid formation or after-effects shall exclusively be decided by the competent court at the seat of association of ICARUS (thus, the place of jurisdiction is Vienna). Concerning the relationship with consumers, obligatory consumer protection regulations shall prevail.

## **14. Final provisions**

14.1 By means of the present agreement the privity of contract of the contractual partners is exclusively regulated. Possible agreements or declarations concluded in connection with this contract shall become invalid upon the signing of present contract.

14.2 Modifications of or amendments to the present contract must be made in writing. Also, any modification of this requirement of form shall be in writing.

14.3 The invalidity of individual provisions of the present contract shall not affect the remaining provisions. The contractual parties undertake to replace the invalid section with a valid provision as close as possible to the economic and legal purpose of the invalid one.

14.4 The expenses for legal representation or consultancy shall be borne by each of the contractual partners individually.