

End User License Agreement of ~sedna GmbH for the provision of standard software for perpetual use (sale of standard software)

As of: November 2022

This End User License Agreement (hereinafter "**EULA**") constitutes a legally binding contract between you as a customer and ~sedna GmbH, Salzufer 13F, 10587 Berlin, Germany, registered in the Commercial Register at the Local Court of Berlin (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") as licensor. The following provisions contain the terms of use for the perpetual use of standard software of the software manufacturer ~sedna via the portal www.sedna.cloud ("**Cloud**") and as a perpetual license with dongle ("**~sedna products**", as defined below in Item 1).

You are not permitted to install and/or use the relevant standard software without agreeing to this EULA. We would therefore request that you read the EULA carefully.

When you concluded a contract with ~sedna for the provision of standard software for perpetual use, you already agreed to this EULA pursuant to Item 3 of the General Terms and Conditions of ~sedna GmbH for the provision of standard software for perpetual use (sale of standard software).

When you install the relevant standard software on your end device, you will again be asked to explicitly agree to this EULA. You accept this EULA by clicking on the "I agree" or "Yes" button, by downloading the standard software or otherwise expressing your consent, and this EULA constitutes a legally binding contract between you and ~sedna. If you do not agree with the EULA, please click on "Cancel", "No", or "Close Window".

1. Definitions

"Dongle"	is a copy protection device used by ~sedna for perpetual licenses.
"End device"	is any device belonging to the customer or recipient on which a ~sedna product is used or is to be used.
"Recipient"	is any natural person or legal entity to whom the customer wishes to transfer his rights to the ~sedna product.
"Perpetual License"	refers to a license of a ~sedna product purchased by the customer, which entitles the customer to perpetual use.
"License Management"	is a free service provided by ~sedna, via which the customer can use his ~sednaID to activate, deactivate and reactivate his perpetual licenses in sedna.cloud (Cloud) with the ~sednaKey and view his booked ~sedna services.
"Customer"	is any natural person or legal entity who holds a perpetual license for a ~sedna product and has agreed to the EULA.
"License Transfer"	is the transfer of rights to the ~sedna product from the customer to the recipient.
"Cloud"	is an online portal provided by ~sedna at sedna.cloud for managing ~sedna products and ~sedna services.

"~sedna ID"	is the individual identification number (Unique Identification Number = "UIN") generated by ~sedna for individual customers
"~sednaKey"	is a UIN required to authenticate ~sedna products in sedna.cloud (Cloud).
"~sedna products"	describes standard software distributed by ~sedna in the field of digital signage, as well as separately licensed add-ons of this software, together with the associated user documentation in digital form ("Online Manual").
"~sedna services"	are services provided by ~sedna, such as maintenance, support, hosting ("Cloud Space"), which ~sedna's customers can book via Cloud in conjunction with ~sedna products.

2. Subject matter of the contract

- 2.1 The subject matter of the contract is the granting of perpetual rights of use to ~sedna products in accordance with this EULA, which can be downloaded and viewed on the website <https://www.sedna.cloud> operated by ~sedna.
- 2.2 The ~sedna product is either protected by a dongle or can be used only via sedna.cloud (Cloud) (see Item 3).
- 2.3 This EULA shall apply exclusively. Any deviating, conflicting or supplementary license terms of the customer shall become part of the contract only if and as far as ~sedna has expressly consented to their validity.
- 2.4 References to the validity of statutory provisions are for the purpose of clarification only. The statutory provisions shall therefore apply even without such clarification, provided these provisions are not actually amended or expressly excluded in this EULA.
- 2.5 The EULA shall enter into force on the day the customer purchases, downloads or uses the ~sedna product, whichever comes first.

3. Terms of use

- 3.1 The customer shall install and use the ~sedna product only if he has agreed to all terms and conditions of this EULA.
- 3.2 The ~sedna products are made available and licensed exclusively in object code, i.e., in executable machine-readable form, via download. The customer has no claim to the provision of the source code. If the ~sedna product is protected by a license key or dongle, the customer shall receive the license key or dongle exclusively for the use of the ~sedna product as specified in the contract, in this EULA, and as given in more detail in the user documentation.
- 3.3 The customer is authorized to use the ~sedna products for his own purposes in his business operations within the scope of the rights of use granted to him (see Item 4).
- 3.4 The due quality of the ~sedna product, and the conditions of use of the hardware and software, as well as the system environment (clients, server and network) in which the ~sedna product may be used, are stated conclusively in the contract, in this EULA, and in the user documentation.

- 3.5 Installation and configuration services, as well as consulting services, do not form the subject matter of the contract, but may be agreed separately between the parties.
- 3.6 ~sedna products without a dongle can be used only via sedna.cloud (Cloud). The ~sedna product must be installed and registered with the associated perpetual license in accordance with the installation instructions described in sedna.cloud (Cloud) by registering the end device, on which the ~sedna product has been loaded, on sedna.cloud (Cloud). The ~sedna ID and ~sednaKey, which are notified to the customer when the license is issued, will be requested when the ~sedna product is started. Perpetual licenses with a dongle are not to be registered on sedna.cloud (Cloud) but may be listed in the license management of sedna.cloud (Cloud).
- 3.7 Software changes on the customer's end device may require the customer to re-register the ~sedna product via sedna.cloud (Cloud) in order to be able to use it.

4. **Granting of rights**

- 4.1 Upon full payment of the agreed purchase price, the customer shall receive the non-exclusive right – which can be transferred only in accordance with the provisions of Item 8 and is unlimited in time and cannot be sub-licensed – to use the ~sedna product to the extent specified in this EULA and in the associated contract. All data carriers and the supplied user documentation shall be subject to retention of title before the purchase price has been paid in full. Contractual use includes installation, as well as downloading, displaying and running of the installed ~sedna product on a single compatible end device. There are no additional rights which exceed the rights of use expressly granted under this EULA.
- 4.2 The customer is authorized to create a backup copy of the ~sedna product provided to him in the object code. The customer shall visibly affix the note "backup copy" as well as a copyright note referring to ~sedna on the backup copy that he creates.
- 4.3 In addition, the customer is authorized only to copy, edit or decompile the ~sedna product if this is legally permissible and only if ~sedna does not provide the necessary information for this purpose at the customer's request. The customer may not commission third parties who are competitors of ~sedna with the tasks specified in this Item, unless he proves that the risk of disclosure of important trade and business secrets of ~sedna (in particular, relating to functions and design of ~sedna products) is excluded. Furthermore, decompilation is permissible only if the terms and conditions specified in Section 69 e para. 1 of the German Copyright Act (Urheberrechtsgesetz – UrhG) are met. The information obtained in this way may not be used or passed on contrary to the provisions of Section 69 e para. 2 UrhG.
- 4.4 Any material provided in printed form may not be copied without ~sedna's written consent.
- 4.5 Apart from the cases mentioned in Items 4.1 to 4.4, the customer is not authorized to copy the ~sedna product along with the user documentation.

- 4.6 The customer is not authorized to pass on the copy of the ~sedna product supplied to him or downloaded by him or any backup copy that he has created to third parties or to make it available to third parties in any other manner. In particular, he is not permitted to lend, rent out or sub-license the ~sedna product in any other way or to publicly reproduce the ~sedna product or to make it accessible. The customer must take appropriate precautions to protect the products from unauthorized access by third parties. He shall keep any original data carriers and the data carriers with the copies created by him in accordance with the contract, as well as the user documentation, in a secure place.
- 4.7 If the customer violates any of the above provisions, all rights of use granted under the contract and this EULA shall immediately become invalid and shall automatically revert to ~sedna. In this case, the customer must cease using the ~sedna product immediately and completely, delete all copies of the ~sedna product installed on his systems, and delete or hand over to ~sedna any backup copies that have been created.

5. **Intellectual property**

- 5.1 ~sedna products are protected by the Copyright Act, as well as by international copyright treaties and other laws and treaties related to intellectual property. Regardless of the rights of use granted in Item 4, ~sedna retains all rights to the ~sedna products, including all copies or partial copies of the products created by the customer.
- 5.2 The customer undertakes to retain the protection notices contained in the ~sedna products, such as copyright notices and other legal reservations, without any changes, and to include them in unchanged form in any full copies or partial copies of the ~sedna products created by him.

6. **Switching installation to another end device of the customer**

- 6.1 For perpetual licenses with a dongle, the ~sedna product may be installed simultaneously on any number of end devices of the customer.
- 6.2 When switching installation of the ~sedna product – without dongle – to another end device, the registration for the end device previously assigned to the ~sedna product must be deactivated via sedna.cloud (Cloud) so that this can be assigned to another end device. The sednaID will not change for an installation switch via sedna.cloud (Cloud).

7. **Upgrades**

The acquisition and use of upgrades requires a valid perpetual license of a previous program version of the ~sedna product. The customer has the right to use an upgrade of the ~sedna product provided to him in accordance with the contract or to waive such use. If he decides to use the product, he is obliged to return the previously used version of the ~sedna product and all copies and partial copies thereof to ~sedna at the beginning of the productive use of the new version and to delete them completely if they are stored on data carriers, data memories or other hardware of the customer. The retention of an archive copy requires a written agreement.

8. License transfer

8.1 The customer may transfer the rights of use to the ~sedna product to a recipient under the conditions specified in this Item 8:

- (a) The customer shall pay ~sedna a license transfer fee per license according to ~sedna's current price list plus any applicable value added tax;
- (b) The customer shall hand over the ~sedna product, including all copies, updates, earlier versions and the dongle – if this is part of the ~sedna product – to the recipient, and shall not retain any copies, including backup copies or other copies, which are stored on an end device;
- (c) If the customer has a perpetual license with a dongle, the ~sedna product must be deleted from all the end devices of the customer. If the customer has a perpetual license that can be used only with sedna.cloud (Cloud), the ~sedna product must be deactivated via sedna.cloud (Cloud) and the waiver declaration vis-à-vis ~sedna must be completed, signed and returned to ~sedna using the form provided by ~sedna;
- (d) The recipient shall accept vis-à-vis ~sedna the terms of the EULA and the license agreement under which the customer licensed the ~sedna product;
- (e) If the customer wishes to transfer a perpetual license that can be used only via sedna.cloud (Cloud), the recipient must register for use of the ~sedna product on sedna.cloud (Cloud). He will be assigned a new ~sednaID by ~sedna after checking the data he entered during registration. Registration of the recipient on sedna.cloud (Cloud) is possible only after the customer has waived further use of the ~sedna product (see Item 8.1 (c)). The recipient cannot register on sedna.cloud (Cloud) immediately after further use of the ~sedna product has been waived. The recipient's registration on sedna.cloud (Cloud) is possible only 48 hours after ~sedna has received the waiver declaration. The customer's ~sednaID is replaced by the recipient's ~sednaID for the transferred ~sedna product. After the license transfer fee has been paid according to Item 8.1 (a), ~sedna will confirm the license transfer by e-mail to the customer and the recipient.

8.2 Notwithstanding the above provisions on transferability, the customer is not authorized to transfer the ~sedna product to third parties if this is a free copy not intended for sale (so-called NFR copy).

9. Special terms for test versions

9.1 The terms given in this Item 9 shall apply only if the customer has received the ~sedna product for test purposes (as a free copy, pre-release version, beta test version, NFR copy, etc.) and will have priority over the other terms of the EULA.

9.2 The customer may use the ~sedna product exclusively for test purposes and only for the duration of a test phase agreed with ~sedna. The customer may terminate the test phase at any time by destroying all copies of the ~sedna product or by returning them to ~sedna.

9.3 Unless otherwise agreed, the customer is not authorized to receive support services from ~sedna during the test phase.

9.4 Test versions are provided by ~sedna "as seen" and without warranty of any kind. The customer uses the ~sedna product in the test phase at his own risk, expense and responsibility. ~sedna does not guarantee the performance or specific results of the use of the ~sedna product and related materials. ~sedna does not guarantee that the use of the ~sedna product does not infringe on any rights of third parties nor does it guarantee the marketability or usability for a particular purpose. The customer's statutory rights in the event of malice or wilful intent shall remain unaffected.

9.5 Claims of the customer for damages or reimbursement of expenses are excluded regardless of the legal basis, in particular, in the event of loss of production, loss of profit, loss of information or data and consequential losses. ~sedna's liability for wilful intent, liability under the Product Liability Act, liability for bodily injuries and liability within the scope of furnished guarantees remains unaffected. The same applies to other cases of mandatory statutory liability.

10. **Feedback**

The customer grants ~sedna a non-exclusive, irrevocable and non-chargeable right, which is unlimited in terms of time, content and space, to its feedback on ~sedna products (e.g., suggestions and comments on ~sedna products including user-friendliness, error messages and test results) for the following types of use: (a) to use as part of products, technologies, services, specifications and other documentation in connection with the creation, copying, sale, distribution, adaptation and sub-licensing of ~sedna products; (b) to publicly display and present, import, transmit, transfer, distribute, license, offer for sale and sell, rent or lend feedback (and adaptations thereof) as part of ~sedna products; (c) to transfer and sub-license the above-mentioned rights to third parties. The customer guarantees that the feedback is not subject to any license terms that would oblige ~sedna to fulfil additional obligations, as far as the feedback is used within the scope of the granted rights.

11. **Warranty**

11.1 ~sedna is obliged to provide ~sedna products that are free from defects which significantly abate or diminish the suitability of such products for use in accordance with the contract. In this respect, ~sedna guarantees the contractually agreed quality of the ~sedna products and also guarantees that there are no third-party rights which conflict with the use of ~sedna products in accordance with the contract. ~sedna shall remedy any material defects and defects of title in due time.

11.2 If the customer is an entrepreneur, he must inspect the ~sedna product immediately after receipt for obvious defects and inform ~sedna of any such defects immediately. Otherwise, a warranty for these defects is excluded. The same shall apply if such a defect becomes apparent later. Section 377 of the German Commercial Code (Handelsgesetzbuch – HGB) shall apply.

11.3 In other respects, the customer is obliged to notify ~sedna of defects in ~sedna products, in writing, immediately after the discovery of such defects. In the case of material defects, this notification shall include a comprehensible description of the error indications, the time of occurrence of the defects and the detailed circumstances, proved by written records or other documents illustrating the defects as far as possible. The notice of defects should enable the reproduction of the defect. If ~sedna provides the customer with a template to report defects, this must be used for the notice of defects.

11.4 ~sedna shall remedy defects at its discretion either by rectification of the defect or by replacing the defective product free of charge. ~sedna can also fulfil its obligation to rectify defects by providing updates with an automatic installation routine and offering the customer telephone support to solve any installation problems that may arise.

11.5 The customer's right to reduce the purchase price or to withdraw from the contract at his discretion if the rectification of the defect or replacement delivery fails on two occasions remains unaffected. A right of withdrawal does not exist in the case of insignificant defects.

- 11.6 The customer's rights due to defects are excluded if the customer makes or has made changes to the ~sedna products without ~sedna's consent, unless the customer proves that the changes do not have an unacceptable effect on ~sedna's analysis and elimination of the defects. The customer's rights due to defects shall remain unaffected if the customer is entitled to make changes and these have been carried out professionally and documented in a comprehensible manner.
- 11.7 The warranty does not cover defects caused by deviations from the conditions of use specified for the ~sedna products.
- 11.8 The customer's claims on account of defects shall become time-barred within twelve (12) months, unless a defect is based on a grossly negligent or intentional breach of duty or on fraudulent concealment of a defect. In such cases, the statutory provisions shall apply.
- 11.9 The customer may assert claims for damages within the framework of the agreed limitations of liability (Item 13).

12. **Third-party property rights**

- 12.1 ~sedna shall defend the customer against all claims derived from an infringement of an industrial property right or copyright and/or other property rights due to the use of the ~sedna product in accordance with the contract. ~sedna shall assume the costs and compensation amounts imposed on the customer by court order, provided that the customer has informed ~sedna of such claims immediately in writing, and all rights concerning defensive measures and settlement negotiations remain reserved for ~sedna.
- 12.2 If claims in accordance with Item 12.1 have been asserted or are to be expected against the customer, ~sedna may modify or exchange the respective ~sedna product at its own expense to an extent considered reasonable by the customer. If this is not possible or if it is not possible to obtain a right of use with reasonable effort, each party to the contract can declare withdrawal from the contract for the relevant ~sedna product, in as far as the ~sedna product infringes the property rights of third parties. In this case, ~sedna shall be liable to the customer in accordance with Item 13 for the loss resulting from the withdrawal.
- 12.3 ~sedna has no obligations if the claims according to Item 12.1 refer to programs or data provided by the customer or are based on the fact that the ~sedna product and the data contained therein were not used in a valid, unchanged original version delivered by ~sedna, or was used under conditions other than those given in the specifications.

13. **Liability**

~sedna shall be liable for losses only in accordance with the following provisions:

- 13.1 For losses which are based on a slightly negligent breach of duty, ~sedna's liability is limited to the foreseeable loss typical for the contract, the occurrence of which the customer had to anticipate at the conclusion of the contract due to the circumstances known to him at that time. Liability for all losses is hereby limited to a total amount which corresponds to 100 percent of the agreed remuneration (excluding taxes) of the relevant ~sedna product.
- 13.2 ~sedna shall be liable without limitation for all losses resulting from an intentional or grossly negligent breach of duty or an injury to life, limb or health.

- 13.3 ~sedna shall be liable for the loss of data and its recovery in accordance with 13.1 and 13.2 only as far as such loss could not have been avoided by appropriate data backup measures on the part of the customer. This liability shall be limited in amount to the expenditure which would have been incurred by the customer for restoration if the data had been backed up properly and regularly in a manner corresponding to the significance of the data. This shall not apply if the data back-up was prevented or became impossible for reasons for which ~sedna is responsible.
- 13.4 Claims for damages in accordance with the above provisions shall include claims for reimbursement of expenses.
- 13.5 Any guarantee bonds that are to be submitted shall require a separate agreement, which shall be attached to the contract as an appendix. The use of terms such as guarantee, assurance or assured quality does not in itself constitute a guarantee within the meaning of the German Civil Code (Bürgerliches Gesetzbuch – BGB), but is rather to be understood exclusively as a description of performance.
- 13.6 Liability under the Product Liability Act remains unaffected.
- 13.7 Liability for lost profits and unrealised savings is excluded. ~sedna is not liable for the customer's lack of economic success.
- 13.8 The above limitations of liability also apply analogously in favour of the employees and authorized representatives of ~sedna.

14. **Closing Provisions**

- 14.1 ~sedna reserves the right to revise, update, exchange, modify, add, supplement or delete any provision of the EULA, at its sole and absolute discretion, for reasons relating to security, law, best practice or other regulations. Such changes shall take effect with or without prior notice to the customer. The customer can view the current version of this EULA at the following link: [<https://www.sedna.de/legal/>]. The customer is solely responsible for regularly checking whether this EULA has been amended. If the customer continues to use the ~sedna product after an amendment to this EULA, he fully and irrevocably consents to the amendments.
- 14.2 The parties are aware that the ~sedna products (including updates and upgrades of the products) may be subject to export and import restrictions. In particular, they may be subject to licensing obligations, or the use of ~sedna products or associated technologies abroad may be subject to restrictions. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant regulations. The fulfilment of the contract by ~sedna is subject to the proviso that there are no obstacles to fulfilment due to national and international regulations of export and import law or any other statutory regulations.
- 14.3 Claims due to non-contractual service provision, regardless of the legal basis of such claims, shall become time-barred one (1) year after the customer may have gained knowledge thereof, but no later than two (2) years after the damaging event, unless shorter statutory limitation periods apply.

- 14.4 The place of performance is the registered office of ~sedna. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the rules referring to other legal systems. The exclusive place of jurisdiction is Berlin.
- 14.5 Should individual provisions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall endeavour to replace the invalid or unenforceable provision with a provision that comes closest to the legal and economic purpose of the contract. This shall apply correspondingly in the event of a contractual gap.