

## End User License Agreement of ~sedna GmbH for the time-limited provision of standard software (software subscription)

As of: November 2022

This End User Licence Agreement (hereinafter "**EULA**") constitutes a legally binding agreement between you as licensee and ~sedna GmbH, Salzufer 13F, 10587 Berlin, entered in the commercial register of Berlin Local Court (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") as licensor. The following provisions accordingly contain the terms and conditions for the time-limited use of standard software from the software producer ~sedna ("**~sedna products**", as defined below under Clause 1).

You may not install and/or use the standard software in question without consenting to this EULA. We therefore ask you to read the EULA carefully.

Where an agreement has been concluded with ~sedna on the time-limited provision of standard software, you have already agreed to this EULA pursuant to Clause 3 of the ~sedna GmbH General Terms and Conditions for the time-limited provision of standard software (software subscription) and software maintenance.

When you install the standard software in question on your end device, you will be explicitly requested once again to confirm that you have already agreed to this EULA when you concluded the contract for the subscription license.

### 1 Definitions

<b>"End device"</b>	is every device of the customer or recipient on which a ~sedna product is or is to be used.
<b>"Subscription license"</b>	means a license granted to the customer pursuant to Clause 4, which entitles the customer to use a ~sedna product for a limited period of time.
<b>"License management"</b>	is a free service offered by ~sedna via which the customer can activate, de- and re-activate its subscription licenses in sedna Cloud with the ~sednaKey by means of its ~sednaID and see the ~sedna service performances it has booked.
<b>"Customer"</b>	is every natural or legal person who has a ~sedna product via a subscription license and has agreed to the EULA.
<b>"sedna Cloud"</b>	is an online portal provided by ~sedna under <a href="http://www.sedna.cloud">www.sedna.cloud</a> for managing ~sedna products and services.
<b>"~sednaID"</b>	is the individual identification number generated by ~sedna (Unique Identification Number = " <b>UIN</b> ") for individualising customers.
<b>"~sednaKey"</b>	is a UIN required for authenticating ~sedna products in the sedna Cloud.
<b>"~sedna products"</b>	means standard software marketed by ~sedna in the field of digital signage, such as Player, Creator and also separately licenced add-ons together with related user documentation in digital form ("online manual").

**"~sedna service performances"**

services offered by ~sedna, such as maintenance, support, hosting ("Cloud Space") which the customer can book via sedna Cloud in conjunction with ~sedna products.

**2 Subject matter and term**

- 2.1 Subject matter is the granting of time-limited rights of use to ~sedna products subject to this EULA.
- 2.2 This EULA shall apply exclusively. Differing, conflicting or supplementary license terms of the customer shall become an integral part of the contract only if and in so far as ~sedna has expressly agreed to the applicability of the same.
- 2.3 References to the applicability of statutory provisions have a clarifying role only. Even without such clarification, the statutory provisions shall therefore apply, in so far as they are not directly amended or expressly excluded in these EULA.
- 2.4 The EULA shall enter into force on that date on which the customer rents, downloads or uses the ~sedna product for the first time, whichever is the sooner, and it shall remain in force until the corresponding right of use ends. Upon the end of the contract entitling the customer to use the ~sedna product, regardless of the reason therefor, the customer has to cease use of the ~sedna product without undue delay and completely delete all copies of the ~sedna product installed on its systems and also delete or surrender to ~sedna any backup copies it has made.

**3 Terms and conditions of use**

- 3.1 The customer shall not install or use the ~sedna product before it has agreed to all the conditions of this EULA.
- 3.2 The ~sedna products shall be provided and licensed solely in object code, i.e., in executable machine-readable form, by download. The customer shall have no claim to provision of the source code. For the case that the ~sedna product is protected by means of a license key, the customer shall receive the license key solely for using the ~sedna product as set forth in the contract, this End User License Agreement and the user documentation.
- 3.3 The customer shall be entitled to use the ~sedna products for its own purpose in its enterprise within the framework of the granted rights of use (see Clause 4).
- 3.4 The owed characteristics of the ~sedna product, the hardware and software operating conditions and also the system environment (clients, server and network) in which the ~sedna product may be used are definitively determined by the contract, the End User License Agreement and the user documentation. ~sedna shall be entitled to carry out minor changes to the agreed functionalities in the customer's interest.
- 3.5 Installation and configuration services and also consulting services are not part of the subject matter, but can be agreed between the parties separately.
- 3.6 ~sedna products are usable solely via sedna Cloud.
- 3.7 Thereby, the ~sedna product must be registered on sedna Cloud by registering the end device on which the ~sedna product has been loaded pursuant to the installation instructions described thereon and the pertinent subscription licence. When you start the ~sedna product, you will be prompted for the ~sednaID and ~sednaKey you were given when you received the license.

- 3.8 Software changes on your end device may require you to reregister the ~sedna product via sedna Cloud so that you can carry on using it.

#### **4 Rights concession**

- 4.1 Upon full payment of the agreed license fee, the customer shall receive the non-exclusive, non-transferable and non-sublicensable right limited in time to the agreed use period to use the ~sedna product on the scale granted in this EULA and the related contract. Contractually compliant use includes the installation and also the loading, displaying and running of the installed ~sedna product on an individual compatible end device. No other rights beyond those expressly granted under this EULA shall be granted.
- 4.2 The customer shall be entitled to make a back-up copy of the ~sedna product provided in object code. The customer has to mark the produced back-up copy as a "back-up copy" and also visibly apply a copyright notice citing ~sedna.
- 4.3 Furthermore, the customer shall only be entitled to reproduce, edit or decompile the ~sedna product, if this is permissible by law and only then, in so far as the information so required has not been made accessible by ~sedna upon the customer's request. The customer may not engage any third parties with measures under this clause who are ~sedna's competitors, unless it is proved that there is no risk of important operating and business secrets of ~sedna (in particular functions and design of ~sedna products) being revealed. Decompiling is also only permissible, if the preconditions and conditions set forth in Section 69 e (1) Copyright Act are met. The information thus obtained may not be used or passed on contrary to the stipulations of Section 69 e (2) Copyright Act.
- 4.4 Any material furnished in printed form may only be reproduced with ~sedna's written consent.
- 4.5 The customer shall not be entitled to reproduce ~sedna product and user documentation above and beyond the cases set forth in Clause 4.1 to 4.4.
- 4.6 The customer shall not be entitled to give any copies of the ~sedna product received or downloaded or any backup copies to third parties or allow such third parties to use the same. In particular, the customer is not permitted to sell, lend, rent or otherwise sublicense the ~sedna product or communicate the ~sedna product to the public or make it available to the public. The customer must take suitable precautions to protect the products from unauthorised access by third parties. The customer shall store any original data media and the data media with the copies made as contractually agreed and the user documentation in a safe place.
- 4.7 If the customer breaches one of the above provisions, all rights of use granted within the framework of the contract and this EULA shall be immediately void and revert automatically to ~sedna. In that case, the customer has to cease use of the ~sedna product without undue delay and completely delete all copies of the ~sedna product installed on its systems and also delete or surrender to ~sedna any backup copies it has made.

## **5 Intellectual property**

- 5.1 The ~sedna products are protected under both copyright laws and international copyright treaties, as well as by other laws and agreements concerning intellectual property. The rights of use granted pursuant to Clause 4 notwithstanding, ~sedna reserves all rights to the ~sedna products including all complete or partial copies thereof made by the customer.
- 5.2 The customer undertakes to keep the protective notices such as copyright notices and other retention of rights contained in the ~sedna products unchanged and include the same in an unchanged form in all complete or partial copies it makes.

## **6 Installation switch to another end device belonging to the customer**

When switching the ~sedna product to a different end device, registration for the end device assigned previously to the ~sedna product must be deactivated via sedna.cloud, so that it can be assigned to another end device belonging to the customer. The sednaID does not change for an installation switch on sedna.cloud.

## **7 Upgrades**

Obtaining and using upgrades requires an active subscription license for an earlier program version of the ~sedna product. The customer has the right to use a provided upgrade of the ~sedna product as contractually agreed or waive such use. If the customer opts to use it, it undertakes to return the previously used version of the ~sedna product and all complete and partial copies thereof to ~sedna and to completely delete the same, in so far as they are stored on the customer's data media, data memories or other hardware, upon the start of productive use of the new version. Retention of an archive copy shall require a written agreement.

## **8 Special conditions for test versions**

- 8.1 The conditions of this Clause 8 shall apply only if the customer has received the ~sedna product for test purposes (as free copy, advance version, beta test version, NFR copy, etc.), and shall have priority over the other conditions of the EULA.
- 8.2 The customer may use the ~sedna product solely for test purposes and only for the duration of a test phase agreed with ~sedna. The customer can prematurely end the test phase at any time by destroying all copies of the ~sedna product or returning the same to ~sedna.
- 8.3 Unless agreed otherwise, the customer shall not be entitled to obtain support services from ~sedna during the test phase.
- 8.4 Test versions shall be provided by ~sedna "as seen" and without any warranty. The customer shall use the ~sedna product in the test phase at its own risk, cost and responsibility. ~sedna shall accept no warranty for the performance or for certain results of using the ~sedna product and related materials. ~sedna shall accept no warranty that use of the ~sedna product does not breach any third-party rights or for the marketability or fitness for a particular purpose. This shall be without prejudice to the customer's statutory rights in the case of fraud or intent.
- 8.5 The customer's claims to damages or reimbursement of expenses are excluded regardless of the legal grounds, in particular in the case of production stoppages, foregone profit, loss of information or data and consequential losses. This shall be without prejudice to the liability of ~sedna for intent, under the Product Liability Act, for physical harm and to the extent of warranties given. The same shall apply for other cases of unavoidable statutory liability.

## 9 Feedback

The customer shall grant ~sedna a non-exclusive, irrevocable and royalty-free right unlimited in content, location and time for the following types of use for its feedback on ~sedna products (e.g. suggestions and comments on ~sedna products including user friendliness, error messages and test results): (i) use as part of products, technologies, service performances, specifications and other documentation within the framework of the creation, copying, sale, distribution, editing and sublicensing of ~sedna products; (ii) publicly showing, presenting, loading, transmitting, transferring, distributing, licensing, offering for sale, selling, renting or lending feedback (and editing thereof) as part of the ~sedna products; (iii) transferring and sublicensing the above rights to third parties. The customer warrants that the feedback is not governed by any license conditions which would oblige ~sedna to honour additional obligations in so far as the feedback is used within the framework of the granted rights.

## 10 Warranty

- 10.1 ~sedna undertakes to provide the ~sedna products free from defects which more than minimally negate or reduce suitability of the same for contractually compliant use. To that extent, ~sedna warrants that the contractually agreed characteristics of the ~sedna products shall be continued during the term of the contract and also that contractually compliant use of the ~sedna products shall not be hindered by any third-party rights. ~sedna shall rectify defects in material and title arising within a reasonable period.
- 10.2 The customer undertakes to report defects in ~sedna products to ~sedna at least in writing without undue delay after they are ascertained. In the case of defects in material, this shall be done with a comprehensible description of the error symptoms, the time when the defects appeared and the detailed circumstances, in so far as possible, supported by written records or other documents highlighting the faults. The complaint is to enable the defect to be reproduced. In so far as ~sedna makes a form for a fault report or bug fixing available to the customer, that form is to be used to report the fault.
- 10.3 Defects shall be rectified by ~sedna at its discretion either by free repair or replacement. ~sedna shall also have met its replacement duty by furnishing updates containing an automatic installation routine and offering the customer telephone support to solve any installation problems that may arise.
- 10.4 If ~sedna fails to rectify the defect or provide a workaround solution that gives the customer contractually compliant use of the product within a reasonable period, the customer can demand a reduction of the license fee. Termination by the customer pursuant to Section 543 (2) 1st sentence no. 1 Civil Code for failing to provide contractually compliant use shall not be permissible before ~sedna has been given sufficient opportunity to rectify the defect and that attempt has failed. Failure to rectify the defect shall only be assumed once it is impossible, has been refused or been unreasonably delayed by ~sedna or if it would be unreasonable for the customer due to other reasons.
- 10.5 The customer's rights under defect are excluded in so far as it makes changes or has changes made to the ~sedna products without ~sedna's consent, unless the customer proves that the changes had no unreasonable effects on the analysis and rectification of the defects. It shall be without prejudice to the customer's rights under defect, in so far as the customer is entitled to carry out changes, in particular while exercising a right of self-remedy pursuant to Section 536 a (2) Civil Code and this is done professionally and is also clearly documented.

- 10.6 The warranty does not cover defects caused by deviating from the operating conditions envisaged for the ~sedna products.
- 10.7 The customer's claims under defect shall be time barred after twelve (12) months, unless a defect is due to a grossly negligent or intentional breach of duty or wilful non-disclosure of a defect; the statutory provisions shall apply in such cases.
- 10.8 The customer can assert claims for damages within the framework of the agreed liability restrictions (Clause 12).

## **11 Third-party property rights**

- 11.1 ~sedna shall defend the customer against all claims derived from a breach of an industrial property right or copyright and/or other property rights through the contractually compliant use of the ~sedna product. ~sedna shall bear the costs and damages imposed on the customer by a court of law, in so far as the customer has notified ~sedna about such claims in writing without undue delay and all defence measures and settlement negotiations are left up to ~sedna.
- 11.2 If claims pursuant to Clause 11.1 have been asserted against the customer or are to be expected, ~sedna can at its expense change or replace the pertinent ~sedna product to an extent reasonable for the customer. If this or bringing about a right of use is not possible with reasonable expense or effort, either party to the contract can terminate the contract for the ~sedna product in question without notice, in so far as the ~sedna product breaches the third-party property rights. In that case, ~sedna shall be liable to the customer for the harm it incurs through the termination subject to Clause 12.
- 11.3 ~sedna shall have no obligations, if the claims pursuant to Clause 11.1 relate to programs or data provided by the customer or that the ~sedna product and data therein were not used in a valid, unchanged original version supplied by ~sedna or under operating conditions other than as stated in the performance description.

## **12 Liability**

~sedna shall be liable for harm or losses only subject to the following provisions:

- 12.1 For harm or losses arising from a slightly negligent breach of duty, ~sedna shall be liable up to the typical losses foreseeable for such contracts, which with the customer should have reckoned when the contract is concluded due to the circumstances known to the customer at that point in time; the liability for all harm is thereby capped at an amount equal to 100 percent of the agreed annual remuneration (without taxes) of the contract year in which the event triggering the harm occurred, albeit not more than 100,000.00 euros in all cases.
- 12.2 For all harm or losses arising from an intentional or grossly negligent breach of duty or a loss of life, personal injury or illness, ~sedna shall have unlimited liability.
- 12.3 Strict liability of ~sedna under Section 536a (1), 1st alternative Civil Code for defects which already exist when the contract is concluded is hereby excluded.

- 12.4 ~sedna shall be liable for the loss of data and restoration thereof to subject to Clauses 12.1 to 12.3 only in so far as such a loss would not have been avoidable through reasonable data backup measures on the part of the customer. This liability is capped at the expense or effort that would have been required to restore the data on the basis of proper regular data backup by the customer appropriate for the importance of the data; this shall not apply if the data backup was hindered or rendered impossible for reasons for which ~sedna is answerable.
- 12.5 Claims for damages under the above provisions include reimbursement of expenses claims.
- 12.6 In so far as warranties are to be rendered, they shall require a separate agreement which is to be appended to the present contract. The use of terms such as warranty, assurance or assured characteristic shall as such not ground a guarantee within the meaning of the Civil Code, but is to be understood solely as descriptive of the performance.
- 12.7 This shall be without prejudice to liability under the Product Liability Act.
- 12.8 The liability for foregone profit and unrealised savings is hereby excluded. ~sedna shall not be liable for the customer's lack of economic success.
- 12.9 The above liability restrictions shall also apply mutatis mutandis in favour of ~sedna's employees and agents.

### **13 Force Majeure**

In cases of force majeure, the affected party shall be released from its performance obligation for the duration and on the scale of the impact. Force majeure is every event outside the scope of influence of the pertinent party through which the latter is completely or partly prevented from meeting its obligations, including fire damage, lightning strikes, flooding, strikes and lawful lock-outs and also operational disruptions for which it is not at fault or public-authority orders. The affected party shall notify the other party without undue delay about the onside and end of the force majeure and do its utmost to overcome the restrictions arising from said force majeure and to limit the impact thereof as far as possible. The parties shall coordinate the next steps in the event of force majeure arising. This notwithstanding, each party shall be entitled to rescind the affected contract, if the force majeure continues for more than six (6) weeks from the agreed performance date. This shall be without prejudice to every party's right to terminate the contract in the case of protracted force majeure for good cause.

### **14 Final provisions**

- 14.1 ~sedna reserves the right to revise, update, replace, change, add, supplement or delete individual provisions in the EULA for reasons relating to safety, law, best practices or other provisions at its own and absolute discretion. Such changes may take effect with or even without prior notification to the customer. The customer can find the current version of this EULA under the following link: [<https://www.sedna.de/legal/>]. The customer bears sole responsibility for regularly checking whether this EULA has been changed. If the customer continues to use the ~sedna product after this EULA has been changed, it fully and irrevocably agrees to those changes.

- 14.2 The parties are aware that the ~sedna products (including updates and upgrades thereof) may be subject to export and import restrictions. In particular, there may be permit requirements and/or the use of ~sedna products or associated technologies may be subject to restrictions abroad. 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, and all other pertinent regulations. Fulfilment of the contract by ~sedna is subject to the proviso that this is not prevented by any impediments arising out of national or international foreign trade legislation or by any other regulations.
- 14.3 Claims under non-compliant performance, regardless of any legal basis, shall be time barred one (1) year from when the customer could have become aware of the same, albeit no later than two (2) years after the harming event, unless shorter statutory time bars apply.
- 14.4 The place of fulfilment is where ~sedna has its registered offices. German law shall apply to the exclusion of the laws on the international sale of goods and laws referring to foreign jurisdictions. Exclusive legal forum is Berlin.
- 14.5 Should individual provisions of the contract be or become void or infeasible, this shall not otherwise affect the validity of the other provisions. The parties shall strive to replace the void or unfeasible provision by a valid and feasible provision most closely meeting the legal and commercial purpose of the contract. This shall apply mutatis mutandis in the event of a lacuna in the contract.