

## General Terms and Conditions of ~sedna GmbH

**Scope:** Hosting services for ~sedna products with perpetual licenses

**As of:** November 2022

### 1. General information

- 1.1 These General Terms and Conditions (hereinafter "**GTC**") shall apply to all contracts between ~sedna GmbH, Salzufer 13F, 10587 Berlin, Germany, registered in the Commercial Register at the Local Court of Berlin (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") and its customers (hereinafter: "**Customer**") for the provision of hosting services. Unless otherwise agreed, the GTC in the version valid at the time of the conclusion of the contract or, in any case, in the version last communicated to the customer in text form, shall also apply as a framework agreement for similar future contracts, without ~sedna having to refer to the GTC again in each individual case.
- 1.2 These GTC and the documents referenced therein shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the customer shall become part of the contract only if and as far as ~sedna has expressly consented to their validity. This consent requirement applies in every case, for example, also if ~sedna provides the services to the customer without reservation and with knowledge of the customer's general terms and conditions.
- 1.3 Offers by ~sedna are always subject to confirmation. Contracts shall come into existence only by means of a written confirmation by ~sedna. If the service is provided without the customer having previously received a confirmation of the order, the contract shall come into existence upon commencement of the performance of the service.
- 1.4 Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC in each case. A written contract or written confirmation by ~sedna is authoritative as regards the content of such agreements.
- 1.5 References to the validity of statutory provisions are solely for the purpose of clarification. The statutory provisions shall therefore apply even without such clarification, provided these provisions are not actually amended or expressly excluded in these GTC.

### 2. Definitions

- "Cloud Space"** refers to storage capacity on an Internet-connected server belonging to ~sedna or on a server hosted by one of its subcontractors, which can be rented by the customer
- "Content"** refers to text files, video files, audio files, web files or graphic files that are either provided by ~sedna within the scope of the respective ~sedna product or originate from the customer himself
- "Perpetual License"** refers to a license of a ~sedna-product purchased by the customer which entitles the customer to permanent use
- "sedna.cloud (Cloud)"** is an online portal made available by ~sedna at [www.sedna.cloud](http://www.sedna.cloud) for management of ~sedna products, hosting and services.

"~sedna products" are software products distributed by ~sedna in the field of digital signage, as well as separately licensed upgrades of these products

### **3. Subject matter of the contract, provision of service**

- 3.1 The subject matter of the contract is the provision of storage space and computing capacity on a server operated by ~sedna itself or by a sub-contractor of ~sedna within the scope of the purpose of the contract. The customer himself shall be responsible for uploading his content. ~sedna does not automatically back up the customer's content.
- 3.2 Subject to Items 3.4 and 3.5, ~sedna shall establish, grant and maintain the connection between the server and the Internet, so that the data stored on the server can be forwarded to the retrieving computer at any time, without problems, at the request of external computers on the Internet (clients) by means of the protocols commonly used on the Internet, and customer data can also be stored if the website has a corresponding functionality.
- 3.3 Subject to Items 3.4 and 3.5, ~sedna warrants that the content stored by the customer in accordance with the contract can be accessed by the public worldwide via the Internet at a bandwidth corresponding to the current state of the art. However, ~sedna does not assume any responsibility for successful access to the website.
- 3.4 ~sedna shall provide the above-mentioned services during core hours daily from 8:00 a.m. to 6:00 p.m. with a total availability of at least 99%. Availability shall be calculated on the basis of the time accruing for the contract period for the respective calendar month, less the maintenance times defined in Item 3.5 below and the downtimes due to force majeure and other reasons beyond ~sedna's sphere of responsibility.
- 3.5 In order to optimize and improve the performance of the systems provided for the provision of services, ~sedna will schedule maintenance windows, which will normally be applicable on weekends between 12 noon on Saturday and 11 p.m. on Sunday or at night on any day of the week between 11 p.m. and 9 a.m. the following morning, if such maintenance is necessary. System maintenance can be carried out by ~sedna at any other time in exceptional cases, while ensuring the least possible disruption to ongoing operations. During these maintenance periods, ~sedna may deactivate its technical equipment to an extent which is necessary and limited to a minimum. The customer will be informed in good time by e-mail about any maintenance that is scheduled outside the hours specified in the maintenance window.
- 3.6 The time zone at ~sedna's registered office shall apply for all periods mentioned in these GTC.
- 3.7 If a certain time of performance is not adhered to on account of events for which ~sedna is not responsible, also in the case of force majeure pursuant to Item 9, the performance periods shall be postponed by the duration of the resulting outage plus an appropriate period to resume the provision of services.

### **4. Responsibilities, Temporary blocking of access**

- 4.1 The Cloud Space provided by ~sedna shall only be used within the scope of statutory provisions; in particular, the customer undertakes to comply with the statutory obligations regarding provider identification. Using the Cloud Space for or in connection with actions that violate applicable law or the rights of third parties is not permitted; in particular, using the Cloud Space for content that is immoral, punishable, sexually offensive, harmful to young persons, politically radical,

propagandistic, pornographic or violence-glorifying is prohibited. Excessive CPU load on the server, such as the load caused by subletting CGI scripts installed on the server, is not permitted. The customer shall assume sole responsibility for the content of his offer and shall indemnify ~sedna against all liabilities, costs, expenses, damages and losses incurred by ~sedna due to or in connection with any claims asserted against ~sedna arising from the use of the services or due to breach of this clause by the customer. This indemnification also includes any direct, indirect or consequential losses, lost profits, loss of reputation and all interest and legal costs (calculated on the basis of full compensation) and includes all other reasonable professional costs and expenses.

- 4.2 ~sedna is entitled to temporarily interrupt the connection of the stored data to the Internet if there is sufficient suspicion that the stored data has illegal content, in particular, as a result of a warning by an allegedly injured party – unless this is obviously unfounded – or as a result of investigations by government authorities. The blocking shall be limited, as far as possible, to the content that allegedly violates the law. The customer shall be informed immediately of the blocking, stating the reasons, and requested to remove the allegedly illegal content or to demonstrate its legality, and if necessary, prove it. Blocking shall be discontinued as soon as the suspicion is invalidated.
- 4.3 The customer shall be solely responsible for the maintenance of his data on the server. The customer can use his online portal access to change and update the data. The customer is obliged to keep the access data confidential and not disclose it to unauthorised third parties. The customer shall inform ~sedna immediately as soon as he becomes aware that the password is known to unauthorised third parties. Those persons who use the contractual storage space with the knowledge and consent of the customer are not regarded as unauthorised third parties.
- 4.4 It is the customer's responsibility to maintain sufficient backup copies of his data. If the website transfers the data of the users of the customer's internet offer to the customer or if he has access to such data in any other way, the customer shall also be responsible for safeguarding this data in this respect.
- 4.5 The customer shall grant ~sedna the copyright-protected reproduction rights and other rights to his data which are necessary to execute the contract for the provision of hosting services.

## **5. Remuneration and terms of payment**

- 5.1 The customer shall owe the respectively agreed remuneration for ~sedna's contractually agreed services. This remuneration shall be due for payment in advance for the agreed term, at the latest within 14 days of invoicing. Unless otherwise agreed in individual cases, the prices are deemed to be "net" prices, plus the statutory value added tax due in each case. Payments are only deemed to have been made when they have been credited to one of ~sedna's bank accounts.
- 5.2 Default interest shall be nine (9) percentage points above the applicable base interest rate in each case.
- 5.3 ~sedna reserves the right to increase the agreed remuneration after a period of 12 months, but not more than once during a 12-month period, with a notice period of at least six weeks by means of a written notice of increase (e-mail is sufficient). Upon receipt of the notice of increase, the customer is entitled to terminate the contract in writing, with a notice period of four weeks, on the date when the increase takes effect.
- 5.4 The customer may only offset claims that are undisputed or those that have been recognised by declaratory judgement; this also applies to the assertion of a right of retention.

## **6. Contractual term and termination**

- 6.1 The contract has a fixed term of 12 months. It shall then be automatically renewed for a further period of 12 months each time unless terminated by either party with one month's notice before the end of the fixed term or renewal period. Apart from this, the right of the parties to ordinary termination of the contract is excluded.
- 6.2 The right of the parties to terminate the contract in exceptional cases for good cause shall remain unaffected. Good cause for termination of the contract by ~sedna in exceptional cases shall especially include a culpable violation of an essential contractual obligation by the customer, in particular, his obligation under Item 4.1, and if he does not remedy the situation within a reasonable period despite a warning.
- 6.3 All notices of termination require the written form.
- 6.4 In the event of termination of the contract, the customer is entitled to take his data that is stored on the server or to transfer it to third parties.

## **7. Warranty**

- 7.1 ~sedna warrants the function of the server and its usability in accordance with the contract within the scope of the above specifications. As far as ~sedna provides the customer with storage space in its server systems, liability for initial defects without fault is excluded in accordance with Section 536a para. 1 BGB (German Civil Code). Otherwise, the warranty shall be in the form of rectification of defects.
- 7.2 The customer shall notify ~sedna of any defects that occur immediately after these defects are discovered. This notification shall be in written or electronic form, shall be comprehensible and shall include the error indications. If ~sedna provides the customer with a template to report defects, this must be used for the notice of defects.
- 7.3 Termination by the customer due to non-granting of the contractual use is only permissible in the event of two failed attempts to rectify the defect.
- 7.4 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.
- 7.5 The customer may assert claims for damages within the framework of the agreed limitations of liability (Item 8).

## **8. Liability**

- 8.1 If telecommunications services are provided to the public on the basis of this contract (Section 3 No. 24 of the Telecommunications Act – TKG), ~sedna shall have limited liability pursuant to Section 44a TKG.
- 8.2 Notwithstanding other statutory requirements for eligibility and beyond the scope of application of Section 44a TKG, the following exclusions and limitations of liability shall apply to ~sedna's liability for damages:

- 8.3 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 annual remuneration (excluding taxes) of the contract year in which the event causing the damage occurred, but it is limited to a maximum amount of 100,000.00 Euro in any case.
- 8.4 ~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.
- 8.5 ~sedna shall be liable for the loss of data and its recovery in accordance with the above clauses 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.
- 8.6 Claims for damages in accordance with the above provisions shall include claims for reimbursement of expenses.
- 8.7 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.
- 8.8 Liability under the Product Liability Act remains unaffected.
- 8.9 Liability for lost profits and unrealised savings is excluded. ~sedna is not liable for customer's lack of economic success.
- 8.10 The above limitations of liability also apply analogously in favour of the employees and authorised representatives of ~sedna.

## **9. Force majeure**

In cases of force majeure, the affected party shall be released from their performance obligations for the duration of the event and to the extent that it affects the party. Force majeure means any event beyond the area of influence of the respective party, due to which the party is prevented from fulfilling its obligations in whole or in part, and includes fire damage, lightning strikes, floods, strikes and lawful lock-outs, as well as operational disruptions or official orders for which the party is not responsible. The affected party shall immediately notify the other party of the occurrence and cessation of the force majeure and shall make every effort to remedy the force majeure and limit its effects as far as possible. In the case of force majeure, the parties shall agree on the further course of action and determine whether the services that are not rendered during this period should still be rendered after the event ceases. Notwithstanding what is stated above, either party shall be entitled to withdraw from the contract affected by the force majeure if the force majeure lasts more than six (6) weeks after the agreed date of performance. The right of each party to terminate the contract for good cause in the event of prolonged force majeure shall remain unaffected.

## **10. Confidentiality**

- 10.1 The parties are obliged to maintain secrecy regarding trade secrets and other confidential information (information and documents which are marked as confidential or which, under the circumstances, must be regarded as confidential. This especially includes information about operational processes, business relationships and know-how). This obligation shall continue for a period of three (3) years after termination of the hosting contract.
- 10.2 This obligation does not include confidential information (a) which can be proved to have been already known to the recipient at the time of conclusion of the contract or which subsequently becomes known from third parties without thereby violating a confidentiality agreement, statutory regulations or official orders; (b) which is publicly known at the time of the conclusion of the contract or is made public thereafter, provided that this is not based on a breach of this contract; (c) which must be disclosed pursuant to statutory obligations or by order of a court or authority; the recipient obliged to disclose shall inform the other party in advance, to the extent permitted and possible, and give them the opportunity to oppose such disclosure.
- 10.3 The parties shall grant access to confidential information only to persons who are bound by professional secrecy or who have previously been subject to obligations corresponding to the confidentiality obligations of this contract. Furthermore, the parties shall disclose confidential information only to those employees who have to know this information in order to perform this contract, and shall require such employees to maintain confidentiality.

## **11. Data protection**

- 11.1 The parties shall observe the relevant data protection regulations.
- 11.2 Should ~sedna come into contact with the customer's personal data, a written agreement on commissioned processing in accordance with Art. 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data (General Data Protection Regulation – GDPR) must be concluded prior to this. In this case, ~sedna shall make such an agreement available to the customer. ~sedna shall process personal data only within the meaning of the GDPR and the Federal Data Protection Act (BDSG), and within the scope of the customer's instructions in every case. The customer shall in all cases remain responsible for any personal data processed by ~sedna within the scope of performing the contract. The customer is solely responsible for the permissibility of the data processing that is carried out as instructed.

## **12. Closing Provisions**

- 12.1 The customer may offset ~sedna's claims against a counterclaim or exercise a right of reduction or retention only if his claim is undisputed or has been recognised by declaratory judgement.
- 12.2 Amendments and supplements to the GTC require the written form. This also applies to any amendment or revocation of this clause. Transmission by telefax or e-mail complies with the written form requirement, in as far as receipt of the telefax or e-mail can be proved.
- 12.3 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.

- 12.4 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.
- 12.5 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.