

# Seervision End User Subscription & License Agreement ("EULA")

## 1. Scope and Applicability

This Seervision End User Subscription & License Agreement ("EULA") between the End User ("You") and Seervision covers Your use of Seervision's software and technology (the "Technology"). This document also incorporates any product specific terms that may apply to the Technology You subscribe and license to use. Definitions of capitalized terms are in Section 12 (Definitions). You also acknowledge and agree that Seervision's General Terms and Conditions (the "GTC") incorporated herein by reference shall also apply as far as they do not explicitly deviate from or conflict with this EULA. Defined terms are indicated by inverted commas.

You agree to be bound by the terms of this EULA through (a) Your download, installation, or use of the Technology; or (b) Your express agreement to this EULA and consent to the transmission of certain information during activation and during use of the Technology as per the privacy statement described in Seervision's Data Protection Statement you can find under [www.seervision.com/data-protection-statement](http://www.seervision.com/data-protection-statement). If You do not have authority to enter into this EULA or You do not agree with its terms, do not use the Technology. You may request a refund for the Technology within 30 days of Your initial subscription provided You return the Technology to the Approved Source and disable or uninstall it. This paragraph does not apply where You have expressly agreed to end user license terms with Seervision as part of a transaction with an Approved Source.

## 2. Using the Technology

### 2.1 License and Right to Use

Seervision grants You a limited, non-perpetual, non-exclusive, non-transferable right and license to use the Technology as acquired from an Approved Source, for Your direct benefit during the Usage Term and as set out in Your Entitlement and this EULA (collectively, the "Usage Rights").

### 2.2. Use by Third Parties.

You may permit Authorized Third Parties to exercise the Usage Rights on Your behalf, provided that You are responsible for (a) ensuring that such Authorized Third Parties comply with this EULA and (b) any breach of this EULA by such Authorized Third Parties.

### 2.3. Beta and Trial Use.

If Seervision grants You Usage Rights in the Technology on a trial, evaluation, beta or other free-of-charge basis ("Evaluation Technology and Services"), You may only use the Evaluation Technology and Services on a temporary basis for the period limited by the license key or specified by Seervision in writing. If there is no period identified, such use is limited to 30 days after the Evaluation Technology and Services are made available to You. If You fail to stop using and/or return the Evaluation Technology and Services or the equipment on which it is authorized for use by the end of the trial period, You may be invoiced for its list price and agree to pay such invoice. Seervision, in its discretion, may stop providing the Evaluation Technology and Services at any time, at which point You will no longer have access to any related data, information, and files and must immediately cease using the Technology. The Evaluation Technology and Services may not have been subject to Seervision's usual testing and quality assurance processes and may contain bugs, errors, or other issues. Except where agreed to in writing by Seervision, You will not put Evaluation Technology and Services into production use. Seervision provides Evaluation Technology and Services "AS-IS" without support or any express or implied warranty or indemnity for any problems or issues, and Seervision will not have any liability relating to Your use of the Evaluation Technology and Services.

### 2.4 Technology Provider

You acknowledge and agree that if the Technology is being provided by Seervision or its Affiliate(s) to a Seervision Partner and that Seervision Partner (and not Seervision) is licensing the Technology to End User, then Seervision Partner, and not Seervision, shall be solely responsible to End User for the Technology and use thereof, notwithstanding any Seervision branding. You shall contact Seervision Partner, and not Seervision, with respect to the Technology, including to obtain any related support or assistance, report any problems, or the like.

Notwithstanding anything to the contrary, including any terms or conditions and privacy policy, Seervision shall have no obligation, responsibility or liability to End User arising out of or related to the Technology or the operation or use thereof, or any ancillary products or services provided by a Seervision Partner. In particular, the only obligations and responsibility to You regarding the Technology shall be those by Seervision Partner as expressly set forth in this EULA. You agree that You, and Your affiliates and users, shall not assert or bring any claim or action against Seervision or its Affiliates in connection with the Technology or the performance or

use thereof, whether based upon this EULA or otherwise, including for any failure of the Technology and including based upon any ancillary or related products or services.

## 2.5. Subscription Renewal.

Usage Rights in the Technology will automatically renew for the renewal period indicated on the order You or Your Seervision Partner placed with Seervision ("**Renewal Term**") unless: (a) You notify Your Approved Source in writing at least 60 days before the end of Your then-current Usage Term of Your intention not to renew; or (b) You or Your Seervision Partner elect not to auto-renew at the time of the initial order placed with Seervision. Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless You or Your Seervision Partner promptly notify Seervision in writing, before the renewal date, that You do not accept the fee changes. In that case, Your license will terminate at the end of the current Usage Term.

## 3. Additional Conditions of Use

### 3.1. Technology Generally.

Unless expressly agreed by Seervision, You may not (a) transfer, sell, sublicense, monetize or make the functionality of any Technology available to any third party; (b) use the Technology that is licensed for a specific device on a different device; (c) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks; (d) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Technology; or (e) use Seervision Content other than as part of Your permitted use of the Technology.

## 4. Fees

To the extent permitted by law, orders for the Technology are non-cancellable. Fees for Your use of the Technology are set out in Your purchase terms with Your Approved Source. If You use the Technology beyond Your Entitlement ("**Overage**"), the Approved Source may invoice You, and You agree to pay, for such Overage.

## 5. Confidential Information, Use of Data & Consents

### 5.1. Confidentiality.

Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know ("**Permitted Recipients**"). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EULA, and (b) is liable for any breach of this Section by its Permitted

Recipients. Such nondisclosure obligations will not apply to information that: (i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete or destroy all Confidential Information of Discloser and certify the same.

### 5.2. Use of Data.

Seervision will access, process and use data in connection with Your use of the Technology in accordance with applicable privacy and data protection laws. For further detail, please visit

**Seervision's privacy policies on its Website under: [www.seervision.com/data-protection-statement](http://www.seervision.com/data-protection-statement),**

as updated by Seervision from time to time without further notice.

### 5.3. Notice and Consent

To the extent Your use of the Technology requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer and storage of their data through Your use of the Technology.

## 6. Ownership

Except where agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your content and Seervision retains ownership of the Technology and Seervision Content and Seervision IP. Seervision may use any feedback You provide in connection with Your use of the Technology as part of its business operations.

## 7. No Warranties and No Representations

Except for any support obligations of Seervision Partner, the Technology is provided "as-is" without warranty of any kind, and Seervision Partner hereby disclaim all representations and warranties, express, statutory, implied, or otherwise, including any implied warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement. Seervision does not represent or warrant that the Technology, or Products will be error free, secure, or uninterrupted. No documentation shall be binding upon or constitute a representation or warranty by Seervision.

**8. Liability.**

Neither party will be liable for indirect, incidental, exemplary, special or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EULA is limited to (a) for claims solely arising from Technology licensed on a perpetual basis, the fees received by Seervision for that Technology; or (b) for all other claims, the fees received by Seervision for the applicable Technology and attributable to the 12 month period immediately preceding the first event giving rise to such liability.

These limitations of liability do not apply to liability arising from (a) Your failure to pay all amounts due; or (b) Your breach of Sections 2.1 (License and Right to Use), 3.1 (Technology Generally) and 5.3. (Notice and Consent). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

**9. Indemnity.**

You shall indemnify and hold harmless each of Seervision and its affiliates, and the directors, officers, employees, customers, licensors, and contractors of Seervision and such affiliates, and the successors and assigns of any of the foregoing (the "**Seervision Indemnitees**"), from and against any and all liabilities, damages, settlements, claims, actions, suits, proceedings, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and other expenses of litigation) incurred by any Seervision Indemnitee based upon a claim of a third party to the extent resulting from:

- a. a breach by End User of this EULA;
- b. the negligence, or illegal or willful misconduct of End User;
- c. any Customer Data; or
- d. otherwise arising out of End User's use of the Technology.

Your obligations under this Indemnity shall not apply if the claim is caused by the Technology alone in the absence of any access, use or other exploitation by End User and in the absence of all Customer Data.

**10. Termination and Suspension****10.1. Suspension.**

Seervision may immediately suspend Your Usage Rights if You breach Sections 2.1 (License and Right to Use) or 3.1 (Technology Generally).

**10.2. Termination.**

If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. Seervision may immediately terminate this EULA if You breach Sections 2.1 (License and Right to Use) or 3.1 (Technology Generally) Upon termination of the EULA, You must stop using the Technology and destroy any copies and Confidential Information within Your control. If this EULA is terminated due to Seervision's material breach, Seervision will refund You or Your Approved Source, the prorated portion of fees You have prepaid for the Usage Rights beyond the date of termination. Upon Seervision's termination of this EULA for Your material breach, You will pay Seervision or the Approved Source any unpaid fees through to the end of the then-current Usage Term. If You continue to use or access any Technology after termination, Seervision or the Approved Source may invoice You, and You agree to pay, for such continued use.

**11. General****11.1. Third Party Beneficiaries.**

This EULA does not grant any right or cause of action to any third party.

**11.2. Assignment and Subcontracting.**

Except as set out below, neither party may assign or novate this EULA in whole or in part without the other party's express written consent. Seervision may (a) by written notice to You, assign or novate this EULA in whole or in part to an Affiliate of Seervision, or otherwise as part of a sale or transfer of any part of its business; or (b) subcontract any performance associated with the Technology to third parties, provided that such subcontract does not relieve Seervision of any of its obligations under this EULA.

**11.3 Seervision Partner Transactions.**

If You purchase the license to use the Technology from a Seervision Partner, the terms of this EULA apply to Your use of that Technology and prevail over any inconsistent provisions in Your agreement with the Seervision Partner.

#### 11.4. Modifications to the EULA.

Seervision may change this EULA or any of its components by updating this EULA on its Website, [www.seervision.com](http://www.seervision.com). Changes to the EULA apply to any Entitlements acquired or renewed after the date of modification.

#### 11.5. Governing Law and Venue.

Except to the extent otherwise authorized by Seervision, all disputes arising out of or relating to this EULA that involve Seervision or its affiliates, shall be governed by, and construed and interpreted in accordance with, the laws of Switzerland, without regard to conflicts of laws principles of Switzerland or any other jurisdiction or the United Nations Convention on the International Sale of Goods. Except to the extent otherwise specified by Seervision, any dispute or claim related to or arising out of Your access or use of the Technology or Products, or the interpretation, making, performance, breach or termination of this EULA, that involves Seervision or its affiliate(s), shall be falling under the sole jurisdiction of the Courts in the City of Zurich, Switzerland. Any written evidence in a language other than English shall be submitted with an English translation.

#### 11.6 Notice.

Any notice delivered by Seervision to You under this EULA will be delivered via email, regular mail or postings on [www.Seervision.com](http://www.Seervision.com). Notices to Seervision should be sent to Seervision AG, ETH / Wyss, Weinbergstrasse 35, 8006 Zürich, Switzerland, unless this EULA, applicable Product Specific Terms or an order specifically allows other means of notice.

#### 11.7. Force Majeure.

Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.

#### 11.8. No Waiver.

Failure by either party to enforce any right under this EULA will not waive that right.

#### 11.9. Severability.

If any portion of this EULA is not enforceable, it will not affect any other terms.

#### 11.10. Entire agreement.

This EULA is the complete agreement between the parties with respect to the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).

#### 11.11. Order of Precedence.

If there is any conflict between this EULA and any Product Specific Terms expressly referenced in this EULA, the order of precedence is: (a) such Product Specific Terms; (b) this EULA (excluding the Product Specific Terms and any Seervision policies); then (c) the GTC and any applicable Seervision policy expressly referenced in this EULA.

#### 12. Definitions

**"Affiliate"** means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

**"Approved Source"** means Seervision or a Seervision Partner.

**"Authorized Third Parties"** means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Technology on Your behalf as part of Your Entitlement.

**"Confidential Information"** means non-public proprietary information of the disclosing party ("Discloser") obtained by the receiving party ("Recipient") in connection with this EULA, which is (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.

**"Customer Data"** means any information, materials and other subject matter that You and/or End User submits to, transmits or distributes through, receives from, or stores using, the Technology.

**"Delivery Date"** means the date agreed in Your Entitlement, or where no date is agreed the earlier of the date Technology is made available for download or installation, or the date that Seervision ships the tangible media (e.g. DoP) containing the Technology.

**"Documentation"** means the technical specifications and usage materials officially published by Seervision specifying the functionalities and capabilities of the applicable Seervision Technology.

**"End User"** or **"User"** means the end-user individuals (including You, Your contractors or employees) permitted to access and use the Seervision Technology on Your behalf as part of Your Entitlement.

**"Entitlement"** means the specific metrics, duration, and quantity of the Technology that You commit to license from an Approved Source.

**"GTC"** means Seervision's general terms and conditions as regularly updated and published on Seervision's website [www.seervision.com/terms](http://www.seervision.com/terms).

**"Product Specific Terms"** means additional product related terms applicable to the Technology You license.

**"Seervision"** "we" "our" or "us" means Seervision AG or its applicable Affiliate(s).

**"Seervision Content"** means any (a) content or data provided by Seervision to You as part of Your use of the Technology and (b) content or data that the Technology generates or derives in connection with Your use.

**"Seervision IP"** means any of Seervision's copyrights, patents, trade secrets, trademarks, or other rights including but not limited to the Seervision logo, and other Seervision trademarks, trade names, service marks and logos.

**"Seervision Partner"** means a Seervision authorized reseller, distributor or systems integrator authorized by Seervision to license Seervision Technology.

**"Technology"** means the software developed by Seervision including Upgrades, firmware and applicable Documentation.

**"Upgrades"** means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

**"Usage Term"** means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period You have the right to use the applicable Technology.

**"User"** or "End User" means the end-user individuals (including You, Your contractors or employees) permitted to access and use the Technology on Your behalf as part of Your Entitlement.

**"Web Site"** means Seervision's website, as may or may not be localized for the Territory, through which Seervision makes the Product available for Customers in the Territory, at the URL address identified by Seervision for the Territory.

**"You"** means the individual or legal entity licensing the Technology.