



Powering Network Performance

# End User License Agreement (EULA)

Savision B.V.

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SAVISION B.V., a limited liability company under Dutch law, whose registered office and place of business is at Keizersgracht 313, Amsterdam, (1016 EE) Netherlands, and all related or wholly owned subsidiaries, hereinafter referred to as 'SAVISION', either directly or through its PARTNER grants the CUSTOMER the license set forth in this EULA to the Licensed Products set out in the Order Form, subject to the rights and obligations as specified herein.

## 1. Definitions

In this EULA, the following terms, whether used in the singular or the plural, shall have the following meaning:

'CUSTOMER':	CUSTOMER set out in the Order Form and each agent or End-User of CUSTOMER using the Licensed Products pursuant to this EULA, as applicable.
'Data'	(a) the information CUSTOMER provides to SAVISION, in the course of ordering, purchasing and using the Licensed Products, including name, billing address (including postal code), email address, phone number, payment card or account number, payment card or account verification code, payment card commencement date and expiration date, the account password CUSTOMER selects for its account with SAVISION, and (other) billing Data as defined in SAVISION's Privacy Policy; (b) information SAVISION collects in the course of processing and fulfilling CUSTOMER orders, including Internet service provider, CUSTOMER Internet Protocol (IP) address; and (c) information about CUSTOMER's installation and use of the Software.
'Documentation'	documentation, whether in written or electronic form, developed or owned by SAVISION that accompanies the Software.
'End-User'	the end user permitted to use the Licensed Products pursuant to this EULA.
'EULA':	this End-User License Agreement.
'Intellectual Property Rights':	SAVISION's intellectual property rights in the Licensed Products, including but not limited to patents, copyrights, trade name rights, trademark rights, database rights, know-how and in whatever form.
'License Fees':	the fee(s) due by CUSTOMER to SAVISION for use of the Licensed Products as specified in the Order Form.
'Licensed Products': Form.	Software and Documentation as set forth in the Order Form.
'Order Form':	the order form which details the Licensed Products, the Support and Maintenance, and the License Fees.
'PARTNER':	the third party through whom CUSTOMER has obtained the Licensed Products, which includes channel partners or service providers of SAVISION.
'Software':	those software programs developed, owned, licensed or otherwise made available by SAVISION, and as specified in the Order Form in object code only.
'Support and Maintenance':	the support and maintenance services provided by

SAVISION pursuant to a Support and Maintenance Agreement or other appropriate support agreement, and which may include the provision of upgrades, updates, new versions and help desk support.

## **2. Entry into force of this EULA**

- 2.1 This EULA between CUSTOMER and SAVISION shall automatically enter into force upon the earlier occurrence of one of the following events: (i) CUSTOMER installs, accesses or uses the Licensed Products, whether or not having a signed Order Form, or paid a License Fee; (ii) CUSTOMER enters into an agreement with SAVISION, for instance by returning a signed Order Form, pursuant to which CUSTOMER obtains (the right to use) the Licensed Products; or (iii) CUSTOMER enters into an agreement with a PARTNER pursuant to which CUSTOMER obtains (the right to use) the Licensed Products. If the individual accepting this EULA is an agent, employee or End-User of an entity, they represent and warrant that: (a) they are duly authorized to accept this EULA on such entity's behalf and to bind such entity; and (b) such entity has full power, corporate or otherwise, to enter into this EULA and perform its obligations hereunder.

## **3. License Grant**

- 3.1 The Software is licensed, not sold. Pursuant to the terms and conditions of this EULA, SAVISION grants CUSTOMER a non-transferable, non-exclusive, non-assignable right to use, display, copy (as set out in this EULA), load and run the Software, either (i) on any compatible computer platform at CUSTOMER's location and use the Documentation for its internal business purposes, or (ii) as the parties may agree otherwise, for instance, pursuant to a software as a service license model. CUSTOMER shall not lend, lease or rent out the Software. SAVISION's software is restricted to a named management group, named instance, or named machine provided by CUSTOMER at time of purchase. All other such licensing restrictions will be specified within the Order Form or email containing CUSTOMER's license key provided at the time of purchase. CUSTOMER shall use the Software only in full compliance with the agreed scope of the license terms.
- 3.2 Unless the parties agree otherwise in the Order Form, the CUSTOMER first obtains a temporary license for a maximum of sixty (60) days. Upon completion of payment, a license will be issued according to the scope set forth in the Order Form.
- 3.3 For termed licenses, the use of the Software and the license grant pursuant to this EULA will expire at the moment the term expires, and without any further notice being due. Termed licenses cannot be terminated for convenience prior to expiry.
- 3.4 For perpetual licenses, the license grant pursuant to this EULA will continue for an indefinite period of time. CUSTOMER understands and acknowledges that termination of Support and Maintenance may result in degradation of the Software functions and use.
- 3.5 CUSTOMER is entitled to make one (1) back-up copy of the Software. CUSTOMER is not entitled to make more copies of the Software than specified in this EULA, unless specifically allowed by applicable law.
- 3.6 CUSTOMER shall not decompile, modify, work-around technical limitations, use components of the Software not running on the Software or alter the Licensed Products in any manner, unless and to the extent explicitly permitted under the Dutch Copyright Act.
- 3.7 If a license to use the Licensed Products was issued to CUSTOMER for an evaluation period, then such evaluation period commences on the date of delivery of the Software to CUSTOMER and automatically expires no more than sixty (60) days later at no charge to the CUSTOMER, or, if CUSTOMER advises SAVISION it no longer wishes to evaluate the Licensed Products, upon SAVISION receiving such notice. CUSTOMER expressly acknowledges that the Licensed Products will be rendered inoperative upon expiry of the evaluation period and will be responsible to purge

these from its systems. Should CUSTOMER continue use of the Licensed Products after the evaluation period, then the License Fee shall be due and payable, the terms of this EULA shall govern such use, and SAVISION shall provide CUSTOMER a permanent key to enable CUSTOMER using the Licensed Products.

- 3.8 In order to ensure that the Software functions properly, from time to time SAVISION publishes updates to the Licensed Products on its web pages. These updates improve the workings of the Software, ensure the Licensed Products comply with minor third party updates or remove any bugs known to SAVISION at the time of issuing of the update. CUSTOMER is entitled to receive such updates if it has entered into a Support and Maintenance Agreement with SAVISION (see Order Form for details).
- 3.9 SAVISION does not represent that it will continue to manufacture or support any version of its Licensed Products indefinitely or for a specific period of time. SAVISION reserves the right to modify any of the specifications or characteristics of the Licensed Products, to remove any Licensed Products from the market, and/or to cease manufacturing or supporting the Licensed Products, and shall provide CUSTOMER reasonable advance written notice should it have the intention to do so.
- 3.10 The Software is not specifically designed for high-risk applications including situations where the failure of the Software would threaten lives or cause extensive material damages. Such applications include operating parts of nuclear power plants, weapon systems, equipment designed for sustaining people's basic bodily functions, etc.
- 3.11 SAVISION may, from time to time, give CUSTOMER written notice of amendments to this EULA. Any such amendment will automatically become a part of this EULA thirty (30) days from the date of such notice, unless otherwise specified in the notice.
- 3.12 The geographic maps feature is sub-licensed by SAVISION from Microsoft BING. If CUSTOMER makes use of geographic maps feature in any SAVISION product, then CUSTOMER will be limited to a maximum of ten (10) End-Users. By signing this EULA, CUSTOMER agrees that they will limit use of the geographic maps feature to not more than ten (10) End-Users. Should CUSTOMER require more than ten (10) End-Users, then it is CUSTOMER's responsibility to license more End-Users from Microsoft directly. It is not SAVISION's responsibility to police the number of users, and CUSTOMER agrees to indemnify SAVISION in the case there is a breach of Microsoft BING licensing.

## **4. License Fee and Audit**

- 4.1 CUSTOMER will pay SAVISION or PARTNER – as the case may be – the applicable License Fee for the Licensed Products within thirty (30) days of the invoice date, exclusive of all applicable taxes for which CUSTOMER shall be responsible.
- 4.2 For term licenses for a period of more than one (1) year, following the first year of the term, SAVISION may, on an annual basis, increase the License Fees payable provided that any such increase does not exceed, on a percentage basis, the increase in the Consumer Price Index published by the CBS Central Office of Statistics over the immediately preceding one year period.
- 4.3 Should CUSTOMER not pay the applicable License Fee when due, then SAVISION shall be entitled to charge CUSTOMER the commercial legal interest on the outstanding amounts, calculated from the date that they were due to SAVISION, without any prior notice being due.
- 4.4 Upon request, CUSTOMER shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of SAVISION in relation to CUSTOMER'S compliance with the agreed restrictions on use. At the first request of SAVISION, CUSTOMER shall grant SAVISION access to its buildings and systems. SAVISION shall maintain the confidentiality of all company information to be regarded as confidential that SAVISION obtains from or on the premises of CUSTOMER within the context of this type of investigation, in so far this information does not relate to the use of the Software itself.

## **5. Intellectual Property Rights and Confidential Information**

- 5.1 CUSTOMER acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Licensed Products shall be and remain the exclusive property of SAVISION.
- 5.2 The Licensed Products constitute confidential information and trade secrets of SAVISION and/or its licensors. CUSTOMER shall not disclose the Licensed Products to any third party other than employees of CUSTOMER involved with evaluation thereof and shall use the same degree of care to avoid disclosure as the CUSTOMER employs with respect to its own confidential information.
- 5.3 CUSTOMER shall not remove or alter any SAVISION designations, logos, trade names or trade-marks on the Licensed Products.
- 5.4 The parties to this EULA agree to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use of disclosure to others not parties to this EULA of such confidential information as can be established to: (i) have been known publicly; (ii) have been known generally in the industry before communication by the disclosing party to the recipient; (iii) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (iv) have been known otherwise by the recipient before communication by the disclosing party; or (v) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.

## **6. Personal Data**

- 6.1 In accordance with the General Data Protection Regulation (GDPR), CUSTOMER authorizes SAVISION to process CUSTOMER's Data, for the purposes described in the Privacy Policy. CUSTOMER acknowledges that use of Data includes processing and fulfilling your orders and providing information to CUSTOMER about the Software and offering solutions. SAVISION may share CUSTOMER Data with its resellers and PARTNERS.

## **7. Warranty**

- 7.1 For a period of thirty (30) days from the date of delivery of the Software to CUSTOMER, SAVISION warrants that it shall operate substantially and perform in accordance with the functional specifications and the Documentation.
- 7.2 If the Software does not conform to the warranty in Section 7.1, then, upon notification of such nonconformance from CUSTOMER, SAVISION shall undertake all reasonable endeavors to correct the error or malfunction or to replace such copy of the Licensed Products free of charge. The foregoing provisions of this Section 7.2 state CUSTOMER's sole and exclusive remedy, and SAVISION's entire liability, for any breach of warranty in Section 7.1 above.
- 7.3 Except to the extent prohibited by law, SAVISION does not warrant that the Software will operate uninterrupted or that it will be free from all defects or errors or that the applications contained in the Software are designed to meet all CUSTOMER's business requirements. Except as otherwise provided in this Section 7, SAVISION accepts no other responsibilities or warranties and expressly excludes the same whether implied, statutory or otherwise, especially as to quality or fitness of the Licensed Products for any particular purpose.

- 7.4 In addition to the rights set out in this Section 7, if pursuant to the Order Form CUSTOMER is under a valid Support and Maintenance Agreement, then SAVISION shall use all reasonable efforts to ensure that the Software functions in accordance with the terms of such agreement.

## **8. Limitation of Liability**

- 8.1 If either party does not or not properly fulfill its obligations under this EULA and after a written notice demanding performance in which a reasonable term for performance is set, still fails to fulfill its obligations, it shall be in default and shall be liable vis-à-vis the other party for any damage or loss sustained by that other party as a result thereof, with due observance of the provisions of this Section 8. SAVISION's liability shall be restricted to the amount CUSTOMER has paid and/or owes SAVISION under this EULA. If periodic amounts are due, the size of the maximum amount in the sense of this Section 8 shall be restricted to the amount paid and/or owed to SAVISION by CUSTOMER in respect of the last four quarters preceding the occurrence causing the loss or damage.
- 8.2 SAVISION's liability for any other loss or damage, on whatever account, shall be excluded, unless that damage or loss is caused by willful intent and/or gross negligence on SAVISION's part.
- 8.3 SAVISION shall indemnify CUSTOMER against all reasonable and demonstrable costs arising from claims, actions, and from demonstrable damages, paid penalties and other losses incurred or suffered by CUSTOMER in connection with any claim or allegation that CUSTOMER's use or possession of the Licensed Products infringes any third party intellectual property rights, provided that CUSTOMER promptly notifies SAVISION in writing of any such allegation or claim. At SAVISION's request, CUSTOMER shall fully cooperate at its own expense with SAVISION in defending or settling such claim or allegation. The indemnification provided under this Section 8 means that CUSTOMER shall be reimbursed the License Fee for the time of its license where it can no longer use the Licensed Products and for the demonstrable damages incurred. SAVISION shall use its best efforts to provide CUSTOMER with a replacement product free of charge.

## **9. Term and Termination**

- 9.1 This EULA takes effect as set out in Section 1 hereof and shall remain in force either for an indefinite period of time or the term of the license specified in the Order Form for the Licensed Products, unless terminated earlier as set forth below. The parties may, upon mutual agreement, at least thirty (30) days before the end of the term, renew this EULA pursuant to an executed Order Form applicable to the Licensed Products.
- 9.2 Notwithstanding any provisions contained herein, this EULA may be terminated with immediate effect by either party upon written notification by the party not in default if any of the following events take place:
- (i) if the other party is, at any time, in default under this EULA and, if such default is capable of cure, fails to cure such default within thirty (30) days upon the receipt of a written notification from the other party specifying such default; or
  - (ii) if either party is for any reason (other than a reason directly attributable to the other party) prevented from performing its obligations hereunder for a period of three (3) months or for a total period of six (6) months in any period of twelve (12) consecutive months.
- 9.3 Notwithstanding any provisions contained herein, this EULA may be terminated with immediate effect by SAVISION upon written notification to CUSTOMER if any of the following events take place:
- (i) if CUSTOMER becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors, files or has filed against it by a third party any petition under any bankruptcy act, or an application for a receiver of CUSTOMER is made by anyone and



- such petition or application is not resolved in favor of CUSTOMER within sixty (60) days; or
- (ii) if CUSTOMER does not pay the License Fees or pays later than sixty (60) days after the date the License Fees are due and payable, and without prejudice to any other rights SAVISION may have under this EULA or the law.
- 9.4 Notwithstanding anything contained in this EULA to the contrary, SAVISION may also, in its sole discretion, terminate or suspend access to the Software at any time.
- 9.5 If any of these events occur, termination shall become effective forthwith or on the date set forth in the written notice of termination.
- 9.6 The expiry or termination of this EULA shall be without prejudice to the rights of the parties accrued up to the date of such expiry or termination. Upon expiry or termination of this EULA for any reason, including, without limitation, as a result of CUSTOMER not renewing the license or not paying the applicable License Fee, CUSTOMER shall return or destroy (as SAVISION shall instruct) no later than fourteen (14) days thereafter any documentation, technical information and any other data in respect of the Licensed Products supplied to CUSTOMER during the term of this EULA and all and any copies made in whole or in part of the same, and at SAVISION's request, CUSTOMER shall furnish SAVISION with a statement certifying that the same has been done. The following Sections shall survive any termination or expiration of this EULA: 1, 3.6, 4.4, 4.5, 5, 6, 7.3, 8, 9 and 10.

## 10. Miscellaneous

- 10.1 Force Majeure. Neither party to this EULA shall be liable in case of force majeure (except for the obligation to pay money). The parties to this EULA agree that force majeure of SAVISION shall include (but shall not be limited to): inability of SAVISION to supply the Licensed Products, material breakdown of its equipment, labor disputes of whatever nature or cause, and any other circumstances reasonably beyond the control of SAVISION.
- 10.2 Partial Invalidity. In the event that any terms, conditions or provision contained in this EULA or any part thereof are found to be invalid, unlawful or unenforceable to any extent, (e.g. as the result of an EU Regulation or Directive), the parties shall endeavor to agree to such amendments which shall in so far as possible effect the intentions expressed therein. In default of such agreement, such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.3 Assignment. CUSTOMER may not assign this EULA or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of SAVISION. SAVISION may freely assign this EULA and upon such assignment shall be fully released from all of its obligations hereunder. Subject to the foregoing, this EULA shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section shall be void.
- 10.4 Waiver. Failure or neglect by SAVISION to enforce any of the provisions hereof at any time shall not be construed or deemed to be a waiver of SAVISION's rights hereunder nor in any way affect the validity of the whole or any part of this EULA nor prejudice SAVISION's rights to take subsequent action. The express waiver by SAVISION of any provision, condition or requirement of this EULA shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
- 10.5 Publicity. Neither party shall: (i) disclose the existence or terms of this EULA to any third party or make any press release or other public communication (other than to an affiliate or except where required by applicable law or regulation); or (ii) use the names or trademarks of the other party, without the prior written consent of such party, such consent to be in such party's and absolute discretion.
- 10.6 Notices. All notices required by or relating to this EULA will be in writing and will be sent by electronic mail to SAVISION to: itops-contracts@martellotech.com; and to



CUSTOMER at the email address set out in the Order Form.

- 10.7 Third Party Beneficiary. SAVISION's PARTNER is a third party beneficiary to the rights reserved for SAVISION under this EULA, and by entering into this EULA, SAVISION shall be deemed to have accepted such on behalf of its PARTNER. Except to the extent expressly set forth herein, there are no third party beneficiaries to this EULA.
- 10.8 Relationship of the Parties. Nothing contained in this EULA shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.
- 10.9 Governing Law. This EULA shall be construed under and governed by the laws of The Netherlands.
- 10.10 Dispute Resolution. SAVISION and CUSTOMER will attempt to settle any claim arising out of or in connection with this EULA through joint negotiation in good faith and in the spirit of mutual cooperation first. Any dispute which cannot be resolved through such negotiation shall be submitted to the competent court in Amsterdam, the Netherlands. The foregoing shall be without prejudice to SAVISION's right to obtain an injunction against CUSTOMER in urgent matters, including but not limited to non-payment of License Fees or infringement of Intellectual Property Rights.
- 10.11 Entire Agreement. This EULA (including the Order Form and Support and Maintenance Agreement, if applicable) constitutes the entire agreement between the parties and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof.