



# **ISEC7 Mobile Exchange Delegate**

**End User License Agreement**

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## End User License Agreement (Rental)

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ISEC7 Software Ltd. – ISEC7 Mobile Exchange Delegate

Version 01.10.2014

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ISEC7 Software Limited

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Germany

## 1. Subject matter of the contract

- 1.1 The nature and scope of the software and the shared application environment are specified in the respective program description and additionally in the user manual.
- 1.2 The software is delivered in executable form (as object programs) including a user manual (user documentation or online Help) and the installation instructions. The user manual and the installation instructions may also be made available to the end user electronically.
- 1.3 The software will be installed and started up by the end user. The provider may carry out the installation in place of the end user. All support services performed by the provider (particularly application engineering, installation and demonstration of successful installation, instruction, training and consultation) will be remunerated on a time and materials usually unless agreed otherwise.

## 2. Rights to use the software and protection against unauthorized use

- 2.1 Upon full payment of the rental fee owed the provider will grant to the end user the right to use the agreed software on the scale specified in the contract. If the scope of use has not been specified in the contract, this will be a non-exclusive license to use the software on a temporary basis limited to the terms of the contract and of this EULA. This entitles the end user only to use the software on one computer by one single user at any one time. The license comprises only use for internal purposes of the end user.  
Any extended use must always be contractually agreed prior to its commencement.
- 2.2 The end user may transfer the license for each software part to another user if it renounces use of the software and deletes the software so that any further use by it is ruled out.
- 2.3 The end user may copy software only to the extent required for the stipulated use. Copyright notices in the software may not be altered or deleted.
- 2.4 The provider is entitled to take appropriate technical measures to protect against any non-conforming use.
- 2.5 Any individually granted licenses are invariably temporary only and may be revoked by the provider until full payment.
- 2.6 The provider may revoke the end user's license in the event of a more than insubstantial breach by the end user of use restrictions or other provisions to protect against unauthorized use (particularly Section 3.4 and 3.5). Beforehand, the provider must grant the end user a grace period to take corrective action. In case of repetition and in special circumstances, which after consideration of both parties' interests justify immediate revocation, the provider may revoke the license without notice.  
The end user must give the provider written confirmation of discontinuance of the use after the revocation.

## 3. Duties of the end user

- 3.1 The end user must ensure that skilled personnel are available to support the provider and for the use of the software by the delivery date at the latest.
- 3.2 The end user undertakes to notify the provider of any changes to the application environment without undue delay. Section 1.1. remains unaffected.
- 3.3 The end user must support the provider as far as necessary in remedying defects; in particular the end user must send the provider at its request a data carrier with the software concerned and make available work equipment to it.
- 3.4 The end user acknowledges that the software including the user manual and further documents – also future versions thereof – are protected by copyright. Particularly source programs constitute trade secrets of the provider. The end user must take precautions for an unlimited period to ensure that source programs do not become available to third parties without the provider's consent. The provider must supply source programs only if expressly agreed.
- 3.5 The end user must not do anything which might encourage unauthorized use. In particular, the end user must not attempt to decompile the programs unless it is entitled to do so. The end user must inform the provider

without undue delay if it is aware that unauthorized access affecting the software impends or has taken place in its area.

## **4. Claims of the end user based on defects**

4.1 The provider warrants that the software will conform to the stipulations in Section 1.1 if used in accordance with the terms of the contract.

If a third party asserts vis-à-vis the end user that a performance by the provider infringes its rights, the end user must notify the provider without undue delay. The provider and, if applicable, its supplier are entitled, but not obliged to ward off the asserted claims at their expense to the extent permitted. The end user is not entitled to recognize claims of third parties before having given the provider a reasonable opportunity to ward off the rights of third parties in a different manner.

If rights of third parties are infringed as a result of a performance by the provider, the provider undertakes to take the following measures at its option and expense:

- a) To procure for the end user the right to use the performance or
- b) To ensure that the design of the performance does not infringe any rights
- c) To take back the performance, refunding the fee paid by the end user for this (less a reasonable compensation for use) if the provider is unable to achieve any other redress at a reasonable cost. In doing so, the provider undertakes to pay due consideration to the end user's interests.

4.2 The end user must furnish without undue delay written proof of defects of quality in a comprehensible, reproducible and detailed form, indicating all the information appropriate for the detection and analysis of the defects. In doing so, the end user must particularly indicate the steps which resulted in the emergence of the defect, the manifestation and effects of the defect.

4.3 If the end user is entitled to claims based on defects, it will initially be entitled to performance of remedial measures within a reasonable period only. At the provider's option, the remedial measures comprise either rectification of the defect or delivery of substitute software. In making its choice, the provider undertakes to pay due consideration to the end user's interests.

4.4 If the remedial measures fail or cannot be carried out on other grounds, the end user may, subject to the statutory conditions, reduce the fee, rescind the contract and/or claim damages pursuant to Section 5.

4.5 The provider may claim reimbursement for its expenses if

- a) It takes action on the basis of a notification without a defect having occurred, unless the end user was not able to recognize at a reasonable cost that no defect existed, or
- b) A notified fault is not reproducible or otherwise can be proved by the end user to be a defect.

## **5. Liability**

5.1 The provider is invariably liable to the end user

- a) For the damage caused by it, its legal representatives or its persons employed in performing a contractual obligation for whom the principal is vicariously liable,
- b) If a guarantee is expressly agreed,
- c) Under the German Product Liability Act and
- d) For damage resulting from injury to life, the body or health, for which the provider, its legal representatives or its persons employed in performing a contractual obligation for whom the principal is vicariously liable are responsible.

5.2 The provider is not liable for slight negligence unless it has infringed a material contractual obligation (cardinal obligation).

This liability is limited in case of property damage and financial loss to the foreseeable damage or loss typical of the contract. This also applies to lost profit and failed savings. Liability for other remote consequential damages is excluded.

The foreseeable damage typical of the contract amounts to three times the contract value concerned for each individual case of damage. The parties may agree more extensive liability for a separate fee upon conclusion of the contract. The liability provided for in Section 5.1 is not affected by this Section 5.2.

5.3 In the event of loss of data, the provider will be liable only for that expense required to recover the data that had been properly saved by the end user.

5.4 Limitation of Liability of Third Parties.

IN NO EVENT WILL BLACKBERRY, OR ANY THIRD PARTY MERCHANT OF RECORD, OR OTHER AGENT, CHANNEL PARTNER, AND ASSOCIATED SERVICE PROVIDER HAVE ANY LIABILITY WHATSOEVER ARISING OUT OF OR CONNECTED TO THE LICENSED MATERIALS OR ANY OTHER PRODUCTS OR SERVICES FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, IN RELATION TO THE SALE, DISTRIBUTION, OR USE THEREOF, OR THE PERFORMANCE OR NON-PERFORMANCE OF THE LICENSED MATERIALS. THESE PARTIES SHALL BE THIRD PARTY BENEFICIARIES IN RESPECT OF THIS PROVISION.

## 6. Miscellaneous

6.1 All the provider's invoices are invariably payable without any deduction no later than 14 calendar days after receipt by the end user. The end user may only make a set-off or exercise a right of retention with regard to claims which are uncontested or have been recognized by a final and absolute court finding.

6.2 German law is applicable. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.

6.3 Standard business conditions or purchase conditions of the end user do not apply even if the provider has not expressly objected to such conditions.

6.4 The courts of Hamburg (Germany) have exclusive jurisdiction over all disputes between the parties. The provider may also bring an action against the end user at the latter's principal place of business.