

End User License Agreement EULA

1. Definitions

„**Intellectual Property Rights**” means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

“**Licensor**” means an entity which participates as a registered member in the openMDM Exchange Platform and grants rights in the openMDM Application Software to the licensee subject to this EULA.

“**MDM**” means Measured Data Management.

“**openMDM Application Software**” means any computer programs that are developed incorporating, based upon, or derived from or by otherwise using the openMDM Core Software and/or that are a Derivative Work of pre-existing openMDM Application Software and which the Licensor undertakes to license to the Licensee.

“**openMDM Community**” means all Participants in the openMDM Exchange Platform. Members of the openMDM Community may develop and maintain components of the openMDM Exchange Platform such as openMDM Application Software or parts thereof. Use and development of software by members of the openMDM Community is based on the principles of reciprocity and costlessness.

“**openMDM Exchange Platform**” means a server for the storage and exchange of open MDM software and information concerning the openMDM Community.

“**Non Participant**” (also “**licensee**”) means a third party that receives an openMDM Application Software License through a licensor.

“**Object form**” means a machine-readable, compiled or otherwise mechanical or automatic transformation or translation of a Source form, including but not limited to compiled object code, generated documentation and conversions of other media types.

“**Participant**” means an entity which participates as a registered member in the openMDM Exchange Platform but is not the licensor.

“**Source form**” means un-compiled, modifiable software, data, data models or a collection of statements or declarations written in human-readable computer programming or declaration language, including but not limited to software source code, documentation source and configuration files.

2. Object

2.1. This EULA is applicable to all openMDM Application Software licensed by Licensor, in particular where the Licensor refers to this EULA.

2.2. The right to license openMDM Application Software is only vested in registered members of the openMDM Exchange Platform. Any license of openMDM Application Software requires an agreement between the Licensor and the licensee, which is amended by this EULA. The EULA takes precedent over the agreement between the Licensee and the Licensor in any case of conflict.

2.3. The licensee may under the conditions set out herein make use of the software in Object Form provided by the licensor.

3. Copyright and License Terms

3.1. All intellectual property rights in openMDM Application Software remain with the owner, unless expressly stated otherwise herein.

3.2. The licensor grants to the licensee a perpetual, worldwide, non-exclusive, license to use the openMDM Application Software in Object Form commercially or non-commercially, subject to the provisions set forth herein. Not included is the right to disassemble, edit, alter or otherwise modify the MDM Application Software or parts thereof. The licensee is not entitled to sub-license, assign, charge or otherwise transfer any of its rights or obligations to third parties. Access to or use of the Source Form of the openMDM Application Software is not granted.

3.3. The Licensee shall not remove any copyright notices, names, trademarks, terms of services, disclaimer, license notices or references to the author of the code or to the owner of Intellectual Property Rights from the MDM Software.

3.4. The license of the openMDM Application Software is expressly granted under the condition of fulfillment of Licensee's obligations in this EULA. Therefore, the license ends automatically in any cases of a material breach of this EULA.

4. Special Responsibilities and Obligations

4.1. Whilst using the openMDM Application Software the Licensee shall comply with all technical or other applicable standards, specifications and requirements to which the Licensor or the openMDM Community refer to regarding the openMDM Application Software.

4.2. Licensee shall ensure that its staff is sufficiently trained in using the openMDM Application Software.

4.3. Licensee shall not:

- conduct business in a manner that reflects negatively on the openMDM Community,
- make any false or misleading representation with regard to the openMDM Community or the openMDM Application Software.

4.4. No warranties on any rights, software, services, submissions, contributions or content are given to the licensee by the openMDM Community, their members or Participants, including but not limited to availability and/or any functionality, merchantability, title, or fitness for a particular purpose or warranties arising out of law, course of dealing, custom or usage trade practice or otherwise. The computer programs are licensed strictly on an "as-is" and "as-available" basis, unless expressly stated otherwise.

4.5. Any representation or warranty by the openMDM Community, their Members or Participants not expressly contained in these General Terms and Conditions is disclaimed and unenforceable. No oral or written information, including documentation, given by the openMDM Community, their Members or Participants, their employees or any purported agent or affiliates shall create a warranty or in any way increase the scope of the warranties given in this Agreement, and the openMDM Community, their Members or Participants shall not be responsible or liable for reliance on any such information.

5. Liability

In no event and under no circumstances shall the openMDM Community or Participants be liable to the licensee for any loss, damage or expense whatsoever in connection with the use of openMDM Application Software, including but not limited to consequential loss, loss of profits, lost savings, loss of or damage to data files, punitive damages and loss caused by interruption of operations.

6. Final Provisions

- 6.1. Nothing in this EULA will be construed so as to constitute the parties and Participants as partners, joint venturers or co-owners or empower either party to act for, bind or otherwise create or assume any obligation on behalf of Participants and neither party will hold itself out as entitled to do the same.
- 6.2. If any provision of this EULA shall made be or become invalid this shall not affect the remaining provisions which shall remain in full force and effect. The parties shall substitute any invalid provision or any incompleteness of the EULA by such provision which comes as close as possible to the economic intent of the present provision.
- 6.3. This EULA shall be interpreted and construed according to the law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods.
- 6.4. The Courts of Munich, Germany (Landgericht München I) shall have exclusive jurisdiction for all disputes arising in connection with this EULA, provided the respective Participant is an ordinary business man (Kaufmann), legal person under public law or a public law special asset (öffentlich-rechtliches Sondervermögen).