



keyon

End-User License Agreement (EULA)

June 2016

This EULA applies to Keyon proprietary software products licensed to the Customer. Unless otherwise agreed in a written contract between Keyon and Customer, Customer explicitly accepts the following terms and conditions when the License Material is installed and / or used for productive-, evaluation- or testing purposes.

keyon AG
Schlüsselstrasse 6
8645 Jona
Switzerland

Tel +41 55 220 64 00
Fax +41 55 220 64 01

www.keyon.ch
info@keyon.ch

Table of Contents

1	Introduction.....	3
1.1	Definition.....	3
1.1.1	Customer.....	3
1.1.2	Keyon.....	3
1.1.3	Affiliate.....	3
1.1.4	License Material	3
1.1.5	Normal Use	3
2	License Grant	4
2.1	Expiration of Usage Rights	4
2.1.1	Perpetual Software Licenses	4
2.1.2	Software License Subscription	5
2.1.3	Test- and evaluation Licenses	5
2.2	Ownership and Property Rights	5
2.3	Acceptance of the License Material.....	5
2.4	Delivery.....	6
2.5	License key	6
3	Warranty of Title	6
3.1	Content	6
3.2	Obligation to Defend	6
3.3	Preventive Measures.....	6
3.4	Release	7
3.5	Open Source	7
4	Warranty of Quality	7
4.1	Warranty for Program Functionality	7
4.2	Limitation of Warranty.....	8
4.3	Exclusion of Warranty.....	8
5	Liability.....	8
5.1	Scope	8
5.2	Force Majeure	9
5.3	Exclusion	9
6	Control and Security of the License Material	9
7	Test- and evaluation licenses	10
8	Miscellaneous.....	11
8.1	Reference	11
8.2	Export Control.....	11
9	Final Provisions.....	11
9.1	Severability	11
9.2	Applicable Law.....	11
9.3	Place of Jurisdiction	11

1 Introduction

This EULA applies to Keyon proprietary software products licensed to the Customer. Unless otherwise agreed in a written contract between Keyon and Customer, Customer explicitly accepts the following terms and conditions when the License Material is installed and / or used for productive-, evaluation- or testing purposes.

It is prohibited install or use the License Material in any manner whatsoever if the Customer does not agree to the terms and conditions of this agreement.

1.1 Definition

1.1.1 Customer

Person, company or organization who is installing and / or using the License Material;

1.1.2 Keyon

Keyon AG, Schlüsselstrasse 6, 8645 Jona, Switzerland;

1.1.3 Affiliate

Any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with Customer, by virtue of a controlling interest of 50 (fifty) % or more of the voting rights or the capital;

1.1.4 License Material

Keyon proprietary software and / or middleware and the corresponding documentation, associated media, documents on paper or electronically. For the purposes of this Agreement, the term "License Material" also includes any updates or upgrades to the License Material to which the Customer is entitled to and which are made available to the Customer by Keyon.

1.1.5 Normal Use

"Normal Use" for the purpose of this Agreement shall mean the, in full or parts, downloading, saving, transferring, converting, executing and reproduction of programs in machine-readable form for the purposes of executing program instructions to process the Customer's data for term of the license granted, including temporarily producing the copies required for those activities in accordance with the respective user documentation.

Normal Use shall include the Customer's right to produce archival and backup copies. The use of such copies may not lead to an expansion of the scope of the right of use. Archival and backup copies shall also be identified as such.

Furthermore, the Customer shall be entitled to temporarily use the License Material on a backup system in the event of the breakdown of the designated IT system.

"Normal Use" does not include any rights to alter, modify, reverse engineer, decompile, disassemble, make derivative works, rent, lease, disclose, sublicense, or otherwise transfer the License Material, related documentation, or other proprietary information of Keyon.

2 License Grant

Subject to the terms and conditions of this Agreement, **and upon full payment of the applicable license fees and acceptance of these terms by Customer when the License Material is installed and / or used**, Keyon grants to Customer and its Affiliates a personal, non-transferable, non-exclusive, limited license to use the License Material in executable form only for the purpose of Normal Use.

Depending on the purchased license and the licensing model Customer has the right to "Normal Use" the License Material solely for the same number of servers, computers applications, clients, users, sessions or objects for which Customer has paid the license fee.

2.1 Expiration of Usage Rights

Upon expiration of the usage rights the License Material must be immediately uninstalled and all copies of must be deleted. Upon Keyons request the Customer shall confirm to Keyon that the License Material has been permanently deleted. The Customer may archive the License Material if statutory provisions oblige the Customer to do so.

2.1.1 Perpetual Software Licenses

The rights to use the License Material expires without further notice or action being required if:

- a) the license fee remain unpaid for more than 120 (one hundred and twenty) days after the due date of the invoice.

Otherwise the usage right remains.

2.1.2 Software License Subscription

The rights to use the License Material expires without further notice or action being required if:

- a) the license fee remain unpaid for more than 120 (one hundred and twenty) days after the due date of the invoice.
- b) the subscription has been terminated by either Keyon or the Customer;

2.1.3 Test- and evaluation Licenses

The rights to use the License Material expires without further notice or action being required if:

- a) the evaluation period expired.

2.2 Ownership and Property Rights

The Customer shall be entitled only to the rights to use the License Material that are expressly granted under this Agreement. All other rights, particularly proprietary rights, including, but not limited to, intellectual property rights, Copyrights, industrial property rights to the License Material, and all usage rights not expressly granted shall remain the property of Keyon or the owner of the property rights to the License Material.

Any property rights, including, but not limited to, intellectual property rights, Copyrights, industrial property rights arising of services provided as part of Maintenance and Support shall belong to Keyon; the Customer shall be entitled to use them in accordance to this Agreement.

2.3 Acceptance of the License Material

The Customer shall conduct a prompt acceptance test of the delivered or available License Material. Should the acceptance test reveal defects that do not render the functionality and/or proper use of the License Material impossible or unreasonably difficult, the Customer shall issue the respective acceptance without claiming a reduction in price, provided that the defects are remedied on time. Keyon agrees to remedy such defects as soon as possible, but no later than within the warranty period set out in Section 4.1.

The acceptance shall be deemed issued if the Customer does not accept the License Material within 30 (thirty) days of their delivery or availability or if it commences productive use of the License Material.

2.4 Delivery

The delivery of the License f shall occur at Keyon's option by making them available electronically for download or delivering them on a data medium. The License Material shall be delivered in their most recent version released for sale by Keyon.

2.5 License key

Depending on the License Material a license key may be required to activate the License Material. A license key may be issued for, but not limited to, i.) a licensing period, ii.) a number of users, servers or applications or iii.) certain features. In case of Software License Subscriptions or Test- and evaluation Licenses the license keys may expire at the end of the licensing period.

3 Warranty of Title

3.1 Content

Keyon represents that it has developed the License Material itself and owns the applicable industrial property rights, particularly the copyrights.

3.2 Obligation to Defend

Should third parties exercise claims against the Customer for infringement of their alleged intellectual property rights concerning the use of the License Material by the Customer in accordance with this Agreement, the Customer shall immediately inform Keyon in writing of such claims, shall authorize it to conduct the defense, including reaching a settlement, and shall reasonably support Keyon in its efforts. In such a case, Keyon shall assume the defense at its own expense and shall indemnify the Customer for any costs and damages finally awarded by a court of law.

The Customer is not entitled to any other claims in the event of an infringement of intellectual property rights and any further warranty is excluded.

3.3 Preventive Measures

If it emerges that, in the view of Keyon, the License Material do or could infringe the intellectual property rights of third parties, Keyon shall at its choice either i.) perform modifications at its own expense in order to eliminate the potential infringement of intellectual property rights, ii.) commence negotiations to acquire the respective rights from the authorized third party or iii.) be entitled to take back the License Material. In such a case, the Customer shall solely have the right to a refund of the license fees that it has paid, subject to a deduction of an appropriate fee for their interim use.

3.4 Release

Keyon shall be released from the aforementioned obligations if an intellectual property right claim arises on the basis that the Customer has changed the License Material, has used them in conjunction with other programs or under usage and operating conditions other than set out in this Agreement.

3.5 Open Source

The License Material may include open source software components pursuant to the provisions of the applicable open source license terms. The Customer's right to use such components, the respective obligations and other terms associated with the use are determined exclusively and conclusively according to the applicable open source license.

The open source software is provided "AS IS," without any warranty or liability. Keyon explicitly excludes any warranty or liability arising in connection with open source components according to section 5.3. Customer agrees that all open source software shall be and shall remain subject to the terms and conditions under which it is provided. Copyrights to the open source software are held by the copyright holders indicated in the respective copyright notices.

Upon Customer's request Keyon provides a list of open source software components which have been integrated in the License Material.

4 Warranty of Quality

4.1 Warranty for Program Functionality

Keyon warrants the operability of the initial delivered License Material under this Agreement.

A defect in the License Material covered under warranty shall exist when the License Material, despite being used in compliance with Normal Use, are deviating from the agreed functionality and performance to an extent which abolishes or greatly impairs their fitness for use. In such an event Keyon shall perform services to correct defects in the latest, unaltered version of the License Material which have been properly documented and reported to it within the warranty period of 6 (six) months of the date of acceptance set out in section 2.3.

The right to a reduction of fees or substitute performance as well as any further warranties are expressly excluded.

4.2 Limitation of Warranty

Keyon cannot warrant that the License Material can be used without interruptions and errors in all of the Customer's intended combinations with all data, IT systems, workflow processes or other programs. Keyon does not give a warranty for the suitability of the License Material for a specific purpose or for its economic efficiency.

4.3 Exclusion of Warranty

Keyon shall be released from its warranty obligations to the extent that a defect is caused by circumstances that are not attributable to it, such as:

- a) Changes in the usage and operating conditions described in the respective manuals
- b) Changes made to the License Material by the Customer or third parties;
- c) Impacts by systems or programs not licensed by Keyon.

Should a defect be attributable to the Customer, for example, if a user error occurred or if additional efforts are incurred due to Customer having failed to fulfill its obligation of cooperating with and providing adequate documentation to Keyon, Keyon shall be entitled to invoice the Customer on a time and material basis for the actual costs incurred by services to remedy the defect.

5 Liability

5.1 Scope

The liability of Keyon for direct damages incurred by the Customer resulting from or in connection with the fulfillment of this Agreement, irrespective of its legal basis (such as default, non or incorrect performance, breach of duty, warranty, etc.), shall be limited to:

- a) the One-off license fee in case of a Perpetual Software License independent of whether a Maintenance contract is in place or not;
- b) the One-off annual subscription fee in case of a Software License Subscription

This limitation shall not apply to any liability for culpably caused personal injuries/bodily harm and the consequences set out in Section 3 for intellectual property rights indemnification.

5.2 Force Majeure

Keyon shall not be held liable if it is prevented from performing the services set out in this Agreement in a timely and appropriate manner due to reasons beyond its control. The deadlines for performing such services shall be extended based on the duration of the impact of the circumstances that are beyond Keyon's control.

5.3 Exclusion

Any further liability of Keyon is excluded, including, but not limited to, any liability of Keyon resulting from the use of the License Material, for the results of such use, loss of data and indirect or consequential damages, such as loss of profits, loss or interruptions of business, non-realized savings, additional efforts and expenses by the Customer or third party claims, shall be excluded.

6 Control and Security of the License Material

Customer shall recognize the ownership, the copyrights and the industrial property rights of Keyon of such rights to the License Material, abstain from committing any offence against the existence and extent of these rights for the duration of the license granted to it, take every action in accordance with the instructions of Keyon to protect the rights of Keyon of such rights to the License Material, and provide Keyon with reasonable support, upon request of Keyon, at Keyon's cost, to defend the industrial property rights. Customer shall particularly apply or leave the proprietary notice of Keyon on all full or partial copies of the License Material.

Customer shall take the organizational and technical measures within its business which are required to protect the License Material from unintentional disclosure or access, theft or misuse by unauthorized parties. In particular, Customer shall delete all parts of the License Material stored on computer systems or storage media prior to their transfer and/or destruction.

7 Test- and evaluation licenses

The terms and conditions of this Agreement also apply for the use of the License Material for test- and evaluation purposes considering the following modifications and conditions:

- a) the License Material is provided “as is”, and Customer understands that it assumes all risks of its use, quality, and performance. The Customer agrees and acknowledges that the assignment of test- and evaluation licenses is subject to the prior consent of Keyon expressed in writing or by e-mail;
- b) any and all liabilities of Keyon are excluded, including, but not limited to, intellectual property rights, loss of data, direct, indirect or consequential damages, such as loss of profits, loss or interruptions of business, non-realized savings, additional efforts and expenses by the Customer or third party claims. The Customer agrees and acknowledges that Keyon shall have no liabilities whatsoever to Customer;
- c) any and all warranties of Keyon are excluded. The Customer agrees and acknowledges that Keyon shall have no responsibilities whatsoever to Customer, including, but not limited to, correct any defects or problems in the License Material, or to assure that the License Material operates properly;
- d) evaluation licenses are granted free of charge and for a limited period of time of 60 (sixty) days. Upon request of Customer, Keyon may extend the evaluation period for a longer period of time.

8 Miscellaneous

8.1 Reference

Keyon can indicate the name of the Customer as reference. The range of any further reference indications will be agreed between the parties by e-mail or in writing.

8.2 Export Control

The Customer is aware that the export of the License Material may be subject to export control and the Customer shall comply with the respective provisions.

9 Final Provisions

9.1 Severability

If individual provisions or parts of this Agreement prove to be void or ineffective, the validity of the remaining parts of the Agreement shall not be affected. In such a case, the parties shall amend the Agreement in such way that the purpose of the void or ineffective part is achieved as best as possible.

9.2 Applicable Law

This Agreement shall be governed by Swiss law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

9.3 Place of Jurisdiction

If the contracting parties fail to resolve differences amicably despite respective efforts, the competent court at the domicile of Keyon shall have exclusive jurisdiction over any disputes arising from or in connection with this Agreement. Keyon however reserves its right to bring an action against the Customer at the Customer's domicile.