

netage solutions GmbH License Agreement

License Agreement

ATTENTION: PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

By clicking on the button "Agree" or by installing the software you are confirming your acceptance of the software and agreeing to become bound by the terms of this agreement. If you do not agree, click on the button that indicates that you do not accept the terms of this contract and do not install the software or de-install the software. If you do not accept this contract, you can return any received media and documents and obtain a refund of the amount you originally paid, if you did not use the software. The refund can be requested at the location at which the software and license was purchased.

1. Definitions

- a) "Software" means (a) the contents of all files, disk(s), CD(s), installation packages, or other media (including electronic media), which contains this agreement, including but not restricted to (i) Computer data, programs, or Software of netage solutions GmbH, (ii) related materials in electronic or printed form ("Documentation"), and (b) Upgrades, updates, revisions, or later Versions and refreshments (referred to commonly as Updates) as well as Software that netage solutions GmbH or an authorized Partner licensed to you by the means of a Software Maintenance contract.
- b) "Use" or "Usage" means the normal use, installation, download, copy or other access of Software. All other rights are reserved unless otherwise specified in these Terms.
- c) "Allowed Number" or "Number Software Licenses" means the volume of the application instances monitored by netage solutions GmbH Software. The number and type of application instances configured in Software are decisive for compliance with the license agreement. The allowed number is the number of licenses per type, unless a written agreement determines the number differently. Each Software License has a corresponding License Fee as stated in the Invoice.
- d) "Customer" means the interested party or buyer or end user of netage solutions GmbH Software. The Software is explicitly targeted to business customers and not intended for private use.
- e) "netage solutions GmbH" means the company netage solutions GmbH headquartered at: Neumarkter Str. 22, 81673 Muenchen, Germany.

2. License Grant

- a) In return for the License Fee and in accordance with the terms of this agreement, netage solutions GmbH grants the customer a non-exclusive and non-transferable license to use the software.
- b) The use of Development Licenses is restricted to the solely use on test and development systems. The use on any kind of productive or production systems is not allowed and requires to buy a full or upgrade license for the according system type.
- c) The use of Test and Evaluation Licenses is limited to a trial period of 30 days starting with the license grant for the software. After the expiration of the 30 day trail period the software must be de-installed and no further use is allowed.

3. Updates

This license is limited to the version of the Software delivered by netage solutions GmbH and does not include Updates, unless a separate maintenance contract is purchased that entitles you to Updates that netage solutions GmbH makes available. After the specified

maintenance period or service contract period has expired, you have no further right to receive any Updates without the purchase of a new or extension maintenance contract.

4. Ownership Rights

The Software is owned by netage solutions GmbH. The software is protected by copyright laws, international treaty provisions and other applicable laws. netage solutions GmbH owns and retains all right, title and interest in and to the Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Your possession, installation, or Use of the Software does not transfer to you any title to the intellectual property in the Software, and you will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

5. Number Licenses/Updates

The software is licensed according to the number and types of application instances that are configured to be monitored. The types determine the usage volume of the monitored application. A tool is delivered with the Software to help determine the instance types. The total number of configured instances per type must not exceed the number of purchased licenses per type.

The use of updates to earlier versions of the licensed Software requires valid licenses for the earlier version and an active maintenance contract for all licenses.

You agree that netage solutions GmbH may audit your evaluation of the software for compliance with these terms at any time, upon reasonable notice.

6. Restrictions

You may not sell, lease, license, rent, loan, resell or otherwise transfer, with or without consideration, the Software. You may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, the Software in whole or in part except from the customizations that are necessary for adjusting the configuration.

You may not permit third parties to benefit from the use or functionality of the Software via a timesharing, service bureau or other arrangement. You may not remove any proprietary notices or labels on the Software. All rights not expressly set forth hereunder are reserved by netage solutions GmbH.

7. Warranty and Disclaimer

The software is provided "as is" according to the actual development state and has passed extensive test and quality assurance measures by netage solutions GmbH. netage solutions GmbH makes no warranty, guarantee nor takes liability as to its use or performance except for any warranty, condition, representation or term the extent to which cannot be excluded or limited by applicable law. netage solutions GmbH make no warranty, condition, representation, or term (express or implied, whether by statute, common law, custom, usage or otherwise) as to any matter including, without limitation, noninfringement of third party rights, merchantability, integration, or fitness for a particular purpose. Without limiting the foregoing provisions, netage solutions GmbH makes no warranty that the software will be error-free or free from interruptions or other failures or that the software will meet your requirements.

8. Limitation of Liability

The customer assumes responsibility for selecting the software to achieve intended results, and for the installation of, use of, and results obtained from the software.

Under no circumstances and under no legal theory, whether in tort, contract, or otherwise, shall netage solutions GmbH be liable to you or to any other person for loss of profits, loss of goodwill, or any indirect, special, incidental, or consequential damages, or damages for gross negligence of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or for any other damage or loss. In no event shall netage solutions GmbH be liable for any damages in excess of the price paid for the software, if any, even if netage solutions GmbH has been advised of the possibility of such damages. This limitation shall not apply to liability for death or personal injury to the extent that applicable law prohibits such limitation. Furthermore, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you. Nothing contained in this Agreement limits netage solutions GmbH's liability to you for netage solutions GmbH's negligence or for the tort of fraud. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

9. Notice to United States Government End Users

The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

10. Export Controls

You are advised that the Software is subject to the Export Administration Regulations; diversion contrary to German law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable German regulation or statute (including but not limited to those countries embargoed from time to time). You represent that no governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges. You agree not to Use or transfer the Software for any Use relating to nuclear, chemical or biological weapons, or missile technology. Additionally, you agree not to directly or indirectly export, import or transmit the Software contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11. High Risk Activities

The software might not be fault tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance and error-free continuous operation. The use in high-risk activities like, for example but not exclusive, the operation of atomic power facilities, weapons systems, aerospace navigation or communication systems and /or life-support machines, is prohibited as well as in any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property or environmental damage. netage solutions GmbH explicitly disclaims any express or implied warranty of fitness for High Risk Activities.

12. Governing Law

This Agreement will be governed by and construed in accordance with the substantive laws in force in Germany. Place of jurisdiction is the "Amtsgericht" in Stuttgart, Germany.

This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

13. Data Privacy

The protection of your private data is an important matter for us. With your agreement to this contract you grant netage solutions GmbH the rights to process and store your data including but not exclusive your company name, name, address, e-mail, and purchase details. The data is used to create offers, handle purchases, create and maintain license information and service delivery. Your data will not be shared with any other company.

14. Contact details for netage solutions GmbH

netage solutions GmbH
Neumarkter Str. 22
81673 Muenchen
Germany

Phone: +49 7034 / 25 45 6-0

Fax: +49 7034 / 25 45 6-9

E-Mail: stefan.pannenberg@netage.de

Website: <http://www.blixx.com>

<http://www.netage.de>

Jurisdiction: Amtsgericht Muenchen HRB 117484

VAT ID: DE188797098