Lookeen License Agreement

Creation date: 2019-Jan-1 / Revision 1016

This License Agreement (the "Agreement") is a legal agreement between you, either an individual or a single legal entity ("Licensee"), and the vendor of Lookeen, Axonic Informationssysteme GmbH, Germany ("Lookeen") that governs Licensee's acquisition and use of the Lookeen software in all its available Lookeen Editions and any accompanying documentation (the "Software"). Licensee must accept the terms of this Agreement before downloading, copying, or otherwise using the Software. By clicking "I AGREE" at the end of this Agreement, or by installing, copying, Purchasing or otherwise using the Software, License is indicating that Licensee has read and understood, and that Licensee assents to be bound by, the terms of this Agreement. If Licensee does not agree to the terms of the Agreement, do not click on the "I AGREE" button and do not use the Software. If Licensee does not agree to the terms of the Agreement, Licensee is not granted any rights whatsoever in the Software and must permanently delete all copies of the Software in Licensee's possession.

1. License Grant:
Subject to the terms of this Agreement, Lookeen grants to Licensee a personal, non-exclusive, non-transferable license, without the right to sublicense, to install and execute one (1) copy of the Software on one (1) computer that is utilized to access one (1) Licensee's email account. Licensee may download, install and use the Software free of charge on any computer during the 14 days immediately after the Software is installed ("Evaluation Period"). After the Evaluation Period, Licensee's continued use of the Software will be subject to payment of all applicable fees as described in Section 4 below. Upon payment of the License Fee, you will be provided, through Lookeen or Lookeen's authorized agent, with a confidential numbered code to access the Software (the "License Key"). You shall, at all times and without exception, maintain the confidentiality of the License Key. Specifically, you shall not disclose the information associated with the License Key to any other person, corporation or any other entity. Please see section 13 for additional license regulations concerning the different Lookeen Editions and section 14 the "Lookeen Server".

2. Restrictions on Use:
Except as expressly permitted in Section 1 (License Grant) (if at all), Licensee may not (a) copy, translate, modify, reverse engineer, decompile, disassemble, create derivative works of, or otherwise use the Software or any part thereof, (b) distribute, sell, assign, pledge, sublicense, lease, loan, use for service bureau purposes, rent, or otherwise transfer the Software or any part thereof in any form to another person, (c) remove from the Software, or alter, any of the trademarks, trade names, logos, patent or copyright notices or other proprietary notices or markings, or add any other notices or markings to the Software. Lookeen does not grant to Licensee any express or implied licenses or rights to any enabling technologies or systems that may be necessary to use the Software. Please see section 13 for additional license regulations concerning the different Lookeen Editions and section 14 the "Lookeen Server".

3. Ownership:
The Software is licensed, not sold, and Licensee agrees that the Software and all intellectual property and proprietary rights therein are owned by Lookeen. Lookeen reserves title and all right and interests in and to the Software not expressly granted to Licensee in Section 1 (License Grant), including without limitation all patent rights, copyrights, trademarks, trade names, trade secrets and other intellectual property and proprietary rights. There are no implied licenses under this Agreement, and all rights not expressly granted are reserved by Lookeen. Portions of this software are Copyright © 2011 The Apache Software Foundation. See further details in section 11.

4. Registration:
If Licensee uses the Software after the 14 day evaluation period, Licensee agrees to obtain a registered license from Lookeen and pay all applicable fees. Unless Licensee and Lookeen have entered into a separate agreement, fees shall be the then current fees set forth on Lookeen's website at www.lookeen.com, or at a successor site.

5. No Warranties:
THE SOFTWARE IS PROVIDED AND LICENSED TO LICENSEE "AS IS". Licensee assumes the entire risk as to, and acknowledges that License relies solely at Licensee's own risk on, results and performance arising out of the use of the Software. Should the Software prove to have defects in any way, Licensee assumes the entire cost of all servicing, repair or correction arising in connection with such defects.
LOOKEEN DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE.  WITHOUT LIMITING THE FOREGOING, LOOKEEN SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES THAT THE SOFTWARE, LOOKEEN'S EFFORTS, OR ANY SYSTEM WITH WHICH LICENSEE WILL USE THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, FULFILL ANY OF LICENSEE'S PARTICULAR PURPOSES OR NEEDS, OR THAT THE OPERATION OF THE SOFTWARE OR WILL BE UNINTERRUPTED OR ERROR FREE. LICENSEE ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF LICENSEE'S REQUIREMENTS, SOFTWARE, AND HARDWARE TO ACHIEVE LICENSEE'S INTENDED RESULTS.

Some jurisdictions do not allow the disclaimer of implied warranties, so the above disclaimer may not apply to Licensee, in which case the duration of any such implied warranties is limited to thirty (30) days from the date the Software is first downloaded by Licensee. In case of breach of such implied warranties, Lookeen's sole and exclusive obligation and liability and Licensee's sole and exclusive remedy will be, at Lookeen's sole discretion, to (i) repair, correct, or work around any defect; (ii) provide a replacement copy of the Software; or (iii) terminate this Agreement and issue Licensee a refund of any fees that Licensee may have paid Lookeen for the Software (if any).

6. Limitation of Liability:
LOOKEEN SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY INNACURACY OF THE E-MAIL PRIORITIZATION AND MANAGEMENT PROCESS. THIS INCLUDES, BUT IS NOT LIMITED TO, THE LOSS OF MAIL MESSAGES SENT TO LICENSEE. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL LOOKEEN BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, LOSS OF BUSINESS INFORMATION, ANY OTHER PECUNIARY LOSS , OR DAMAGES RESULTING FROM LICENSEE'S USE OF THE SOFTWARE. LOOKEEN'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY LICENSEE HEREUNDER IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF COMPANY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY.

7. Indemnification:
Licensee agrees to indemnify and hold Lookeen harmless from and against all damages, liabilities, losses, costs and expenses arising from or relating to Licensee's use or misuse of the Software or Licensee's breach of this Agreement.

8. Term and Termination:
The term of this Agreement will commence upon Licensee's clicking of the "I AGREE" button or installing/using the software and will continue until terminated as specified in this Section 8 (Term and Termination). The license granted under this Agreement shall terminate 14 days following installation of the Software unless Licensee registers the Software and pays all applicable fees. The license will automatically terminate earlier if Licensee fails to comply with the limitations described herein. Licensee may only terminate this License by destroying all copies of the Software in Licensee's possession and by discontinuing all use of the Software. Lookeen may terminate this Agreement and without prior notice take appropriate technical measures to effect such termination in the following cases:
(a) Licensee fails to comply with the terms of this Agreement;
(b) Licensee distributes the Software without prior authorization by Lookeen; or
(c) Licensee's use of the Software gives rise to any legal action against Lookeen or its officers, directors, employees or agents.
Any termination by Lookeen pursuant to this Section 8 (Term and Termination) will be exercised without limiting any other rights or remedies of Lookeen.  Upon termination of this Agreement, the license granted in Section 1 (License Grant) will terminate and Licensee must immediately destroy all copies of the Software in Licensee's possession or control. Sections 2, 3 and 5 through 17 of this Agreement will survive termination.

9. U.S. Government Use Restricted Rights:
The Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, Lookeen provides the Software to U.S. Government end users only pursuant to the terms and conditions herein. Contractor/manufacturer is: Axonic Informationssysteme GmbH, Kaiserstrasse 241, 76133 Karlsruhe, Germany.

10. Export Control:
Licensee agrees and acknowledges that the Software is subject to German export control law, and Licensee will comply with all applicable laws and regulations in Licensee's use of the Software under this Agreement, including without limitation all export laws and regulations of the Federal Ministry of Economics ("Wirtschaftsministerium Deutschland") and all other German agencies and authorities, including the German Code of Commercial Law ("Deutsches Handelsrecht"). Without limiting the foregoing, Licensee expressly agrees not to export or re-export the Software in violation of such laws or regulations, or without all required licenses and authorizations.

11. 3rd Party Components:
Portions of this software are Copyright © 2011 The Apache Software Foundation. All rights reserved. For more information on the Apache Software Foundation, please see http://www.apache.org and http://incubator.apache.org/lucene.net/.

The Lucence.Net search engine is licensed under the Apache License, Version 2.0 (the "License"); you may not use this file except in compliance with the License. You may obtain a copy of the License at

http://www.apache.org/licenses/LICENSE-2.0

Unless required by applicable law or agreed to in writing, software distributed under the License is distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied. See the License for the specific language governing permissions and limitations under the License.

12. SOFTWARE NOT INTENDED FOR HIGH-RISK ACTIVITIES:
The Software is not designed, manufactured or intended for use as online equipment control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage. LOOKEEN SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR ANY HIGH RISK USES LISTED ABOVE.

13. Lookeen Edition regulations:
The available "Lookeen Editions" are each own, independent client software versions. If you need further information concerning the

different Lookeen Editions or the licensing of the Lookeen Editions please visit www.lookeen.com or www.free.lookeen.com or contact sales@lookeen.com. A Trial License and a License for Freeware is provided to you free of charge and "as is" except for the operability of the Software and consequently Lookeen provides no warranty to you with regard to the Software. Lookeen does not provide product support for Trial and Freeware Licenses and you may not use them in a production or commercial environment.

14. Lookeen Server regulations:
The "Lookeen Server" is an own, independent version and service. The "Lookeen Server" is only for commercial and professional use. It is not provided, delivered, included or part of the in chapter 13 described Lookeen Editions. The "Lookeen Server" is available for an additional fee and has to be downloaded, installed and registered with an own license key separately. If you want further information please contact: sales@lookeen.com.

15. Customer Support:
Subject to Lookeen's availability and resources, 3rd level (email) customer support for the Software may be provided in the first year for free by Lookeen. This is provided through its email address at support@lookeen.com. Such 3rd level technical support shall be provided at Lookeen's sole discretion without any guarantee or warranty of any kind. 3rd level support will also only be offered to a single contact person in the case of larger teams. It is your responsibility to back up of all your existing data, software and programs before receiving any technical support from Lookeen. Lookeen reserves the right to refuse, suspend or terminate any technical support, at its sole discretion. Axonic does not provide any support via phone or remote sessions without a fee. Please ask for further information about Premium Support or Lookeen support hotlines (with costs) at sales@lookeen.com. Please do not use the Axonic company phone number for support requests.

16. Resellers and Affiliates price binding:
The prices for Lookeen licenses mentioned in our web shop at www.lookeen.com are binding for all customers, resellers and affiliates.

17. Miscellaneous:
Nothing contained herein will be construed to create any agency, employment, partnership, principal-agent relationship, or other form of joint enterprise between the parties. No waiver or modification of the Agreement will be valid unless signed by each party. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof. The headings in this Agreement do not affect its interpretation. Licensee may not assign or transfer any of Licensee's rights or obligations under this Agreement to a third party without the prior written consent of Lookeen. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning. Lookeen may assign this Agreement without consent to any third party. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect. Notices to Lookeen must be sent to the following address, and will be deemed effective **three (3) days** after certified mailing, return receipt requested:

**Axonic Informationssysteme GmbH, Kaiserstrasse 241, 76133 Karlsruhe, Germany;**

Notices to Licensee may be sent to Licensee's e-mail address and will be deemed effective upon arrival at Licensee's e-mail server.

Lookeen may modify or amend this agreement at any time by providing you notice of the modification or amendment, and by installing, copying or using the Software after any such modification or amendment, you agree to be bound thereby.

This Agreement is governed by the laws of Germany without reference to conflict of laws principles that would require the application of the laws of any other jurisdiction.
The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of courts located in Karlsruhe, Germany.

This Agreement is the final, complete, and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written.

You acknowledge that you have read this agreement, that you understand it, that you agree to be bound by its terms, and that this is the complete and exclusive statement of the agreement between you and Lookeen regarding the Lookeen Software.

2019 Jan 1, Axonic Informationssysteme GmbH, Karlsruhe, Germany

Axonic and Lookeen are registered trademarks of Axonic GmbH.

Microsoft Windows and Outlook are registered trademarks of Microsoft Corporation.

© 2008 - 2021 Axonic Informationssysteme GmbH.