

Contact Us to Get Started Today

 sinefa.com/eula/



End User License Agreement

Welcome to Sinefa, an online network monitoring, reporting and management service designed especially for businesses and enterprises. Please read this end user license agreement carefully.

This End User License Agreement (EULA) is a legal agreement between Sinefa Pty Ltd (ABN 86 141 844 911) (Sinefa) and you. If you are agreeing to this EULA not as an individual, but on behalf of your company, then 'Customer', 'you' or 'your' means your company.

PLEASE READ THIS EULA CAREFULLY. BY CLICKING ON THE 'I ACCEPT' BUTTON OR BY USING THE PRODUCTS, YOU REPRESENT TO US THAT YOU HAVE REVIEWED THE TERMS OF THIS EULA, HAVE THE AUTHORITY TO ENTER INTO THIS EULA ON BEHALF OF THE COMPANY (WHERE APPLICABLE), AND AGREE TO BE BOUND BY THIS EULA. THIS EULA DOES NOT NEED TO BE SIGNED IN ORDER TO BE BINDING.

1. EULA SCOPE

This EULA governs your initial purchase of Products (as defined below) as well as any future purchases of Products made by you. This EULA includes the terms of any purchase orders for the Products submitted directly to Sinefa or through an authorised reseller or distributor of Sinefa (Purchase Order) and incorporates any other referenced policies and attachments. This EULA applies to Products purchased directly from Sinefa or through authorised resellers or distributors of Sinefa.

2. SINEFA PRODUCTS

This EULA governs your use of: (i) Sinefa's application software products or downloadable software products, including any software updates (Application Software Products); (ii) hardware products and physical devices that are used in conjunction with the Application Software Products (Hardware Products); and (iii) any support or maintenance services provided by Sinefa or associated materials. Application Software Products and Hardware Products are collectively referred to in this EULA as 'Products'.

3. LICENSE RIGHTS AND TERM

3.1. Licence and Term

Sinefa grants to you for the Licence Term a personal, revocable, non-transferable, non-sublicensable and non-exclusive right to use the Application Software Products under the terms of this EULA. The term of your licence to use the Application Software Products (Licence Term) will be set out in your Purchase Order, as approved by Sinefa, and/or on your invoice notification that you will receive from Sinefa upon purchasing any Products. This EULA is in effect for as long as you have a valid License Term. This EULA will expire at the end of your Licence Term, unless terminated earlier in accordance with its terms.

3.2. Hosted Application Software Products

Where Application Software Products are provided as software services hosted by Sinefa (Hosted Application Software Products): (i) you acknowledge that these Hosted Application Software Products are on-line, subscription-based services and that Sinefa may make changes to such Hosted Application Software Products and associated services from time to time; (ii) the on-line, subscription-based services are subject to use specifications and licence limits, as set out at <http://sinefa.zendesk.com/hc/en-us/articles/206438967> and you must only use the Hosted Application Software Products in accordance with those specifications and limits.

4. CUSTOMER DATA

4.1. Rights to Customer Data

You will retain all right, title and interest in and to Customer Data (as defined below) in the form provided to Sinefa, whether provided via use of a Hosted Application Software Product or otherwise. Subject to the terms of this EULA, you hereby grant Sinefa a non-exclusive, worldwide, royalty-free, perpetual, sub-licensable and irrevocable licence to collect, use, copy, store, transmit and modify Customer Data to the extent necessary to: (i) provide the applicable Products to you; (ii) perform its obligations under this EULA; (iii) use and create derivative works from such Customer Data; and (iv) allow Sinefa to use aggregated and unidentifiable data regarding network usage collectively derived from Customer Data for the purposes of: (A) providing comparative analysis of network usage to Sinefa's other customers ; (B) preparing articles, reports or research papers on trends and types of

application and data used on networks, which may be made publically available; and (C) developing and commercialising other products and services to Sinefa's customers.

You warrant that you have obtained all consents and made all necessary disclosures pursuant to applicable laws (including the *Privacy Act 1988* (Cth)) for the purpose of Sinefa exercising the benefit of the licence granted to it under clause 4.1.

'Customer Data' means any of your data, content, code or other materials of any type that is transmitted to Sinefa through a Hosted Application Software Product or otherwise, including personal information.

4.2. Customer Data security

Sinefa uses and implements market standard security practices to protect Customer Data it collects from unauthorised access or use. However, Sinefa cannot guarantee that security practices will be error-free, that transmissions of Customer Data will always be secure or that unauthorised third parties will never gain access to Customer Data. Details of Sinefa's security practices are available at www.sinefa.com/data-security. Sinefa may access identifiable Customer Data when Sinefa is providing account support and also during system maintenance work.

4.3 Customer indemnity for Customer Data

You indemnify Sinefa from and against any loss, cost, liability or damage for which Sinefa becomes liable arising from or relating to any claim relating to Customer Data, including but not limited to any claim brought by a third party alleging that Customer Data, or your use of the Products: (i) infringes or misappropriates the intellectual property rights of a third party; (ii) violates applicable law (including the *Privacy Act 1988* (Cth)); or (iii) breaches the warranty in clause 4.1.

4.4 Authorised Use of Promotional Material

You grant Sinefa the right to use your company's name and logo for promotional purposes; including, but not limited to, Sinefa's website, press releases, and in advertising and promotional material, unless indicated otherwise by written notice to Sinefa.

5. PRODUCT SUPPORT AND ACCOUNT REGISTRATION

During the Licence Term, Sinefa will provide telephone and web based support (via email and chat function) for the Products during Australian standard business hours. This support will be provided only to licenced Customers and customers on our free trial product.

When you register in order to place orders or access or receive any Products, any registration information that you provide to us must be accurate, current and complete. You must also update your information so that we may send notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your accounts.

6. PRICING

Sinefa's Products are priced in Australian Dollars (AUD) for Australian domiciled clients and in US Dollars (USD) for all other territories or as otherwise available through Sinefa's website. Taxes and freight is charged separately.

7. DELIVERY

7.1. Hardware Products

We will use commercially reasonable efforts to ship Hardware Products within two business days of receipt of the Purchase Order, inventory permitting. We will mark all Hardware Products for shipment to the address specified in the Purchase Order, and we will deliver the Hardware Products to a carrier or forwarding agent chosen by us or specified by you in the Purchase Order. Shipment will be FCA Sinefa's facility, at which time title and risk of loss passes to the recipient specified on the Purchase Order. You will specify a carrier and provide us with an active account number on the Purchase Order, otherwise we will ship under our account and you will pay all related freight, insurance, and other shipping expenses incurred by us. As used in this EULA, the term FCA will be construed in accordance with the International Commercial Terms, 'Incoterms' (published 2012).

7.2. Application Software Products

Where a Purchase Order for purchase of Application Software Products is created, Sinefa will enable access for you to the Application Software Products.

8. WARRANTY DISCLAIMER AND REPLACEMENT POLICY

8.1 Warranty disclaimer

All Products are provided on an 'as is' basis. To the extent permitted by law, Sinefa disclaims and make no express or implied warranties, conditions, representations or guarantees that: (i) the Products are of merchantable quality or are fit for a particular purpose; (ii) the use of the Products will be secure, timely, uninterrupted or error free; (iii) the Products will operate in combination with any other hardware, software, system or data; (iv) errors or defects will be corrected; or (v) the Products or any servers used to deliver the Products are free of viruses or other harmful components. Sinefa is not obligated to provide any updates to the Application Software Products.

8.2 Replacement policy

Sinefa's warranty policy, available at <http://www.sinefa.com/warranty>. If any guarantee, warranty, term or condition is implied or imposed in relation to this EULA and cannot be excluded (a **Non-Excludable Provision**), and Sinefa is able to limit a customer's remedy for a breach of the Non-Excludable Provision, then the liability of Sinefa for breach of the Non-Excludable Provision is limited to one or more of the following (at Sinefa's option): (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

9. LIMITATION OF LIABILITY AND INDEMNITY

9.1 Consequential loss

To the extent permitted by law, Sinefa will not be liable to you for any loss of use, lost data, failure of security mechanisms, interruption of business, or any indirect, special, incidental, or consequential loss of any kind (including lost profits, loss of goodwill, anticipated savings, or anticipated revenue), whether in contract, tort (including negligence), statute or otherwise whether or not such loss may reasonably be supposed to have been in the contemplation of both parties at the commencement of this EULA.

9.2 Liability cap

To the maximum extent permitted by law and subject to clause 9.1, Sinefa's aggregate liability arising under or in connection with this EULA to you (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the aggregate amount of fees paid by you to Sinefa in the 6 month period immediately preceding the date of the first cause of action giving rise to a claim (**Liability Cap**). The Liability Cap does not apply to Sinefa's liability under the indemnity referred to in clause 10.4.

9.3 Indemnity

You are fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of your use of the Products. You will indemnify, hold harmless and (at Sinefa's option) defend Sinefa from and against any claim, loss, cost, liability or damage, including legal fees, for which Sinefa becomes liable arising from or relating to: (i) any breach or alleged breach by you of any term of this EULA; or (ii) your use of the Products.

10. INTELLECTUAL PROPERTY AND RESTRICTIONS ON USE

10.1. Intellectual Property

Sinefa owns all right, title and interest (including all intellectual property rights) in or relating to the Products and, no rights to such intellectual property are granted to the Customer, except as expressly provided in this EULA. The Hardware Products may only be used with Application Software Products provided by Sinefa. You will not and will not permit any third party to: (i) modify, duplicate, disassemble, or attempt to reverse engineer the Products; (ii) remove or erase the software from the Products, or otherwise try to disable or alter the Application Software Products functionality; or (iii) load any other software onto the Products. Products offered for sale and sold by Sinefa are subject in every case to the condition that such sale does not convey any licence, expressly or by implication, to manufacture, modify, duplicate, or otherwise copy or reproduce any Product or component thereof.

10.2. Protection of Proprietary Rights

If you become aware that you or any third party is infringing or misappropriating any intellectual property rights in or relating to any Product (including the trade marks), then you must promptly notify Sinefa in writing and cooperate with and assist Sinefa, at Sinefa's expense, in the protection of such intellectual property rights.

10.3. Sublicensing

You agree you may not loan, rent, sublicense or lease the Application Software Products.

10.4. Sinefa indemnity

Subject to clause 9.1, Sinefa will defend you against any claim brought against you by a third party alleging that a Product, when used in accordance with this EULA, infringes a registered patent or any copyright (Claim), and we will indemnify you and hold you harmless against any damages and costs finally awarded by a court of competent jurisdiction or agreed to by Sinefa as part of a settlement arising out of a Claim, provided that we have received from you: (i) prompt written notice of the Claim (but in any event notice in sufficient time for us to respond without prejudice); (ii) reasonable assistance in the defence and investigation of the Claim, including providing us with a copy of the Claim and all relevant evidence in your possession, custody or control; and (iii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the Claim.

11. TERMINATION

11.1 Termination for Cause

Either party may terminate this EULA immediately if the other party breaches a term of this EULA, and the breaching party fails to cure the breach within 15 days of receipt of written notice from the non-defaulting party. In addition, either party may immediately terminate this EULA upon: (i) the insolvency of the other party; (ii) the institution of any proceeding in

relation to the credit standing of the other party, such as bankruptcy, reorganisation, rehabilitation or composition, by or against the other party; or (iii) the appointment of any receiver or trustee for the other party.

11.2. Effect of Termination

Termination of this EULA will not release either party from any liability which, at the time of such termination, has already accrued to the other party or which is attributable to a period prior to such termination. Upon termination of this EULA, each party will return (or destroy) any Confidential Information (as defined below) of the other party in its possession. The following provisions of this EULA will survive any termination of the EULA: clause 4.3, clause 8, clause 9, clause 10, clause 11 and clause 12, together with any other provision which by its nature is intended to survive termination of this EULA.

12. MISCELLANEOUS

12.1 Confidentiality

Any and all non-public information provided directly or indirectly by one party (the Disclosing Party) to the other party (the Receiving Party) related to the business or technology of the Disclosing Party (collectively, Confidential Information), will be kept confidential by the Receiving Party and may not be used, except as necessary in the performance of the Receiving Party's obligations under this EULA. The Receiving Party agrees to limit access to the Confidential Information to those of its employees or contractors as are reasonably required for the purpose of performing the Receiving Party's obligations under this EULA or otherwise in connection with the use of the Products and will ensure that each such employee or contractor is subject to an agreement with the Receiving Party with respect to third party confidential information substantially as protective of the Disclosing Party's Confidential Information as the provisions of this clause 12.1.

Notwithstanding the foregoing, Confidential Information does not include any information that the Receiving Party can verify based on its written records was: (a) already lawfully in the Receiving Party's possession without confidentiality obligations prior to receiving it from the Disclosing Party; (b) independently received from a third party without an accompanying duty of confidentiality and without breach of such third party's obligations of confidentiality; (c) becomes available in the public domain through no action or inaction of the Receiving Party; or (d) developed independently by the Receiving Party without use of or reference to Disclosing Party's Confidential Information. If the Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, the Receiving Party will provide the Disclosing Party with prompt written notice, if legally permissible, and will use its best efforts to assist the Disclosing Party in seeking a protective order or another appropriate remedy.

12.2 Notices

All notices required or permitted under this EULA must be in writing, including notices sent by email, and will be deemed received: (i) for email notices, upon the time the email enters the information processing system that the recipient has designated or uses for the purposes of receiving email (as provided below); or (ii) for mailed notices, one day after deposit with a commercial express courier specifying next day delivery, or two days for international courier packages specifying two-day delivery, with written verification of receipt by the courier. All notices to Customer will be sent to the email address or postal address provided at the time of application. All notices to Sinefa will be sent to Sinefa Pty Ltd Unit 16/71 Victoria Crescent, Abbotsford, Victoria, 3067 or to sales@sinefa.com.

12.3 Governing Law

This EULA is governed by the laws of Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and the Commonwealth of Australia and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this EULA.

12.4 Severability

Any provision of, or the application of any provision of this EULA, which is prohibited, void, illegal or unenforceable in any jurisdiction: (i) is, in that jurisdiction, ineffective only to the extent to which it is void, illegal, unenforceable or prohibited; (ii) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this EULA in that or any other jurisdiction; and (iii) is severable from this EULA and will not affect the remaining provisions of this EULA.

The application of this clause 12.4 is not limited by any other provision of this EULA in relation to severability, prohibition or enforceability.

12.5 Assignment and novation

Sinefa may assign or novate, in whole or in part, any of its rights or obligations under this EULA upon written notice to the Customer. The Customer cannot assign or novate any of its rights or obligations under this EULA, in whole or in part, without the prior written consent of Sinefa.

12.6 Amendment to terms

From time to time, Sinefa may modify this EULA. We will use reasonable efforts to notify you of these changes through communications through our website or other forms of communication.

You acknowledge and agree that Sinefa may amend the terms and conditions of this Agreement at any time, with notice given to Customer by email or through the Service (in the case of significant amendments).

If Customer has a paid plan, Customer must notify Sinefa within thirty (30) days of notice of the amendments that Customer does not agree to such changes, and Sinefa (at its option and as Customer's exclusive remedy) may either: (a) permit Customer to continue under the prior version of this Agreement until expiration of the then-current Subscription Term (after which time the modified Agreement will apply) or (b) allow Customer to terminate this Agreement and receive a prorated refund of any fees Customer has pre-paid for use of the Service for the terminated portion of the applicable subscription term.

12.6 Subcontracting

Sinefa may subcontract its obligations under this EULA to any third party at any time without notice to you.

12.7 Dispute resolution process

If a dispute arises between the parties in respect of or in connection with this EULA (including the validity, breach or termination of it), then without prejudice to any other right or entitlement they may have pursuant to this EULA or otherwise, the parties will explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted may be as agreed between the parties or, if the parties are unable to agree on a technique, such technique as is recommended by the Law Institute of Victoria, Australia or as selected by the Australian Commercial Disputes Centre. If the dispute is not resolved by agreement within thirty (30) days' written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to the courts.