

# AKIPS SOFTWARE LICENSE AGREEMENT

VERSION 1.5

18th July 2017

**If you are a competitor in the network monitoring software field, you are not authorized to download, install, evaluate, or use this software for any purpose.**

Do not download, install, or use the software until you have read and accepted the terms of this agreement and wish to become an authorised licensee of the software.

Your acceptance binds you (either an individual or an entity) to the terms of this agreement. By downloading, installing or using the software, you are deemed to have accepted the terms of this agreement. If you do not agree to the terms of this agreement, do not download, install or use the software.

## 1 Preamble

Thank you for selecting AKIPS Network Monitor Software. This software is made available by (licensor) AKIPS Pty Ltd, Brisbane, Queensland, Australia.

## 2 Definitions

In this agreement:

- AKIPS means AKIPS Pty Ltd.
- Licensor means AKIPS Pty Ltd.
- Licensee or Customer means the person or entity agreeing to this agreement with AKIPS.
- Licensed Materials means the software application, software updates and any associated documentation.
- Major release version means the latest version available at time of renewal.

## 3 TERMS

By using this software you (the licensee) are agreeing to all terms within this agreement. If you do not accept and comply with these terms, you may not use the software or features.

You may:

- Use the software for lawful purposes without any tampering of the underlying software code.

Your agreement is to:

- License the software for the set period that a license fee has been agreed and paid, usually issued on an annual subscription basis.
- Use the software on a network controlled by you or your organisation solely.

## **4 Limited License**

If you wish to use this software for multiple customers, then a separate License is required for each customer to be monitored.

If you are delivering outsourced monitoring services to your customers using the AKIPS software, then you are required to individually license each of those customers.

The license is a personal, non-exclusive license that is non-transferable, non-assignable, non sub-licensable, commercial, royalty free, without rights to create derivative works.

You may not copy, modify, distribute, sell or lease any part of our software, nor reverse engineer or attempt to extract the source code of our software, without our written permission.

## **5 Intellectual Property**

Use of the software does not give you ownership of any intellectual property rights over the software. You are not granted any rights, title, or interest in or to any trademarks, service marks, or trade secrets of AKIPS or its suppliers.

## **6 Branding**

These terms do not give you any rights to use any branding or logos associated with our software. You are not entitled to white label the software to any party and are not entitled to remove, obscure, or alter any brand, image or notices displayed in our software.

## **7 Payment**

As consideration to grant this license, a subscription based fee is payable, in advance, for a set period as determined by the Licensor. Such fees will be payable by whichever means the licensor provides as options, including currencies, for payment as the licensor deems fit.

## **8 Renewals of Subscriptions**

Renewals should be made by the due date on the anniversary of the term that was originally agreed, or annually, whichever is lesser, to ensure that historical monitoring data is available. After the expiration of your subscription, only two days of network monitoring data will be viewable until the subscription has been paid and a new license key issued. Once renewed the data history will be returned to provide up to three (3) years of historical data.

The customer is required to update their software to the latest major release version, upon renewal of the software. Please note that the activation key issued at renewal time will only work on the latest major release version. Further, the customer accepts that the software may cease to operate if they fail to update the software within two years of installation, or within two years of the most recent software update. For performance reasons, there are limits to the time filter code used in the software to ensure the supported version is in use.

## **9 No Refunds**

A no refunds policy applies. No refund, rebate, compensation or restitution for any reason whatsoever to any subscription paid.

## **10 Taxes and Charges**

The purchaser is liable for the application and payment of any government taxes or charges, including any import duties, fees or charges imposed or any local taxes, including goods and services taxes.

## **11 Timeframe of License**

The License is limited to the subscription package selected. The terms of this license shall be in force until terminated.

## **12 Third Party Programs**

The software may include third party open source programs or plug-ins, that such party licenses to you. Notices, acknowledgments, licensing terms and disclaimers, if any, for such third party programs are included for your information only. Please refer to the third party electronic documentation that may also confer to you additional rights from the open source components.

You expressly acknowledge that damage to your organisation resulting from modification of the open source components included with AKIPS Software, such damage is excluded from the terms of AKIPS license agreement.

## **13 Modifying License Terms**

The terms of use of the software will be updated over time and will form additional and / or replacement terms of your agreement with us.

## **14 Warranties and Disclaimers**

AKIPS make no warranties and offers the software “as is” with all implied warranties excluded, to the extent permitted by Australian law (State of Queensland Jurisdiction in the Commonwealth of Australia). The customer acknowledges that the licensed materials are not error free, and that they may contain errors that cause them to malfunction or not operate in the manner the customer may expect or as otherwise documented.

AKIPS disclaims all warranties, conditions or other terms, express or implied, statutory or otherwise, on software and documentation furnished hereunder including without limitation the warranties of design, merchantability or fitness for a particular purpose and non-infringement. In no event shall AKIPS, its suppliers or its licensors be liable for any damages, whether arising in tort, contract or any other legal theory even if AKIPS has been advised of the possibility of such damages.

## **15 Upgrades, Updates, Fixes**

AKIPS will provide support, updates or maintenance on the software, limited to the terms under which a subscription payment has been provided. The licensor may provide, at their sole discretion, any upgrades, updates or fixes, whether initiated from a request from a licensee or otherwise.

## **16 Feedback and Suggestions**

We may use your feedback or suggestions without any obligation to you. Licensees may request or suggest additional features and/or bug notifications to the software provided, including code, scripts

or prototypes. If they do so they waive any claim or right should the feature be implemented in future versions, updates or bug fixes.

## **17 Indemnity**

Licensees hereby warrant to hold licensor harmless and indemnify licensor for any lawsuit brought against it in regards to licensee's use of the software in means that violate, breach or otherwise circumvent this license, licensor's intellectual property rights or licensor's title in the software.

## **18 Liability, Governing Law and Jurisdiction**

All liabilities, to the extent permitted by Australian law (State of Queensland Jurisdiction in the Commonwealth of Australia), are excluded. This includes all damages, whether caused by us, our distributors, authorised trainers and parties related to AKIPS.

Should any dispute arise concerning this agreement, the parties agree to submit to the exclusive jurisdiction of the State of Queensland in the Commonwealth of Australia, and the dispute will be determined in accordance of such jurisdictions law.

If any provision of this End User License Agreement (EULA) is held to be un-enforceable, that shall not affect the enforceability of the remaining provisions.

This constitutes the entire agreement between the parties and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof including without limitation the terms of any party contained in the software or any purchase order issued in connection with such.

## **19 Limitation of Liability**

To the maximum extent permitted by applicable law, in no event will AKIPS be liable to you for more than the amount of license fees that you have paid to AKIPS in the preceding (12) twelve months or be liable to you for any incidental or consequential damages, including lost profits, lost savings, or other incidental or consequential damages, arising out of the use or inability to use the software or software programs, even if AKIPS or a dealer authorised by AKIPS had been advised of the possibility of such damages.

## **20 Class Action Waiver**

Licensee hereby agrees not to initiate class-action lawsuits against licensor in relation to this license and to compensate licensor for any legal fees, cost or attorney fees should any claim brought by licensee against licensor be denied, in part or in full.

## **21 Binding Arbitration Clause**

Disputes of any nature are first to be communicated to AKIPS (presented to the address above) by forwarding a written event notice that details the name, address and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. AKIPS will attempt to resolve disputes within a period of not more than 365 days from the date the notice of dispute is sent. After 365 days the licensee may commence arbitration. If the licensee and AKIPS do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration. The licensee is giving up the right to litigate (or participate in

as a party or class member) all disputes in court before a judge or jury. Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final. Any court with jurisdiction over the parties may enforce the arbitrator's award.

## **22 Terminating License**

This licensor may terminate this license upon written notice to Licensee and Licensee fails to cure within 30 days of notice, including licensee's license in the case where the licensee:

- became insolvent or otherwise entered into any liquidation process; or
- exported the software to any jurisdiction where licensor may not enforce their rights under this agreement in; or
- licensee was in breach of any of this license's terms and conditions and such breach was not cured within 30 days of written notice; or
- licensee was in breach of any of the terms of this license; or
- licensee otherwise enters into any arrangement which causes licensor to be unable to enforce their rights under this license.

Any residual period resulting from a license termination is rescinded and will not result in any refund of unused software network monitoring use provided Licensee fails to comply with any provision of this Agreement and fails to cure or take reasonable steps to cure such failure within thirty days after receipt of written notice.

## **23 Legal Notices**

We may send you notices, administrative messages, and other information in relation to your relationship with AKIPS. This agreement is governed by, and adjudicated against, the laws of the State of Queensland in the Commonwealth of Australia.

## **24 Copyright Protection**

Copyright © 2011-2017 AKIPS Holdings Pty Ltd. All rights reserved worldwide.

The software is a collective work under copyright laws and along with documentation thereof, is protected by copyright.

No part of this document may be reproduced by any means nor modified, decompiled, disassembled, published or distributed, in whole or in part, or translated to any electronic medium or other means without the written consent of AKIPS Holdings Pty Ltd. All rights, title and interest in and to the software and documentation are and shall remain the exclusive property of AKIPS and its licensors.

All other trademarks contained in this document are the property of their respective owners.

## **25 Confidentiality**

Each party must keep confidential and not use or disclose the other party's proprietary confidential information. The obligations of confidence do not apply to information which: is in the public domain; independently developed by the recipient; or already known to the recipient independently with appropriate evidence of its development to be supplied.

## **26 Privacy Policies**

AKIPS collects personal information relating to the customer for purchase, upgrade or renewal transactions details and support services. AKIPS will not disclose any information to third parties. If we need to contact and pass information onto a hardware vendor with a clients network specific issue, then your express permission will be sought.

If required, customers may provide to AKIPS information about their network. This customer information is not automatically provided by the software, but can be transmitted via a support email or call to AKIPS from the client. By using this feature, you consent to transmission of this information. AKIPS may use this information to upgrade or fix the software and otherwise improve our products and services.

You agree that we may use and disclose information in accordance with Privacy legislation within the laws of the State of Queensland in the Commonwealth of Australia.

## **27 Limited Rights Versions**

Versions of AKIPS software dedicated for Academic or University purposes are also subject to the terms above, unless explicitly replaced by agreement between the licensor and licensee.

## **28 Evaluation Software**

AKIPS may provide, at its discretion, a free time-limited license, for the purposes of your evaluation of this software. The customer obligations of the terms of this agreement apply to you as a beta or evaluation customer. Please note that the historical data available will be limited if the evaluation software is not activated to a full subscription version in that time.