

AKIPS SOFTWARE LICENCE AGREEMENT

VERSION 1.6

11th January 2019

If you are a competitor in the network monitoring software field, you are not authorised 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. If you do not agree to the terms of this Agreement, you are not permitted to use the Software.

This Agreement is not subject to change or revision by the Licensee.

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.

1 Definitions

In this agreement:

- “Licence” or “Agreement” means this Licence Agreement also referred to as the End User Licence Agreement (EULA)
- “Licensor” means AKIPS Pty Ltd
- “Licensee” or “Customer” means the person or entity agreeing to this Agreement with the Licensor.
- “Licensed Materials” means the Software and any associated documentation.
- “Major Release” means any Software Release issued within the current calendar year.
- “Software” means AKIPS Network Monitor software.
- “Operating System” means the bundled FreeBSD operating system.
- “Third Party Packages” means additional bundled software required to run the Software.
- “Software Release” means the combined Software, Operating System and Third Party Packages.
- “Subscription” means a payment made by the Licensee to the Licensor that allows full functionality of the Software for a set period of time.

2 Licensor’s Contact Details

AKIPS Pty Ltd
PO Box 3422
Shailer Park, Qld, 4128
Australia

Australian Company Number (ACN) 169 056 204
Contact Email: accounts@akips.com

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.

You may only:

- Use the Software for lawful purposes without any tampering of the underlying software code.
- Use the Software on networks controlled solely by the Licensee.

4 Limited License

If you wish to use the Software for multiple customers, then a separate Licence is required for each customer to be monitored.

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

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

You may not copy, modify, distribute, sell or lease any part of the Software, nor reverse engineer or attempt to extract the source code of the software, without the Licensor's 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 the Licensor or its suppliers.

6 Branding

These terms do not give you any rights to use any branding or logos associated with the Software or the Licensor. 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 the Software.

7 Payment

As consideration to grant a Subscription, a fee is payable in advance for a set period as determined by the Licensor. Such fees are payable by whichever means stipulated by the Licensor, including currencies and payment method as the Licensor deems fit.

8 Renewal of Subscriptions

Subscription 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, a maximum of two days of network monitoring data will be viewable until a new Subscription has been paid and a new activation key issued. Once renewed, the data history will be returned, providing up to three years of historical data.

The Licensee may be required to update the Software to the latest Major Release, upon renewal of the Subscription. Please note that the activation key issued at renewal time is only guaranteed to work on the latest Major Release.

9 Non-Renewal of Subscription

If the Licensee decides not to renew the Subscription, upon a written request the Licensee will be provided with a licence key that provides access to data collected during the subscription period.

10 No Refunds

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

11 Taxes and Charges

For Australian Licensees, the Subscription fee is inclusive of Australian GST.

Non-Australian Licensees are liable for the application and payment of all applicable government charges, duties, fees and taxes.

12 Third Party Programs

The Software includes Third Party Packages of open source programs, that such parties license 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.

The Licensee expressly acknowledges that damage to your Licensee's organisation, resulting from modification of the open source components included with the Software, is excluded from the terms of the Agreement.

13 Modifying Licence Terms

The terms of use of the Software will be updated over time by the Licensor and will form additional and / or replacement terms of the Agreement. Release notes contain notices of updates.

14 Warranties and Disclaimers

The Licensor makes 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 Licensee 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 Licensee may expect or as otherwise documented.

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

15 Upgrades and Fixes

The Licensor will, at their sole discretion, provide upgrades and fixes for the Software and provide updates for the Operating System, limited to the terms under which a Subscription payment has been provided.

To ensure compatibility between the Software and supplied Operating System, the Licensor will only provide Operating System updates with the Software in tandem as a packaged release. Specifically, no Software or Operating System patches will be provided separately.

If there is an issue updating to the latest Software Release, the Licensor will, within seven business days, inform the Licensee of an estimated time frame in which a solution or workaround will be available.

16 Software Vulnerabilities and Remediation

Each party shall disclose to the other, in writing, all security-relevant information regarding the vulnerabilities, risks and threats to the Software, Operating System, and any Third Party Packages within seven business days of discovery. Such security documentation shall describe the vulnerability, its security impact, root cause and recommended corrective actions.

The Licensor will provide the appropriate Software Release to mitigate all newly discovered vulnerabilities and/or workarounds to address vulnerabilities.

17 Feedback and Suggestions

The Licensor may use the Licensee's feedback or suggestions without any obligation. Licensees may request or suggest additional features and/or bug notifications to the Software, including code, scripts or prototypes. The Licensee waives any claim or right should the feature be implemented in future versions, updates or bug fixes.

18 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 Agreement, Licensor's intellectual property rights or Licensor's title to the Software.

Subject to Limitation of Liability, Licensor warrants to hold Licensee harmless and indemnify Licensee against all claims brought against Licensee in regards to the Software which relates to violation or infringement of any intellectual property right of a third party.

19 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 distributors, authorised trainers and parties related to the Licensor.

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

If any provision of this End User Licence Agreement (EULA) is held to be unenforceable, 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.

20 Limitation of Liability

To the maximum extent permitted by applicable law, in no event will the Licensor be liable for more than the amount of Subscription fees that the Licensee has paid to the Licensor in the preceding twelve months or be liable 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, even if the Licensor had been advised of the possibility of such damages.

21 Class Action Waiver

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

22 Binding Arbitration Clause

Disputes of any nature are first to be communicated to the Licensor 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. The Licensor will attempt to resolve disputes within a period of not more than ninety days from the date the notice of dispute is sent. After ninety days the Licensee may commence arbitration. If the Licensee and the Licensor do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration. The Licensee gives 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.

23 Terminating Subscription

The Licensor may terminate the Licensee's Subscription upon written notice to the Licensee if the Licensee fails to cure within thirty days of notice 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 the Agreement in; or
- Licensee was in breach of any of the Agreement's terms and conditions and such breach was not cured within thirty days of written notice; or
- Licensee was in breach of any of the terms of the Agreement; or
- Licensee otherwise enters into any arrangement which causes Licensor to be unable to enforce their rights under the Agreement.

Any residual period resulting from termination of the Subscription is rescinded and will not result in any refund provided Licensee fails to comply with any provision of the Agreement and fails to cure or take reasonable steps to cure such failure within thirty days after receipt of written notice.

24 Legal Notices

The Licensor may send notices, administrative messages, and other information in regard to the Licensee's relationship with the Licensor. The Agreement is governed by, and adjudicated against, the laws of the State of Queensland in the Commonwealth of Australia.

25 Copyright Protection

Copyright © 2011-2019 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 Holdings Pty Ltd and its licensees.

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

26 Confidentiality

Each party must keep confidential and not use or disclose the other party's proprietary 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 supplied.

27 Privacy Policies

The Licensor collects personal information relating to the Licensee for purchase, upgrade or renewal transactions details and support services. The Licensor will not disclose any information to non-affiliated third parties. If the Licensor needs to contact and pass information onto a hardware vendor with a client's network specific issue, then the Licensee's permission will be sought.

If required, Licensees may provide to the Licensor information about their network. This information is not automatically provided by the Software, but can be transmitted via a support email or call to the Licensor from the client. By using this feature, the Licensee consents to transmission of this information. The Licensor may use this information to upgrade or fix the Software and otherwise improve our products and services.

28 Limited Rights Versions

Versions of the Software dedicated for Academic or University purposes, or provided as a lab testing purpose, are also subject to the terms above, unless explicitly replaced by Agreement between the Licensor and Licensee.

29 Evaluation Software

The Licensee obligations of the terms of the Agreement apply irrespective of a Subscription being paid.

The Licensor may provide, at its discretion, a free time-limited activation key, for the purposes of evaluation of the Software.