

AKIPS SOFTWARE LICENSE AGREEMENT

VERSION 1.5

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1 Preamble

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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.

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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

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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