

# AKIPS SOFTWARE LICENCE AGREEMENT

VERSION 1.7

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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 Modifying Licence Terms

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

**Amendments to this agreement will not be accepted.**

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.

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

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

### **4 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.

### **5 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.

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## **9 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.

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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.

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

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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.

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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.

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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.

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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.

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- 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.

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