

STATSEEKER END USER LICENSE AGREEMENT

1. DEFINITIONS

In this agreement:

- (a) **Statseeker** means Statseeker Pty Ltd;
- (b) **Customer** means the person or entity agreeing to this agreement with Statseeker; and
- (c) **Licensed Materials** means the Network Infrastructure Monitor (NIM) software application, software updates and any associated documentation.

2. GRANT OF LICENSE

- (a) Statseeker grants the Customer a non-exclusive license to use the software as follows: (i) install and run the Statseeker software from a single computer for the sole purpose of examination of the performance of the Customer's networks;
(ii) view any documentation provided by Statseeker in connection with the software; and (iii) make copies of the Licensed Materials for backup purposes.
- (b) The Customer acknowledges and agrees that the Licensed Materials shall only be used in a manner that complies with all applicable laws in the jurisdictions in which the Licensed Materials are being used, including applicable restrictions concerning copyright and other intellectual property rights.
- (c) The Customer acknowledges and agrees that other than the license granted under this clause, nothing in this agreement is intended to give the Customer any intellectual property rights or other rights in any trade marks, know-how, business names, software or other material of Statseeker.

3. SUPPORT SERVICES

If Statseeker makes the services under this clause available in a specified 12 month period and the Customer pays Statseeker the Support Services Fee for that period then for that period:

- (a) Statseeker must endeavor to make available to the Customer for download over the internet, updates and upgrades to the Licensed Material as Statseeker makes such updates or upgrades available to its general client base; and
- (b) if Statseeker receives from the Customer an e-mail notification of an error in the Licensed Material that causes the Licensed Material to perform in a manner other than as described by Statseeker on its website or otherwise then Statseeker must endeavor to:
 - (i) commence remote investigation into the error within one business day; and
 - (ii) notify the Customer within 5 business days of the status of the investigation including any expected timing of a solution or workaround.

4. LIMITED WARRANTY

- (a) Statseeker warrants that it is the lawful licensee or owner of the Licensed Materials and that the Licensed Materials do not infringe any Patents, Copyrights or Trademarks or constitute misappropriation of third party intellectual property rights. Statseeker will indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Licensed Materials constitutes an infringement of the intellectual property rights of that third party. Statseeker's liability in connection with the indemnity in this clause is limited to the amount paid to Statseeker by the Customer under this agreement.
- (b) If Statseeker's right to provide the Licensed Materials is enjoined by final court order or judgment, Statseeker shall at its option, either: (i) procure for the Customer the right to continue using the Licensed Material; (ii) modify or replace the Licensed Materials so that they are non-infringing (so long as the functionality of the Licensed Materials remains the same); or (iii) refund the fees paid by Customer for the Licensed Materials.
- (c) 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.

5. LIMITED LIABILITY

- (a) Statseeker is not liable for any loss or damage, however caused, suffered by the Customer in connection with this agreement.
- (b) If any legislation implies a condition or warranty into this agreement in respect of goods or services supplied, and Statseeker's liability for breach of that condition or warranty may not be excluded but may be limited, then Statseeker's liability for such breach is limited to, in the case of a supply of goods, Statseeker replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, Statseeker supplying the services again or paying the cost of having the services supplied again.
- (c) The parties agree that Statseeker's liability with respect to the indemnity in clause 4(a) is limited to a maximum of US\$1 million.

6. CONFIDENTIALITY

- (a) Each party acknowledges that by reason of its relationship with the other party hereunder, it may have access to certain information and materials concerning the other party's business, technology and/or products that are confidential and of substantial value to the other party, which value would be impaired if such information were disclosed to third parties, ("Confidential Information"). For the purposes of this clause, Confidential Information shall also include, with respect to each party and without limitation, any information pertaining to a party's computer systems, passwords, software code, data, files, input, results and output materials and reports emanating from the use of any Software, systems architecture, security, products, formulae, specifications, designs, processes, personnel and their associated information, email content, videos, pictures, instant messaging conversations, calendar and scheduling data, personal contact lists, trade secrets, regulatory affairs, discoveries and inventions and discussions relating thereto, disclosed, directly or indirectly, in writing, orally, electronically, observed, or by any other means. Confidential Information shall not include information that: (i) was already in the possession of the non-disclosing party before its disclosure as evidenced by written records, (ii) is independently developed without reference to any information of disclosing party as evidenced by written records, (iii) is or becomes publicly available through no fault of the non-disclosing party, or (iv) is obtained by the non-disclosing party from a third party under no obligation not to disclose same.
- (b) Each party agrees that it will not use in any way for its own benefit or the benefit of any third party, nor disclose to any third party, any Confidential Information except as authorized under this Agreement and will protect the confidentiality of such information with the same degree of care which it uses to protect its own confidential information but in no event with less than reasonable care.
- (c) In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the disclosing party, the receiving party shall promptly, and at its own expense notify the disclosing party in writing, and take such actions as may be necessary and cooperate in all reasonable respects with the disclosing party to minimize the violation and any resulting damage.

7. TERMINATION

- (a) If the Customer breaches this agreement Statseeker may terminate this agreement by written notice to the Customer if the Customer does not remedy the breach within 7 calendar days of being given written notice to do so.
- (b) If this agreement is terminated the Customer must immediately delete or destroy any copies of the Licensed Materials in its possession.

8. GENERAL

- (a) The Customer must not assign any of its rights under this agreement without Statseeker's prior written consent which Statseeker may withhold in its absolute discretion.
- (b) If you are an IT Solution Provider delivering outsourced monitoring services to your customers using the Statseeker software, then you are required to individually license each of those customers, and if Statseeker makes Support Services available to you in a specified 12 month period, then you are required to pay the Support Services fee for each of those customers for that period.
- (c) This agreement constitutes the entire agreement between the parties regarding its subject matter.
- (d) This agreement is governed by the laws of the State of Oregon in the United States of America.

Signed By Customer: _____

Signed by Statseeker: _____

Name:

Name:

Position:

Position:

Date:

Date:

Company:

Company Address: