

**RUCKUS WIRELESS, INC.**  
Cloudpath Hosted Service Terms and Conditions

This agreement sets forth the terms and conditions under which Ruckus Wireless, Inc. ("**Ruckus**") is willing to grant the entity identified on the Order ("**Customer**") access to the Services. In consideration of the covenants and conditions set forth herein, each of Ruckus and the Customer agree as follows:

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. BY CLICKING ON THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS, AND/OR USING THE SERVICE, CUSTOMER ACKNOWLEDGES THAT (1) IT HAS READ THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS, (2) THE PERSON ACCEPTING THIS AGREEMENT IS OF A LEGAL AGE TO FORM A BINDING AGREEMENT WITH RUCKUS, AND (3) THE PERSON ACCEPTING THIS AGREEMENT HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE COMPANY HE/SHE HAS NAMED AS THE CUSTOMER, AND TO BIND THAT ENTITY TO THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, CUSTOMER MAY NOT USE THE SERVICE.

**1) Definitions**

"**Customer Data**" means all data collected by the Service (other than authentication keys and related data used by Ruckus to authorize Customer's use of the Service).

"**Documentation**" means the published technical manuals, including any updates thereto, relating to the use of the Service made generally available by Ruckus to its customers.

"**Evaluation Term**" means the limited period of time during which Customer is permitted to use the Service without placing an Order; provided, that the Evaluation Term is subject to early termination as provided in this agreement.

"**Order**" means the ordering or quote document, either physical or electronic, accepted by Ruckus that sets forth Customer's Scope of Use of the Service.

"**Ruckus Channel Partner**" means an entity authorized by Ruckus to sell subscription licenses to access the Service.

"**Service**" means the online XpressConnect software as a service product identified in the applicable Order that is made available for use by Ruckus to Customer (using equipment hosted by Ruckus or a third party data center for use and access by Customer), including support services made available through the Service Portal and any related Documentation.

"**Service Portal**" means the online administrative site for the Service located at the URL set forth in the Order.

"**Service Term**" means the period of time for which access to the Service is authorized, as set forth in the applicable Order.

**2) Service**

- a) Trial Evaluation and License. Upon Customer's request for a trial period to evaluate the Service, Ruckus may make the Service available to Customer via the Service Portal. Such access to the Service shall be solely for evaluation and demonstration purposes upon Customer's acceptance of these terms. Upon Customer initially accessing the Service, the Evaluation Term shall commence. Customer understands and accepts that during the Evaluation Term, the Service may have limited functionality as well as features that are restricted.
- b) Activation and Delivery. Upon acceptance of an Order or Customer's request for a trial period, Ruckus or a Ruckus Channel Partner will provide Customer with instructions to activate the Service. During activation, Customer must confirm the terms of this agreement prior to being provided access to the Service. Once Customer completes activation, Ruckus will make the Service available to Customer and provide Customer with credentials allowing access to and use of the Service.
- c) Service License. During the applicable Evaluation Term or Service Term, subject to Customer's compliance with the terms and conditions of this agreement, including the payment of any applicable subscription license fees, Ruckus grants Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the Service via an internet connection in accordance with the Documentation and any limitations or restrictions set forth in the applicable Order or trial request (the "**Scope of Use**"). Only the employees, contractors and agents of Customer acting on Customer's behalf may exercise the licenses granted to Customer in this section. Customer is solely responsible for acquiring, separately from this agreement, any wireless client endpoints or other devices for use in conjunction with its use of the Service.
- d) Scope of Use. Customer may use the Services only in accordance with the Scope of Use. If Customer desires to exceed the Scope of Use, Customer may place an Order to increase the Scope of Use. Upon written acceptance by Ruckus or its Ruckus Channel Partner, Customer may use the Service in accordance with the new Scope of Use.
- e) Service Operations. Generally, the Service is installed and runs in third party data centers contracted by Ruckus to make the Service available for access to Customer via an internet connection. However, Ruckus may choose to operate such a data center at any time. While Ruckus endeavors to contract with reputable third parties that provide global hosting services, Ruckus bears no responsibility or liability with respect to the actions or malfeasance of such third parties. Licenses to access and use the Service are personal to Customer, and Customer shall be responsible for the interaction with any instance of the Service made available to Customer, including but not limited to the management of all Customer Data stored by or accessed through the Service.
  - i) Customer Data. As between Customer and Ruckus, Customer retains sole ownership in the Customer Data. Any functionality in the Service that allows for the collection, storage, access or use of Customer Data is provided solely for Customer's benefit. Neither Ruckus nor any third party is authorized by Ruckus to access Customer Data, unless authorized by Customer or in connection with the provision or operation of the Service by Ruckus. However, Ruckus and such third party service providers will comply with any lawful process served upon them. Customer hereby grants to Ruckus a limited, non-exclusive, non-transferable, royalty-free license to reproduce, translate, encode and use Customer Data for the purpose of providing and improving the Services and to fulfill Ruckus' obligations under this agreement. Customer is solely responsible for and represents and warrants that it has provided all notices and obtained all consents necessary to permit Ruckus to lawfully collect, store, access and use Customer Data in accordance with the terms herein.
  - ii) Security Breaches. Ruckus believes strongly in providing a secure Service and takes reasonable steps in light of industry practices to help secure the Service and any Customer Data stored on the Service from unauthorized access. However, despite these steps, no method of security is 100% secure, and Customer acknowledges that unauthorized access may occur. Ruckus will promptly communicate to Customer any unauthorized access to Customer Data, of which Ruckus is actually aware, as soon as reasonably practical upon Ruckus's confirmation of the access. As the owner of the Customer Data, Customer shall be solely responsible for any

further communication or announcement regarding any unauthorized access to Customer Data to any individuals or other entities to which the Customer Data pertains or relates in compliance with all applicable laws.

- f) **Restrictions.** Customer will not, and will not permit any third party to (a) modify, copy, or otherwise reproduce the Service in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the code used in the Service; (c) provide, lease or lend the Service to any third party except as expressly authorized hereunder; (d) remove any proprietary notices or labels displayed on the Service; (e) modify or create a derivative work of any part of the Service; (f) use the Service for any unlawful purpose; (g) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; (h) attempt to gain unauthorized access to or breach the security mechanisms of the Service or its related systems or networks; (i) permit direct or indirect access to or use of any Service in a way that circumvents the Scope of Use; (j) access any Service or Content in order to build a competitive product or service or (k) disclose the results of any benchmarking of the Service (whether or not the results were obtained with assistance from Ruckus) to any third party. The Service is not designed, intended, authorized or warranted to be suitable for use in connection with any high risk, mission critical or strict liability activity (including, without limitation, air or space travel, aircraft navigation systems, aircraft communication systems, air traffic control, weapons systems, operation of nuclear facilities and other power plants, military or space equipment requiring radiation hardened components, life support applications, devices or systems or other medical operations, and Enhanced 911 or the E911 emergency calling system). Any such use by Customer is solely at Customer's risk. TO THE MAXIMUM EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY RUCKUS FROM ANY LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER DATA, OR CUSTOMER'S USE OF THE SERVICE IN CONTRAVENTION OF THE TERMS OF THIS AGREEMENT.
- g) **Proprietary Rights.** As between Ruckus and Customer, Ruckus, and its suppliers, own all rights, title and interests in and to the Service and Documentation, including all improvements to the foregoing. All rights not expressly granted to Customer are reserved by Ruckus.

### 3) Fees & Payment

- a) **Fees for Direct Ruckus and Ruckus Channel Partner Purchases.** In the event that Customer is purchasing the Service licenses from a Ruckus Channel Partner, then the payment terms shall be exclusively as defined between such Ruckus Channel Partner and Customer. In the event that Customer is purchasing access to the Service directly from Ruckus, then Customer shall pay the fees stated in the Order within thirty (30) days of the date of the applicable Ruckus invoice. All payment obligations, including for the length of a Service Term or volume based fees relating to Scope of Use, are non-cancelable and nonrefundable. Customer acknowledges that a failure to pay the applicable fees (either to Ruckus directly or to a Ruckus Channel Partner) may result in Ruckus suspending Customer's access to the Service, without prejudicing the rights of any party for remedies of a breach of contractual obligations. Delinquent invoices are also subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. All fees owed by Customer in connection with this agreement are exclusive of, and Customer shall pay, all sales, use, excise and other taxes that may be levied upon Customer in connection with this agreement, except for employment taxes and taxes based on Ruckus' net income.

- 4) **Support and Services.** Technical support services during the Service Term are included in the subscription fees for the Service (as set forth in an Order) and shall be provided in accordance with the Technical Support Information Guide made available through the Service Portal. Any additional services, including consulting or training, shall be provided on an as-quoted basis and subject to a separate Order.

### 5) Term & Termination

- a) **Term.** This agreement commences as of the date the parties execute the initial Order and continues until the end of the Evaluation Term or Service Term as applicable, unless otherwise terminated earlier as provided for in this agreement. Any Service Term renewal shall be subject to the pricing in effect at the time of renewal.
- b) **Termination for Cause.** Either party may terminate this agreement and any licenses granted hereunder (a) for cause upon thirty (30) days written notice to the other party of a material breach of this agreement if such breach remains uncured at the expiration of such period; (b) either party ceases to do business as an operating concern; or (c) Customer is finally adjudged as financially insolvent, makes an assignment for the benefit of creditors, or files for bankruptcy which is not dismissed within sixty (60) days following the filing.
- c) **Effect of Termination.** Termination will not relieve Customer of the obligation to pay any fees due or payable to Ruckus (or a Ruckus Channel Partner, as applicable) prior to the effective date of termination, including any other fees or payments that Customer has committed to under this agreement. Upon termination of this agreement, all rights and licenses granted by Ruckus hereunder shall immediately terminate. The provisions of this agreement that by their nature extend beyond the expiration or other termination of this agreement will survive and remain in effect until all obligations are satisfied. Ruckus will make a file of the Customer Data (as it exists on the effective date of termination) available within 30 days of termination if Customer so requests in writing at the time of termination; provided, that Customer acknowledges Ruckus has no obligation to retain any Customer Data more than 30 days beyond termination, and may delete such Customer Data thereafter.

### 6) Warranties

- a) **Warranty.** During the first ninety (90) days of the initial Service Term, Ruckus warrants that the Service when used in accordance with the Documentation, will operate in all material respects substantially as set forth in the Documentation. If Customer notifies Ruckus of any breach of the foregoing warranty, Ruckus' sole obligation and Customer's exclusive remedy shall be for Ruckus to, at its option, (a) provide an error correction or update to the Service to remedy the failure; or (b) terminate the applicable Service license and provide a prorated refund of fees paid by Customer for the Service. This warranty and the remedies offered are applicable only if: (i) the failure is reasonably reproducible by Ruckus; (ii) Customer reports the failure with reasonable specificity in writing within thirty (30) days from its occurrence; and (iii) Customer provides Ruckus with reasonable assistance in the diagnosis and remedy of the failure.
- b) **DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 4 AND 6(a), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND RUCKUS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. RUCKUS DOES NOT WARRANT THAT THE SERVICE MEETS CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SERVICE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THESE WARRANTIES GIVE CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.**

- 7) **Intellectual Property Infringement.** Ruckus agrees to defend Customer and pay any damages finally awarded or, at its option settle and pay any settlement agreed to by Ruckus, with respect to any claim made or brought against Customer by an entity unaffiliated with Customer alleging that Customer's use of the unaltered Service infringes or misappropriates any U.S. patent, copyright or trademark of such entity, provided that Customer (a) provides prompt written notice of such claim to Ruckus, (b) grants Ruckus the sole right to control and defend such claim, and (c) provides Ruckus, at Ruckus's expense, with all information and assistance reasonably requested by Ruckus in the defense of such claim. In the event of such a claim or threatened claim, Ruckus may, at its option, (i) provide Customer with revised Service that is substantially equivalent to the accused Service in functionality in material respects but is noninfringing, (ii) obtain the right for Customer to continue using the Service, or (iii) terminate this agreement upon 30 days' notice and refund any license fees previously paid for the Service that is the subject of a claim on a pro-rata basis for the remaining portion of the Service Term. Notwithstanding the foregoing, Ruckus shall have no obligation or liability with respect to (a) use of the Service in combination with any materials not provided by Ruckus, if the infringement would be avoided by use of the Service without such combination, (b) any alleged patent infringement related to the implementation of a standard; (c) any modification of the Service by any party other than Ruckus, (d) any open source code contained within the Service, (e) damages based on the value of product, services or business methods not provided by or performed by Ruckus, (f) any use of the Service outside the scope of the license or (g) any use of the Service after Ruckus has terminated access to the Service. THIS PARAGRAPH REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF RUCKUS AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.
- 8) **Limitation of Liability.** RUCKUS AND ITS SUPPLIERS SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS, BUSINESS, DATA OR REVENUES, OR THE COSTS OF REPLACEMENT OR SUBSTITUTE PRODUCTS, ARISING FROM THE PURCHASE, USE OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF RUCKUS HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. RUCKUS' TOTAL AGGREGATE LIABILITY FOR DAMAGES OF ANY NATURE, REGARDLESS OF THE FORM OF ACTION, IS LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY THE CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT(S) GIVING RISE TO LIABILITY HEREUNDER.
- 9) **General Provisions**
- a) **Governing Law; Venue.** The laws of the State of California, excluding its conflict of laws provisions, will govern the validity, construction and interpretation of this agreement. The parties consent to the exclusive jurisdiction and venue of the state courts located in Santa Clara County, California, and the federal courts for the Northern District of California, for any action arising hereunder.
- b) **Export Requirements.** Customer agrees that the Services and Documentation are subject to the Export Administration Regulations of the United States. Customer agrees not to export, re-export or transfer, directly or indirectly, the Service, Documentation or any technical data acquired from Ruckus, or any products utilizing such data, in violation of the United States export laws, regulations and controls.
- c) **Force Majeure.** Notwithstanding any provision contained in this agreement, neither party will be liable to the other to the extent the fulfillment or performance of any terms or provisions of this agreement are delayed or prevented by revolution or other civil disorders; wars; strikes; labor disputes; electrical supply or availability failure; fires; floods; acts of God; government action; or, without limiting the foregoing, any other causes not within its control and which, by the exercise of reasonable diligence, it is unable to prevent. This section will not apply to the payment of any sums due under the agreement by either party to the other.
- d) **Miscellaneous.** Notices will be deemed given on the day actually received by the party to whom the notice is addressed. The relationship of Ruckus and Customer is that of independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer-employee or agents of each other. Headings in this agreement are for reference purposes only and will not affect the interpretation or meaning of this agreement. If any provision of this agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of this agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under this agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights. This agreement may not be assigned by Customer by operation of law or otherwise, without the prior written consent of Ruckus, which consent will not be unreasonably withheld. This agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. The parties agree that electronic signatures are valid signatures for enforcement of this agreement. This agreement constitutes the entire agreement between Ruckus and Customer with respect to the subject matter hereof. This agreement supersedes all prior negotiations, agreements and undertakings between the parties with respect to such subject matter. No modification of this agreement will be effective unless contained in writing and signed by an authorized representative of each party. Notwithstanding applicable law, electronic communications will not be deemed signed writings. Any additional orders for Services hereunder shall be governed by the terms of this agreement. No term or condition contained in Customer's purchase order or similar document will apply unless specifically agreed to by Ruckus in writing, even if Ruckus has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by Ruckus. In the event of a conflict between this agreement and any other applicable agreement, this agreement shall govern, unless otherwise expressly stated.

**RUCKUS WIRELESS, INC.**  
Cloudpath On-Premise  
Software License

This agreement sets forth the terms and conditions under which Ruckus Wireless, Inc. (“**Ruckus**”) is willing to grant the entity identified on the Order (“**Licensee**”) access to the Software. In consideration of the covenants and conditions set forth herein, each of Ruckus and the Licensee agree as follows:

PLEASE READ THIS SOFTWARE LICENSE CAREFULLY. IF A USER ACCEPTS THIS LICENSE, OR DOWNLOADS, USES OR INSTALLS THE SOFTWARE, AS AN EMPLOYEE OF, OR AS AN AGENT OR CONTRACTOR FOR THE BENEFIT OF, A COMPANY, THAT COMPANY SHALL BE DEEMED THE LICENSEE AND THE USER REPRESENTS THAT IT HAS THE POWER AND AUTHORITY TO ACCEPT THIS AGREEMENT ON BEHALF OF THE COMPANY. BY DOWNLOADING, INSTALLING AND/OR USING THE SOFTWARE, LICENSEE ACKNOWLEDGES THAT IT HAS READ THIS LICENSE AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. IF LICENSEE DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE, RUCKUS IS UNWILLING TO LICENSE THE SOFTWARE. IN THAT EVENT, LICENSEE MAY NOT DOWNLOAD, USE OR INSTALL THE SOFTWARE AND SHALL BE GIVEN A FULL REFUND OF ANY LICENSE FEES ACTUALLY PAID FOR THE SOFTWARE.

**1) Definitions**

“**Licensee Data**” means all data collected by the Software (other than authentication keys and related data used by Ruckus to authorize Licensee’s use of the Software).

“**Documentation**” means the published technical manuals, including any updates thereto, relating to the use of the Software made generally available by Ruckus.

“**Evaluation Term**” means the limited period of time following Licensee’s initial download of the Software during which Licensee is permitted to use the Software without placing an Order; provided, that the Evaluation Term is subject to early termination as provided in this agreement.

“**Software**” means a copy of a machine executable version of a Ruckus software product that Ruckus makes available to Licensee for download onto equipment owned or controlled by Licensee, and any error corrections, updates or upgrades of such software product that Ruckus makes available to Licensee.

“**Order**” means one or more ordering documents or transactional records in the form required by Ruckus from Licensee (or a Ruckus Channel Partner for the benefit of Licensee) to activate the Software or increase the Authorized Device Limit.

“**Ruckus Channel Partner**” means an entity authorized by Ruckus to sell licenses to Software.

“**Service Term**” means the period of time for which access to the Software is authorized, as set forth in the applicable Order.

**2) Software**

a) Trial Evaluation and License. Upon Licensee’s request for a trial period to evaluate the Software, Ruckus may provide Licensee with instructions to download and use the Software. Such use of the Software shall be solely for evaluation and demonstration purposes and contingent upon Licensee’s acceptance of the terms of this Agreement. Upon Licensee initially accessing the Software, the Evaluation Term shall commence. If an Order has not yet been placed by or for Licensee, Ruckus will make the Software available to Licensee solely for download and evaluation upon Licensee’s acceptance of the terms of this agreement. Upon download, the Evaluation Term shall commence. Subject to Licensee’s compliance with the terms of the agreement and any applicable Documentation, Ruckus hereby grants to Licensee during the Evaluation Term a personal, limited, non-exclusive, non-transferable, non-sublicenseable right to download and use the Software for its internal non-commercial evaluation purposes only; provided, that upon termination or expiration of the Evaluation Term (whichever occurs sooner), such license shall automatically terminate. Licensee understands and accepts that during the Evaluation Term, the Software may have limited functionality as well as features that are restricted.

b) Software Activation and License. At any time during, upon or following expiration of the Evaluation Term, Licensee may submit an Order to activate the Software and initiate a Service Term; provided, that if Ruckus has terminated the Evaluation Term or this agreement for cause then Licensee shall not be eligible to submit an Order or otherwise continue using the Software. During the Service Term, subject to Licensee’s compliance with the terms and conditions of this agreement, including the payment of any applicable subscription license fees, Ruckus grants Licensee a non-exclusive, non-transferable, non-sublicenseable right to access and use the Software in accordance with the Documentation and any limitations or restrictions set forth in the applicable Order or trial request. Only the employees, contractors and agents of Licensee acting on Licensee’s behalf may exercise the licenses granted to Licensee in this paragraph. Licensee is solely responsible for acquiring, separately from this agreement, any wireless client endpoints or other devices for use in conjunction with its use of the Software.

c) Scope of Use. Licenses to the Software may limit: (a) the number of users; or (b) the number of wireless client end-points or devices, that may be supported by the Software depending on the part number requested in the Order (the “**Scope of Use**”). When so licensed, each part number and/or the description of the part number stated in the Order will specify the applicable Scope of Use. At no time may Licensee use the Software in a manner that could, directly or indirectly, through one or more controllers, gateways or other devices, manage, collect data from, or otherwise interact with more users or wireless client end-points than authorized by the Scope of Use. If Licensee wishes to exceed the Scope of Use, Licensee may place an Order to increase the Scope of Use. Upon written acceptance by Ruckus or its Ruckus Channel Partner, Licensee may then use the Software in accordance with the new Scope of Use.

d) Additional Instances. Licensee may copy the Software to create additional instances on additional physical or virtual servers and all such copies shall be subject to the terms of paragraph (a) of this section. Licensee may submit an Order to activate such instances of the Software pursuant to paragraph (b) of this section.

e) Software Operations. Licenses to access and use the Software are personal to Licensee, and Licensee shall be responsible for the interaction with any instance of the Software made available to Licensee, including but not limited to the management of all Licensee Data stored by or accessed through the Software. Neither Ruckus nor any third party is authorized by Ruckus to access Licensee’s operation of the Software, including Licensee Data, unless authorized by Licensee. However, Ruckus and such third party service providers will comply with any lawful process served upon them.

i) Licensee Data. As between Licensee and Ruckus, Licensee retains sole ownership in the Licensee Data. Any functionality in the Software that allows for the collection, storage, access or use of Licensee Data is provided solely for Licensee’s benefit. Licensee hereby grants to Ruckus a limited, non-exclusive, non-transferable, royalty-free license to reproduce, translate, encode and use Licensee Data for the purpose of providing and improving the Software and to fulfill Ruckus’ obligations under this agreement. Licensee is solely

responsible for and represents and warrants that it has provided all notices and obtained all consents necessary to permit Ruckus to lawfully collect, store, access and use Licensee Data in accordance with the terms herein.

ii) **Security Breaches.** Ruckus takes reasonable steps in light of industry practices to help secure the Software and any Licensee Data from unauthorized access. However, despite these steps, no method of security is 100% secure, and Licensee acknowledges that unauthorized access may occur. Ruckus will promptly communicate to Licensee any unauthorized access to Licensee Data, of which Ruckus is actually aware, as soon as reasonably practical upon Ruckus's confirmation of the access. As the owner of the Licensee Data, Licensee shall be solely responsible for any further communication or announcement regarding any unauthorized access to Licensee Data to any individuals or other entities to which the Licensee Data pertains or relates in compliance with all applicable laws.

f) **Restrictions.** Licensee will not, and will not permit any third party to (a) modify, copy, or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the code used in the Software; (c) provide, lease or lend the Software to any third party except as expressly authorized hereunder; (d) remove any proprietary notices or labels displayed on the Software; (e) modify or create a derivative work of any part of the Software; (f) use the Software for any unlawful purpose; (g) interfere with or disrupt the integrity or performance of the Software or third-party data contained therein, (h) attempt to gain unauthorized access to or breach the security mechanisms of the Software or its related systems or networks, (i) permit direct or indirect access to or use of any Software in a way that circumvents the Scope of Use or (j) use the Software in order to build a competitive product or service; or (h) disclose the results of any benchmarking of the Software (whether or not the results were obtained with assistance from Ruckus) to any third party. The Software is not to be used in connection with any high risk, mission critical or strict liability activity (including, without limitation, air or space travel, power plant operation, life support or medical operations). Any such use by Licensee is solely at Licensee's risk. TO THE MAXIMUM EXTENT ALLOWED BY LAW, LICENSEE SHALL INDEMNIFY RUCKUS FROM ANY LIABILITY ARISING OUT OF OR RELATED TO LICENSEE'S USE OF THE SOFTWARE IN CONTRAVENTION OF THE SCOPE OF USE OR THE TERMS OF THIS AGREEMENT.

g) **Proprietary Rights.** Ruckus, or its suppliers, owns all rights, title and interests in the Software. No transfer of ownership will occur under this agreement. All rights not expressly granted to Licensee are reserved by Ruckus.

### 3) Fees & Payment

a) **Fees for Direct Ruckus and Ruckus Channel Partner Purchases.** In the event that Licensee is purchasing the Software licenses from a Ruckus Channel Partner, then the payment terms shall be exclusively as defined between such Ruckus Channel Partner and Licensee. In the event that Licensee is purchasing access to the Software directly from Ruckus, then Licensee shall pay the fees stated in the Order within thirty (30) days of the date of the applicable Ruckus invoice. All payment obligations, including for the length of a Service Term or fees relating to Scope of Use, are non-cancelable and nonrefundable. Licensee acknowledges that a failure to pay the applicable fees (either to Ruckus directly or to a Ruckus Channel Partner) may result in Ruckus suspending Licensee's access to the Software, without prejudicing the rights of any party for remedies of a breach of contractual obligations. Delinquent invoices are also subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. All fees owed by Licensee in connection with this agreement are exclusive of, and Licensee shall pay, all sales, use, excise and other taxes that may be levied upon Licensee in connection with this agreement, except for employment taxes and taxes based on Ruckus' net income.

b) **Audit.** Ruckus may audit Licensee's use of the Software upon reasonable notice. If an audit reveals that Licensee has underpaid fees based on the Scope of Use and its use of the Software, Licensee shall be invoiced for such fees. The audit shall be at Ruckus's expense unless fees were underpaid by 5% or more, in which case Licensee shall pay all reasonable expenses associated with the audit. Licensee agrees to retain all relevant business records to justify compliance with this agreement for a period of one (1) year from the date of any expiration or termination.

4) **Support and Services.** Technical support services during the Service Term are included in the license fees for the Software (as set forth in an Order) and shall be provided in accordance with the Technical Support Information Guide made available by Ruckus with the Software. Any additional services, including consulting or training, shall be provided on an as-quoted basis and subject to a separate Order.

### 5) Term & Termination

a) **Term.** This agreement commences as of the date the parties execute the initial Order and continues until the end of the Evaluation Term or Service Term as applicable, unless otherwise terminated earlier as provided for in this agreement. Any Service Term renewal shall be subject to the pricing in effect at the time of renewal.

b) **Termination for Cause.** Either party may terminate this agreement and any licenses granted hereunder (a) for cause upon thirty (30) days written notice to the other party of a material breach of this agreement if such breach remains uncured at the expiration of such period or (b) either party ceases to do business as an operating concern or (c) Licensee becomes financially insolvent, makes an assignment for the benefit of creditors, or files for bankruptcy which is not dismissed within sixty (60) days following the filing.

c) **Effect of Termination.** Termination will not relieve Licensee of the obligation to pay any fees due or payable to Ruckus (or a Ruckus Channel Partner, as applicable) prior to the effective date of termination, including any other fees or payments that Licensee has committed to under this agreement. All rights granted hereunder shall immediately terminate and Licensee shall return or destroy all Software in its possession no less than thirty days from the termination date. The provisions of this agreement that by their nature extend beyond the expiration or other termination of this agreement will survive and remain in effect until all obligations are satisfied.

### 6) Warranties

a) **Warranty.** During the ninety (90) day period following Licensee's activation of the Software, Ruckus warrants that when the Software is used in accordance with the Documentation and in unmodified form, the Software will operate in all material respects substantially as set forth in the Documentation. If the Software fails to so operate, Ruckus's only obligation and Licensee's exclusive remedy shall be for Ruckus to, at its option, (a) provide an error correction or update to the Software to remedy the failure; or (b) terminate the applicable Software license and provide a refund of fees paid by Licensee for the Software. This warranty and the remedies offered are applicable only if: (i) the failure is reasonably reproducible by Ruckus; (ii) Licensee reports the failure with reasonable specificity in writing within thirty (30) days from its occurrence; and (iii) Licensee provides Ruckus with reasonable assistance in the diagnosis and remedy of the failure.

b) **DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 4 AND 6(a), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE AND DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE",**

**AND RUCKUS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. RUCKUS DOES NOT WARRANT THAT THE SERVICE MEETS LICENSEE'S REQUIREMENTS OR THAT USE OF THE SERVICE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS AND LICENSEE MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.**

- 7) **Intellectual Property Infringement.** Ruckus agrees to defend Licensee and pay any damages finally awarded or, at its option settle and pay any settlement agreed to by Ruckus, with respect to any claim made or brought against Licensee by an entity unaffiliated with Licensee alleging that Licensee's use of the unaltered Software infringes or misappropriates any patent, copyright or trademark of such entity, provided that Licensee (a) provides prompt written notice of such claim to Ruckus, (b) grants Ruckus the sole right to control and defend such claim, and (c) provides Ruckus, at Ruckus's expense, with all information and assistance reasonably requested by Ruckus in the defense of such claim. In the event of such a claim or threatened claim, Ruckus may, at its option, (i) provide Licensee with revised Software that is substantially equivalent to the accused Software in functionality in material respects but is noninfringing, (ii) obtain the right for Licensee to continue using the Software, or (iii) terminate this agreement upon 30 days' notice and refund any license fees previously paid for the Software that is the subject of a claim on a pro-rata basis over a five (5) year period. Notwithstanding the foregoing, Ruckus shall have no obligation or liability with respect to (a) use of other than the current version of the Software, if the infringement would be avoided by use of the current version, (b) use of the Software in combination with any materials not provided by Ruckus, if the infringement would be avoided by use of the Software without such combination, (c) any alleged patent infringement related to the implementation of a standard; (d) any modification of the Software by any party other than Ruckus, (e) any open source code contained within the Software, (f) damages based on the value of product, services or business methods not provided by or performed by Ruckus, (g) any use of the Software outside the scope of the license or (h) any use of the Software after Ruckus has terminated the license as set forth above. THIS PARAGRAPH REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF RUCKUS AND THE EXCLUSIVE REMEDY OF LICENSEE FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.
- 8) **Limitation of Liability.** RUCKUS AND ITS SUPPLIERS SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS, DATA OR REVENUES, OR THE COSTS OF REPLACEMENT OR SUBSTITUTE PRODUCTS, ARISING FROM THE PURCHASE, USE OR INABILITY TO USE THE SOFTWARE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF RUCKUS HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. RUCKUS'S TOTAL AGGREGATE LIABILITY FOR DAMAGES OF ANY NATURE, REGARDLESS OF THE FORM OF ACTION, IS LIMITED TO THE PURCHASE PRICE PAID BY THE LICENSEE FOR THE SOFTWARE UPON WHICH LIABILITY IS BASED.
- 9) **General Provisions**
- a) Governing Law; Venue. The laws of the State of California, excluding its conflict of laws provisions, will govern the validity, construction and interpretation of this agreement. The parties consent to the exclusive jurisdiction and venue of the state courts located in Santa Clara County, California, and, if applicable, the federal courts for the Northern District of California, for any action arising hereunder.
- b) Compliance with Laws and Export Requirements. Licensee must not collect, obtain or store any information in the course of its evaluation or use of the Software except in compliance with all applicable laws. Licensee shall comply with all applicable export control laws in connection with the Software. Specifically, if the Software is being delivered to Licensee outside of the United States, Licensee understands that the commodities, technology or software comprising the Software are exported from the United States in accordance with the Export Administration Regulations. Licensee agrees to export, re-export or import Software only in compliance with applicable export- and import regulations and controls. As such, in accordance with U.S. law, these commodities, technology and software may not be exported or re-exported. Diversion contrary to U.S. law is prohibited.
- c) Miscellaneous. Notices will be deemed given on the day actually received by the party to whom the notice is addressed. The relationship of Ruckus and Licensee is that of independent contractors. Neither party has any authority to act on behalf of the other party or to bind it, and in no event will the parties be construed to be partners, employer-employee or agents of each other. Headings in this agreement are for reference purposes only and will not affect the interpretation or meaning of this agreement. If any provision of this agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of this agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under this agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights. This agreement may not be assigned by Licensee by operation of law or otherwise, without the prior written consent of Ruckus, which consent will not be unreasonably withheld. This agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which together constitute one and the same agreement. The parties agree that electronic signatures are valid signatures for enforcement of this agreement. This agreement constitutes the entire agreement between Ruckus and Licensee with respect to the subject matter hereof. This agreement supersedes all prior negotiations, agreements and undertakings between the parties with respect to such subject matter. As a matter of clarity, the preceding two sentences do not affect either party's obligations regarding confidential information under any other agreement between the parties. No modification of this agreement will be effective unless contained in writing and signed by an authorized representative of each party. Notwithstanding applicable law, electronic communications will not be deemed signed writings. Any additional orders for licenses hereunder shall be governed by the terms of this agreement. No term or condition contained in Licensee's purchase order or similar document will apply unless specifically agreed to by Ruckus in writing, even if Ruckus has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by Ruckus. In the event of a conflict between this agreement and any other applicable agreement, this agreement shall govern.