

APPENDIX D
RUCKUS WIRELESS, INC.

SCI Software License

DIR-CPO-4401

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1) Definitions

“**Device**” means a single Ruckus access point on Licensee’s network.

“**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.

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“**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.

2) Software

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3) **Fees & Payment**

a) **Fees for Direct Ruckus and Ruckus Channel Partner Purchases.** Fees shall be in accordance with Appendix C, Pricing Index of the DIR Contract, DIR-CPO-4401, in the event that Licensee is purchasing the Software licenses directly from Ruckus, then the fees payable by Licensee to Ruckus are those stated in the Order, and payment terms shall in accordance with Appendix A, Section 8.J of the DIR Contract, DIR-CPO-4401 and exclusively as defined in the separate agreement between Ruckus and Licensee governing the sale and purchase of Ruckus goods and services. In the event that Licensee is purchasing the Software licenses from a Channel Partner, then the payment terms shall be in accordance with Appendix A, Section 8.J of the DIR Contract, DIR-CPO-4401 and as defined between such Ruckus Channel Partner and Licensee. Licensee acknowledges that a failure to pay the applicable fees (either to Ruckus directly or to a Ruckus Channel Partner) may result in a cancellation of the licenses hereunder, without prejudicing the rights of any party for remedies of a breach of contractual obligations.

b) **Audit.** Ruckus may audit Licensee's use of the Software upon reasonable notice. If an undisputed audit reveals that Licensee has underpaid fees based on its use of the Software, Licensee shall be invoiced for such fees. The audit shall be at Ruckus's expense. 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, consulting and training services are not included in license fees and are not provided pursuant to this agreement. This includes the right to receive any information from Ruckus regarding the Software that is not explicitly stated in this agreement, as well as the right to receive or use any error corrections, updates or upgrades to the Software. Support services are available for separate purchase by Licensee in accordance with Ruckus' policies at the time of purchase. Without the purchase of support services, Ruckus is obligated only to provide error corrections or updates during the warranty period (but not upgrades providing additional functionality). Any additional error corrections or updates are provided solely at the discretion of Ruckus.

5) **Term & Termination**

a) **Term.** This agreement commences once Ruckus has made the Software available to Licensee and shall continue until the expiration of the Evaluation Term unless otherwise terminated as provided for in this agreement (whichever occurs sooner). To ensure uninterrupted use of the Software, Licensee must place, or have placed, an Order to activate the Software no less than ten (10) days prior to expiration of the Evaluation Term. If such an Order has been accepted by Ruckus and paid for by Licensee, then this agreement shall continue for initial term of two (2) years with three optional one-year renewals.

b) **Termination for Cause.** Termination shall be in accordance with Appendix A, Section 11.B of the DIR Contract, DIR-CPO-4401.

c) **Effect of Termination.** Subject to record retention laws and policies, 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 the DIR Contract, DIR-CPO-4401 and 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. THESE WARRANTIES ARE RUCKUS'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT WHERE EXPRESSLY PROHIBITED BY LAW. RUCKUS DOES NOT WARRANT THAT THE SOFTWARE MEETS LICENSEE'S REQUIREMENTS OR THAT USE OF THE SOFTWARE WILL BE 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. FOR ANY WARRANTIES THAT MAY NOT BE EXCLUDED UNDER APPLICABLE LAW, IF PERMITTED BY LAW: (A) SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD SPECIFIED FOR THE SOFTWARE; AND (B) THE REMEDY FOR BREACH OF ANY SUCH WARRANTIES IS LIMITED TO REPAIR OR REPLACEMENT OF ANY SOFTWARE FOUND NOT TO COMPLY WITH THEM. 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.** Infringement shall be in accordance with Appendix A, Section 10 of the DIR Contract, DIR-CPO-4401.

8) **Limitation of Liability.** Limitation of Liability shall be in accordance with Appendix A, Section 10.K. of the DIR Contract, DIR-CPO-4401.

9) **General Provisions**

Governing Law; Venue. The laws of the State of Texas, excluding its conflict of laws provisions, will govern the validity, construction and interpretation of the DIR Contract, DIR-CPO-4401 and this agreement. The parties consent to the exclusive venue of the state courts located in Travis County, Texas. Nothing herein shall in any manner waive the sovereign immunity of the State of Texas.

a) **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.

- b) Miscellaneous. Notices shall be in accordance with Appendix A, Section 12.A of the DIR Contract, DIR-CPO-4401. 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 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. Assignment will be in accordance with Appendix A, Section 4.D of the DIR Contract, DIR-CPO-4401. The parties agree that electronic signatures are valid signatures for enforcement of this agreement. The DIR Contract, DIR-CPO-4401 and his agreement constitutes the entire agreement between Ruckus and Licensee with respect to the subject matter hereof. The DIR Contact, DIR-CPO-4401supersedes 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, to the extent allowable under the Texas Public Information Act, 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 DIR Contract, DIR-CPO-4401 and 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, the DIR Contract, DIR-CPO-4401 shall govern.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement effective as of:

Date: _____

Ruckus Wireless, Inc. _____ **Licensee:** _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____