

# Assured Wireless Corporation (“AWC”) End User License Agreement

This Assured Wireless Corporation (“AWC”) End User License Agreement (“EULA”) is between AWC and the user of the AWC equipment (“You” or “Your”) and this EULA covers Your use of the Software and Cloud Services (“AWC Technology”) provided by AWC. This document also incorporates any product specific terms that may apply to the AWC technology You acquire.

**You agree to be bound by the terms of this EULA through Your download, installation, or use of the AWC Technology. If You do not have authority to enter into this EULA or You do not agree with its terms, do not use the AWC Technology.**

## **Section 1. Using AWC Technology**

- 1.1 License and Right to Use.** AWC grants You a non-exclusive, non-transferable (a) license to use the Software; and (b) right to use the Cloud Services, both as acquired from AWC or an approved distributor of AWC, for Your direct benefit during the Usage Term as set forth this EULA (collectively, the “Usage Rights”).
- 1.2 Use by Third Parties.** You may permit third parties to exercise Your rights on Your behalf, provided You are responsible for (a) ensuring that such third party complies with this EULA and (b) any breach of this EULA by such third parties.
- 1.3 Beta and Trial Use.** If AWC grants You Usage Rights in AWC Technology on a trial, evaluation, beta or other free-of-charge basis (“Evaluation Software and Services”), You may only use the Evaluation Software and Services on a temporary basis for the period limited by a license key or specified by AWC in writing. If there is no period identified, such use is limited to 30 days after the Evaluation Software and Services are made available to You. If You fail to stop using and/or return the Evaluation Software and Services or the equipment on which it is authorized for use by the end of the trial period, You may be invoiced for its list price and agree to pay such invoice. AWC, in its sole discretion, may stop providing the Evaluation Software and Services at any time, at which point You will no longer have access to any related data, information, and files. The Evaluation Software and Services may not have been tested through normal quality assurance processes and may contain bugs, errors, or other issues. You agree not to put Evaluation Software and Services into production use. AWC provides Evaluation Software and Services “AS-IS” without support or any express or implied warranty or indemnity for any problems or issues. AWC will not have any liability relating to Your use of the Evaluation Software and Services whatsoever.
- 1.4 Upgrades or Additional Copies of Software.** Updates, upgrades, patches, and modifications may be necessary in order to be able to continue to use the AWC Technology on certain hardware, and You are responsible for their timely installation upon notice from AWC of their availability. Unless otherwise agreed, You may only use upgrades or additional copies of the AWC Technology if You have (a) acquired such rights under a support agreement; or (b) to the extent You have purchased rights to use upgrades or additional copies.
- 1.5 Interoperability of Software.** If required by law and upon Your request, AWC may provide You with the information needed to achieve interoperability between AWC Technology and another independently created program. Such information, if provided will be subject to any terms reasonably required by AWC, and you will treat all such information as confidential.
- 1.6 Subscription Term and Renewal.** The Usage Term shall be the period commencing on the date of your acceptance of the terms of this EULA and continuing until expiration or termination of your trial period or subscription period (including any renewals), during which period You have the right to use the AWC Technology (the “Usage Term”). Any Usage Rights in AWC Technology other than a trial period will be acquired on a subscription basis and will renew for any renewal period indicated on such order unless otherwise agreed. All other Usage Terms will automatically renew annually unless you notify us in writing at least 30 days before the end of Your then current Usage Term of your intent not to renew. All automatic renewals will renew at our then current license rates. If you do not renew or otherwise fail to pay renewal fees when due, Your subscription and Usage Rights shall terminate at the end of the current Usage Term.

## **Section 2. Additional Conditions of Use**

- 2.1 AWC Technology.** Unless expressly agreed by AWC, You may not (a) transfer, sell, sublicense, monetize or make the functionality of any AWC Technology available to any third party; (b) use the software on second hand or refurbished AWC equipment not authorized by AWC, or use software that is licensed for a specific device on a different device; (c) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks; (d) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the AWC Technology; or (e) use AWC content other than as part of Your permitted use of the AWC Technology.
- 2.2 Cloud Services.** You will not intentionally (a) interfere with other customers' access to, or use of, any cloud service, or with its security; (b) facilitate the attack or disruption of the cloud service, including a denial of service attack, unauthorized access, penetration testing, crawling, or distribution of malware (including viruses, trojan horses, worms, time bombs, spyware, adware, and cancelbots); (c) cause an unusual spike or increase in Your use of the cloud service that negatively impacts the use or operation of any AWC Technology; or (d) submit any information that is not contemplated in the applicable documentation.
- 2.3 Evolving AWC Technology.** AWC may: (a) enhance or refine AWC Technology, although in doing so, AWC will not materially reduce the core functionality of such technology, except as contemplated in this Section; and (b) perform scheduled maintenance of the infrastructure and software used to provide a cloud service, during which time You may experience some disruption to that cloud service. Whenever reasonably practicable, AWC will provide You with advance notice of such maintenance. You acknowledge that, from time to time, AWC may need to perform emergency maintenance without providing You advance notice, during which time AWC may temporarily suspend Your access to, and use of, such cloud service.
- AWC may end the life of AWC Technology, including component functionality, for any reason and at any time and will provide written notice on [www.assured-wireless.com](http://www.assured-wireless.com) and will either refund a prorated amount of any prepaid subscription fees or provide a substantially similar AWC Technology. Any partial refund will be calculated from the last date the applicable AWC Technology is available through to the last date of the applicable Usage Term. Such partial refund can be applied towards the future purchase of AWC products.
- 2.4 Protecting Account Access.** You will keep all account information up to date, use reasonable means to protect Your account information, passwords, and other login credentials, and promptly notify AWC of any known or suspected unauthorized use of or access to Your account.
- 2.5 Use with Third-Party Products.** If You use the AWC Technology together with third-party products, such use is at Your risk. You are responsible for complying with any third-party provider terms, including its privacy policy. AWC does not provide support or guarantee ongoing integration support for products that are not a native part of the AWC Technology.
- 2.6 Open Source Software.** Open source software not owned by AWC is subject to separate license terms under the GPL software license terms and are available upon request through [www.assured-wireless.com/support](http://www.assured-wireless.com/support). The applicable open source software licenses will not materially or adversely affect Your ability to exercise usage rights in applicable AWC Technology.

## **Section 3. Fees**

To the extent permitted by law, orders for the AWC Technology are non-cancellable and fees for Your use of AWC Technology are set out in any purchase terms with AWC or an approved provider of AWC Technology or at our then current license renewal rates. If You use AWC Technology beyond Your approved Usage Term, then AWC or its approved provider of AWC Technology may invoice You for such use, and You agree to pay, for such use beyond your approved limits.

## **Section 4. Confidential Information and Use of Data**

- 4.1 Confidentiality.** Recipient will hold in confidence and use no at least reasonable care to avoid disclosure of any Confidential Information to any third party, outside of its employees, affiliates, and contractors who have a need to know (“**Permitted Recipients**”). Recipients: (a) must ensure that its Permitted Recipients are covered under written confidentiality obligations no less restrictive than the Recipient’s obligations under this EULA, and (b) are liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information that:
- 4.2** is known by Recipient without confidentiality requirements; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is developed independently by Recipient. Recipient may disclose Confidential Information under this section if required due to a regulation, law, or court order where Recipient provides prior notice to original discloser, to the extent legally permissible, and at discloser’s expense, agrees to reasonably cooperate with protective actions pursued by the discloser. If reasonably requested, a recipient will either return, delete, or destroy all Confidential Information of a discloser and certify the same.
- 4.3 Data Use and Consent.** AWC will access, process, and use data in connection with Your use of AWC Technology in accordance with applicable privacy and data protection laws. You agree that AWC may collect and use technical data and related information that is gathered periodically to facilitate the provision of software updates, product support, and other services to you (if any) related to the AWC Technology. To the extent Your use of the AWC Technology requires it, You are responsible for providing notice to, and obtaining consents from, all third parties regarding the collection, processing, transfer, and storage of their data through Your use of the AWC Technology.

## **Section 5. Ownership**

Except where agreed in writing, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your content and AWC retains ownership of the AWC Technology. AWC may use any feedback You provide in connection with Your use of the AWC Technology as part of its business operations.

## **Section 6. Indemnification**

- 6.1 Claims.** AWC will defend any third-party claim against You that Your valid use of AWC Technology infringes a third party’s patent, copyright, or registered trademark (the “**IP Claim**”). AWC will indemnify You against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that You: (a) promptly notify AWC in writing of the IP Claim; (b) fully cooperate with AWC in the defense of the IP Claim; and (c) grant AWC the right to exclusively control the defense and settlement of the IP Claim, and any subsequent appeal. AWC will have no obligation to reimburse You for attorney fees and costs incurred prior to AWC’s receipt of notification of the IP Claim. You, at Your own expense, may retain Your own legal representation.
- 6.2 Remedies.** If an IP Claim is made and prevents Your use of the AWC Technology, AWC will either procure for You the right to continue using the AWC Technology or replace or modify the AWC Technology with equivalent or better functionality. Only if AWC determines that these alternatives are not reasonably available, AWC may terminate Your usage rights granted under this EULA upon written notice to You and will refund You a prorated portion of the fee You paid for the AWC Technology for the remainder any warranty or unexpired usage term.
- 6.3 Exclusions.** AWC has no obligation with respect to any IP Claim based on: (a) compliance with any designs, specifications, or requirements You provide or a third party provides on Your behalf; (b) Your modification of any AWC Technology or modification by a third party; (c) the amount or duration of use made of the AWC Technology, revenue You earned, or services You offered; (d) combination, operation, or use of AWC Technology with non-AWC products, software or business processes; (e) Your failure to modify or replace AWC Technology as required by AWC; or (f) any AWC Technology provided on a no charge, beta or evaluation basis.
- 6.4** This Section states AWC’s entire obligation and Your exclusive remedy regarding any IP Claims against You.

## **Section 7. Warranties and Representations**

- 7.1 Performance.** AWC warrants that, during the Usage Term, the AWC Technology substantially complies with its documentation.

**7.2 Malicious Code.** AWC will use commercially reasonable efforts to deliver the AWC Technology free of malicious code.

**7.3 Qualifications.** Sections 7.1 and 7.2 do not apply if the AWC Technology or the equipment on which it is authorized for use: (a) has been altered, except by AWC or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or AWC Warranty; (c) is acquired on a no charge, beta or evaluation basis; or (e) has not been provided by AWC or an approved supplier or reseller of AWC. Upon Your prompt written notification during the warranty period to AWC of AWC's breach of this Section 7, Your sole and exclusive remedy (unless otherwise required by applicable law) is, at AWC's option, either (i) repair or replacement of the applicable AWC Technology or (ii) a refund of the license fees paid or due for the non-conforming AWC software if applicable.

**7.4** Where AWC provides a refund of license fees paid for the AWC Technology, You must return or destroy all copies of the applicable software. **Except as expressly stated in this Section, AWC expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition, or other implied term as to merchantability, fitness for a particular purpose or non-infringement, or that the AWC Technology will be secure, uninterrupted or error free.**

## **Section 8. Liability**

Neither party will be liable for indirect, incidental, exemplary, special, or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EULA is limited to (a) for claims solely arising from software licensed on a perpetual basis, the fees received by AWC for that software; or (b) for all other claims, the fees received by AWC for the applicable AWC Technology and attributable to the 12-month period immediately preceding the first event giving rise to such liability.

These limitations of liability do not apply to liability arising from (a) Your failure to pay all amounts due; or (b) Your breach of Sections 1.1 (License and Right to Use), 2.1 (AWC Technology), 2.2 (Cloud Services) or 11.8 (Export). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

## **Section 9. Termination and Suspension**

**9.1 Suspension.** AWC may immediately suspend Your Usage Rights if You breach Sections 1.1 (License and Right to Use), 2.1 (AWC Technology), 2.2 (Cloud Services) or 11.7 (Export).

**9.2 Termination.** If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. AWC may immediately terminate this EULA if You breach Sections 1.1 (License and Right to Use), 2.1 (AWC Technology), 2.2 (Cloud Services) or 11.7 (Export). Upon termination of the EULA, You must stop using the AWC Technology and destroy any copies of software and Confidential Information within Your control. If this EULA is terminated due to AWC's material breach, AWC will refund You or AWC's approved distributor or reseller, the prorated portion of fees You have prepaid for the usage rights during any warranty period or usage time limited license. Upon AWC's termination of this EULA for Your material breach, You agree to cease using AWC Technology, and you will pay AWC or AWC's designee any unpaid fees through to the end of the then-current Usage Term.

## **Section 10. Verification**

During the Usage Term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the AWC Technology sufficient to verify compliance with this EULA.

## **Section 11. General Provisions**

**11.1 Survival.** Sections 3, 4, 5, 6, 8, 9, 10 and 11 survive termination or expiration of this EULA.

**11.2 Third-Party Beneficiaries.** This EULA does not grant any right or cause of action to any third party.

**11.3 Assignment and Subcontracting.** You may not assign or novate this EULA in whole or in part without AWC's express written consent. AWC may assign or novate this EULA in whole or in part in its sole discretion.

- 11.4 AWC Distributors and Resellers.** If You purchase AWC Technology from an AWC distributor or reseller, the terms of this EULA apply to Your use of that AWC Technology and prevail over any inconsistent provisions in Your agreement with that distributor or reseller.
- 11.5 Modifications to the EULA.** AWC may change this EULA or any of its components by updating this EULA on [www.assured-wireless.com](http://www.assured-wireless.com). Changes to the EULA apply to any rights acquired or renewed after the date of modification.
- 11.6 Compliance with Laws.** Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. AWC may restrict the availability of the AWC Technology in any location or modify or discontinue features to comply with applicable laws and regulations.
- 11.7 Export.** AWC software, cloud Services, products, technology, and services are subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export, or re-export any AWC Technology or any AWC products.
- 11.8 Governing Law and Venue.** Customer agrees that California law governs this EULA (notwithstanding any conflict of laws provision) and the Federal courts located in San Diego County California shall be the exclusive venue and jurisdiction related to any claim arising under this this EULA. In addition, the United Nations Convention on the International Sale of Goods shall not apply.
- 11.9 Notice.** Any notice delivered by AWC to You under this EULA will be delivered via email, regular mail or postings on [www.assured-wireless.com](http://www.assured-wireless.com). Notices to AWC should be sent to the address under the Contact Us or similar section of [www.assured-wireless.com](http://www.assured-wireless.com).
- 11.10 Force Majeure.** Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.
- 11.11 No Waiver.** Failure by either party to enforce any right under this EULA will not waive that or any other rights.
- 11.12 Severability.** If any portion of this EULA is not enforceable, it will not affect any other terms.
- 11.13 Entire agreement.** This EULA is the complete agreement between the parties with respect to the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings, or agreements (whether written or oral).