

Aruba Wireless Networks, Inc.
End-User Software License Agreement (“Agreement”)
IMPORTANT

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA WIRELESS NETWORKS, INC. (“ARUBA”). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA (OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.

1. LICENSE

Subject to your full compliance with all the terms and restrictions set forth in this agreement (“Agreement”), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the software programs (“Programs”) delivered to you solely in connection with the use of Aruba’s hardware products.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs. The Programs in source code form remain a confidential trade secret of Aruba and its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, know-how, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. The Programs may be used solely in conjunction with Aruba’s hardware products and may be copied solely for installation and back-up purposes in support of your use of such hardware products. You may not modify the Programs in any manner without the prior written approval of Aruba. You may physically transfer the Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations.

B. You shall not (and you shall not permit others to), directly or indirectly, modify, translate, decompile, disassemble, or reverse engineer the Programs (except to the extent applicable laws specifically prohibit such restriction) or any copy, in whole or in part, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Programs; copy (except for the purposes set forth above), rent, lease, distribute, or otherwise transfer rights to the Programs; or remove any proprietary notices or labels on the Programs.

C. You shall not disclose any Proprietary Information, including any information relating to the performance or operation of the Programs (including any benchmarking or other testing results) or to any third party without the express prior written consent of Aruba.

4. LIMITED WARRANTY; WARRANTY DISCLAIMER

Aruba warrants to you (and only you) that any media on which the Programs are recorded will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date the Programs are delivered to you. If a defect in any such media should occur during this 90-day period, the media may be returned to Aruba (or if you received such Programs from a reseller, to such reseller) and Aruba or the reseller, as applicable, will replace the media without charge to you. Aruba shall have no responsibility to replace media if the failure of media results from accident, abuse or misuse of the media.

ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT FOR THE EXPRESS WARRANTY ABOVE, THE PROGRAMS ARE PROVIDED TO YOU WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. LIMITATION OF LIABILITY

YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TERM

This Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically if you fail to comply with any term or condition of this Agreement, including any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.

7. U.S. GOVERNMENT RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to “restricted rights” as that term is defined in Defense Federal Acquisition Regulations (“DFAR”) in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered “restricted computer software” and the Government’s rights in the Programs are set forth in the Federal Acquisition Regulations (“FAR”) in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government. You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if made by non-preprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

Except as provided below, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.