

IXVERIWAVE WAVEAGENT SDK END USER LICENSE AGREEMENT

THIS IXVERIWAVE WAVEAGENT SDK END USER LICENSE AGREEMENT (this “**Agreement**”) is a legal agreement between you (a business entity and not an individual) (“**Licensee**”) and Ixia for certain Ixia products defined below. By selecting the “I Accept” option, you are binding Licensee to the terms and conditions of this Agreement

If Licensee does not agree to the terms of this Agreement, Licensee may not use the WaveAgent Product or WaveAgent SDK in any way.

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- (a) “**Authorized Third Party DUT**” shall mean a third party WiFi device on which Licensee installs the Ported Wave Agent Product in accordance with the limitations set forth in this Agreement, solely for non-commercial testing purposes.
- (b) “**Licensee DUT**” shall mean Licensee’s WiFi device.
- (c) “**Licensee Site**” shall mean Licensee’s office located at the address specified in Exhibit A attached hereto.
- (d) “**Ported WaveAgent Product**” shall mean the WaveAgent Product as ported by Licensee for use on the Licensee DUT pursuant to the terms of this Agreement.
- (e) “**WaveAgent Product**” shall mean Ixia’s IxVeriWave WaveAgent software application, which is a WaveTest Product that is loaded onto a WiFi device and used in conjunction with other WaveTest Products to test and measure the performance of that WiFi device.
- (f) “**WaveAgent SDK**” shall mean the source code for the WaveAgent Product and associated make files for compiling that code and a written porting test plan.
- (g) “**WaveTest Products**” shall mean Ixia’s hardware and software products that are branded as “IxVeriWave” products and that are used to test WiFi devices and wireless local area networks.

2. License Grant; Restrictions.

- 2.1 Subject to all of the terms and conditions in this Agreement, Ixia hereby grants to Licensee a limited, personal, non-exclusive, non-transferable, royalty-free, revocable license to: (a) internally use the WaveAgent SDK at the Licensee Site for the sole purpose of porting the WaveAgent Product to the operating system used by the Licensee DUT, so as to create the Ported WaveAgent Product; and (b) install and use copies of the Ported WaveAgent Product, in binary code form only, on no more than 100 Licensee and/or Authorized Third Party DUTs for the sole purpose of testing the performance of those DUTs.
- 2.2 Any and all rights not expressly granted to Licensee in Section 3.1 above are hereby reserved by Ixia and its licensors. Without limiting the foregoing, Licensee shall not (a) distribute, sell, rent, lease, license, sublicense, assign, or otherwise transfer to any third party any portion of the WaveAgent SDK or the Ported WaveAgent Product; (b) use any portion of the WaveAgent SDK or the Ported WaveAgent Product with any network test or measurement products or services other than the WaveTest Products; (c) use, or allow any other person or entity to use, the Ported WaveAgent Product at any location other than the Licensee Site; (d) remove or alter any proprietary markings, notices, or legends (including but not limited to any trademarks or copyright notices) posted on or in any portion of the WaveAgent SDK; or (g) except to the limited extent expressly permitted in Section 3.1 above,

create or allow anyone else to create any derivative works of any portion of the WaveAgent SDK. Licensee shall only make the minimum number of copies of the WaveAgent SDK and the Ported WaveAgent Product that are reasonably necessary to facilitate the porting and testing expressly permitted in Section 3.1 above, and each such copy must retain any and all proprietary markings, notices, and legends (including but not limited to all trademarks and copyright notices) contained in the original.

3. Ownership. As between Ixia and Licensee, Ixia shall own all rights, title, and interest in and to the WaveAgent SDK, the WaveAgent Product, and all patent rights, copyrights, trademark rights, trade secret rights, and other intellectual and industrial property rights (collectively, “**Intellectual Property Rights**”) contained in or related to the WaveAgent SDK or the WaveAgent Product. Additionally, Ixia shall be the sole and exclusive owner of (a) any derivative works of the WaveAgent SDK and/or the WaveAgent Product created by Licensee (collectively, “**Derivative Works**”), and (b) any feedback or comments concerning, or any suggested modifications or improvements to, the WaveAgent SDK or the WaveAgent Product that Licensee provides to Ixia (collectively, “**Feedback**”). Licensee hereby irrevocably transfers and assigns to Ixia all of Licensee’s rights, title, and interest (including but not limited to all Intellectual Property Rights) in and to the Derivative Works and the Feedback. At Ixia’s request, Licensee will execute such documents and take such further actions as Ixia may reasonably request to assist Ixia to acquire, perfect, protect, and/or maintain Ixia’s rights in or to the Derivative Works or the Feedback. Licensee represents and warrants that neither the Derivative Works nor the Feedback will infringe upon or misappropriate any Intellectual Property Rights.

4. Confidentiality.

4.1 As used herein, the term “**Confidential Information**” shall mean the WaveAgent SDK, the Ported WaveAgent Product, the Feedback, and any other materials or information that Ixia provides to Licensee in connection herewith that is designated as “confidential” by Ixia or that a reasonable person would understand to be confidential. The Confidential Information constitutes Ixia’s confidential and proprietary information. Licensee shall hold the Confidential Information in strict confidence and shall not use the Confidential Information for any purpose other than for the exercise of Licensee’s rights and performance of Licensee’s duties hereunder. Licensee shall use the same or greater degree of care in safeguarding the Confidential Information as it uses for its own confidential information of like importance, but no less than reasonable care. Licensee shall take all reasonable steps to ensure that (a) no unauthorized person has access to the Confidential Information, and (b) no unauthorized copies of any portion of the Confidential Information are made. Upon discovery of any misuse or unauthorized disclosure of any Confidential Information, Licensee shall immediately notify Ixia and shall act to prevent any further misuse or unauthorized disclosure.

4.2 Licensee may only disclose the Confidential Information (or any portion thereof) to those Licensee employees who: (a) have a need to access such Confidential Information solely in the exercise of Licensee’s rights in Section 3.1 above; (b) have been advised of Licensee’s obligations in this Agreement; and (c) have entered into a written agreement with Licensee containing confidentiality obligations and usage restrictions that cover the Confidential Information and that are substantially similar to those contained in this Agreement. Licensee shall be liable under this Agreement for any unauthorized use or disclosure of any portion of the Confidential Information by any such individuals.

4.3 Licensee shall obtain Ixia’s written consent prior to any publication, presentation, public announcement, or press release concerning the existence of, or terms or conditions contained in, this Agreement (which consent may be withheld at Ixia’s sole discretion).

5. No Support; No Updates. Ixia has no obligation to provide Licensee with any support in connection with Licensee's use of the WaveAgent SDK or the Ported WaveAgent Product. Licensee acknowledges and agrees that Ixia may modify the WaveAgent SDK at any time, and that Ixia has no obligation to provide any such modified versions to Licensee (regardless of whether any such modifications are attributable to Feedback provided by Licensee).
6. No Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL PORTIONS OF THE WAVEAGENT SDK ARE PROVIDED TO LICENSEE "AS IS," AND IXIA AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE WAVEAGENT SDK AND/OR THE USE THEREOF (INCLUDING, WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT).
7. Damages Waiver. UNDER NO CIRCUMSTANCES WILL IXIA OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT, THE WAVEAGENT SDK, OR LICENSEE'S USE OF THE WAVEAGENT SDK, WHETHER OR NOT IXIA HAS BEEN ADVISED OF, OR SHOULD HAVE KNOWN ABOUT, THE POSSIBILITY OF SUCH DAMAGES.
8. Indemnification. Licensee will indemnify and hold harmless Ixia and its officers, directors, employees, and agents from and against any and all losses, costs, damages, and expenses (including but not limited to reasonable attorneys' fees and court costs) attributable to any claim arising out of or relating to (a) Licensee's use of the WaveAgent SDK; (b) any Licensee product or service; or (c) any breach by Licensee of any of the representations, warranties, terms, or conditions contained in this Agreement.
9. Term and Termination.
 - 9.1 The term of this Agreement shall continue until terminated as provided herein.
 - 11.2 This Agreement may be terminated by Ixia upon written notice if Licensee breaches any provision of this Agreement and fails to cure such breach within five (5) days after receipt of a written notice identifying such breach. Additionally, Ixia may terminate this Agreement immediately upon written notice if Licensee is insolvent, adjudged bankrupt, is unable to pay its debts when due, ceases to operate as a going concern, makes an assignment for the benefit of creditors, or is the subject of a bankruptcy proceeding, whether voluntary or involuntary, that is not dismissed within sixty (60) days.
 - 11.3 Upon any expiration or termination of this Agreement, all licenses granted to Licensee in Section 3.1 shall terminate immediately and Licensee must immediately cease using the Confidential Information and return all copies thereof to Ixia.
 - 11.4 The rights and obligations of the parties contained in Sections 4 through (and including) 18, shall survive any expiration or termination of this Agreement and continue in perpetuity.
10. Assignment. Licensee may not assign this Agreement in whole or in part to any third party without the prior written consent of Ixia (which consent may be withheld at Ixia's sole discretion). A change of control or reorganization of Licensee pursuant to a merger or a sale of assets or stock shall be deemed to be an assignment under this Agreement. Ixia shall have the right to assign this Agreement in whole or in part without the consent of Licensee. This Agreement shall terminate immediately upon the occurrence of any prohibited assignment.

11. Export Controls. Licensee hereby acknowledges that the materials and information provided by Ixia hereunder are subject to export or import controls under the laws and regulations of the United States (U.S.), and may be subject to export or import controls in other jurisdictions. Licensee shall comply with such laws and regulations, and agrees not to knowingly export, re-export, import or re-import or transfer any such materials or information except in compliance with the terms and conditions of this Agreement and without first obtaining all required U.S. and other applicable government authorizations or licenses.
12. Waiver. No failure by either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of such rights, and no waiver of a breach in a particular situation shall be held to be a waiver of any other or subsequent breach.
13. Severability. If any provision of this Agreement is found invalid or unenforceable, that provision shall be enforced to the maximum extent possible and the other provisions of this Agreement shall remain in force.
14. Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflicts of laws rules and principles. The parties hereby specifically disclaim the UN Convention on Contracts for the International Sale of Goods. With respect to any litigation arising from, relating to, or connected with this Agreement, each party irrevocably (a) submits to the exclusive jurisdiction of any state or federal court located in Los Angeles County, California, and (b) waives, to the fullest extent permitted by law, the defenses of lack of personal jurisdiction, inconvenient forum, and improper venue.
15. Entire Agreement. This Agreement, including but not limited to all exhibits attached hereto, constitutes the entire and exclusive agreement of the parties regarding its subject matter and supersedes any and all prior or contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified or any rights under it waived by a written document executed by both parties.
16. Miscellaneous. Licensee should print and save a copy of this Agreement for Licensee's records. Any questions about this Agreement should be directed to Ixia at 26601 W. Agoura Road, Calabasas, CA 91302, or support@ixiacom.com.