

## Terms and Conditions of Use

Last Updated: October 14, 2016

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RCL and ESF are often referred to as “we,” “our” or “us” in these terms and conditions. “You” refers to you personally (*i.e.*, the individual who has accepted these terms and conditions), and/or the organization, company or legal entity on whose behalf you are acting and have the legal authority to bind.

RCL may provide products and services when you visit or shop on the RCL or ESF website, purchase, use or re-sell RCL or ESF products or services, ask for maintenance or support, or use applications, software, hardware, or other services provided by RCL or ESF in connection with any of the foregoing (collectively referred to herein as the “Products/Services”). RCL provides the Products/Services subject to the following conditions.

**When you access this site, or by obtaining, ordering or using Products/Services, you acknowledge that you have read and agree to abide by the terms and conditions described below.** If you do not agree to the terms and conditions discussed herein, you should exit this site now. These terms and conditions supersede any other agreement between us pertaining to the subject matter set forth herein. If you are a reseller of RCL or ESF Products/Services, and there is a conflict between the reseller agreement and these terms and conditions, the reseller agreement shall govern.

### **PROOF OF PURCHASE**

Your invoice is your proof of purchase from RCL.

### **ORDER AND SHIPMENT**

RCL is not bound by any terms and conditions set forth by customer unless previously agreed to in writing by an officer or director of RCL. Unless otherwise agreed to in writing, delivery will be made in accordance with RCL’s shipping policy on the date of order. All shipments of Products by RCL will be EX WORKS EXW RCL warehouse Incoterms® 2010. Insurance coverage, transportation costs and all other expenses applicable to shipment from RCL to your identified delivery location will be your responsibility. You must notify RCL, by calling RCL within three (3) days after delivery of any claimed shortages or rejections. Failure to give such notice of a claim will be deemed an acceptance in full of any such delivery. Approval of any short shipment claim is in RCL’s sole power and discretion. In the event that RCL grants a short shipment claim, RCL will replace the lost or damaged Product or issue a credit memo at its sole discretion.

RCL is not responsible for typographical errors. RCL reserves the right to change the terms and conditions of sales at RCL at any time. All sales at RCL are governed by Texas law, without giving effect to Texas's conflict of law provisions. Only an officer or director of RCL has the authority to vary any RCL policies or the terms and conditions governing any sale. Additional terms and conditions apply, as set forth herein.

From time to time we may change or supplement these terms and conditions of use. Your continued access of this site signifies your agreement to such changes or additions.

## **PRIVACY**

Please review our Privacy Notice, which also governs your use of Products/Services, to understand our practices.

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ESF marks include but are not limited to the following:

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PFSENSE (U.S. Reg. No. 3571276)

PFSENSE (U.S. Reg. No. 4414546)

PFSENSE (International Reg. No. 1176766)



RCL marks include but are not limited to the following:

NETGATE (U.S. Reg. Nos. 3161285 and 3146119)

NETGATE (U.S. Ser. No. 86375940)



## PATENTS

One or more patents owned by RCL or ESF may apply to the Products/Services and to the features and services accessible via the Products/Services.

## ESF SOFTWARE TERMS

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## RCL SOFTWARE TERMS

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3. **Use of Third Party Services.** When you use the RCL Software, you may also be using the services of one or more third parties, such as a wireless carrier or a mobile platform provider. Your use of these third party services may be subject to the separate policies, terms of use, and fees of these third parties.
4. **No Reverse Engineering.** You may not (and you will not encourage, assist or authorize any other person to) copy, modify, reverse engineer, decompile or disassemble, or otherwise tamper with or attempt to learn the source code, structure, algorithms or ideas underlying the RCL Software, whether in whole or in part, or create any derivative works from or of the

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- 5. Export Regulations; Government End Users.** You must comply with all export and re-export restrictions and regulations of the Department of Commerce and other United States agencies and authorities that may apply to the RCL Software. If you are a U.S. Government end user, we are licensing the RCL Software to you as a "Commercial Item" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. § 2.101), and the rights we grant you to the RCL Software are the same as the rights we grant to all others under these terms and conditions of use. You will promptly notify RCL if you become aware of any violation of these RCL Software Terms.

## **LIMITATIONS ON USE**

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You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of RCL or ESF without prior express written consent of an officer or director of RCL. You may not use any metatags or any other "hidden text" utilizing RCL's or ESF's name or trademarks without the prior express written consent of an officer or director of RCL. You may not misuse the Products/Services. You may use the Products/Services only as permitted by law and pursuant to RCL's or ESF's Reseller Agreement. The licenses granted by RCL terminate if you do not comply with these terms and conditions of use or any service terms.

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## **MAINTENANCE AND SUPPORT**

Some of our Products/Services may be eligible to receive "Subscription-Based Product Support," as may be specified on the RCL or ESF websites. You are entitled to receive support on a Product only if you have paid a separate support fee for such product and have registered such Product's serial number with RCL.

### **1. Definitions.**

An “Incident” refers to a specific problem you may encounter arising out of the use of the Products/Services. Upon submitting your “Support Request,” we will, in our sole discretion, evaluate the validity of the incident described and determine if we are able to support you via the Subscription-Based Product Support.

“Support Subscription” refers to your right to receive Subscription-Based Product Support for a single Incident. The effective date for a Support Subscription shall be the date upon which we receive payment of the Support Subscription fee. Each Support Subscription will continue for a period of one year from the date we receive payment. All Support Subscription purchases are final and non-refundable. We reserve the right to cancel any Support Subscriptions that have not been paid.

“Subscription-Based Product Support” refers to the support services that we may provide with respect to the Products/Services, pursuant to these terms and conditions. Subscription-Based Product Support is subject to the following specifications and to the requirements and limitations set forth below:

#### Subscription-Based Product Support Characteristics Requirements or Limitations

##### Hours of Availability

Subscription-Based Product Support is available 24 hours per day, 7 days per week.

##### Geographic Availability

Subscription-Based Product Support is generally available to customers worldwide, but may be subject to the limitations imposed by United States law and any other similar export control laws and regulations.

##### Language Availability

Subscription-Based Product Support will be provided in English.

##### Support Subscription Expiration

Support Subscriptions expire one year from date of purchase.

##### Products Eligible for Support

Subscription-Based Product Support is available only for the Products/Services.

##### Supported Product Versions

Subscription-Based Product Support is generally available for the most current Products/Services released and for the one version prior to the current release.

\* Subscription-Based Product Support may be subject to the limitations imposed by United States and any other similar export control laws and regulations.

“Subscription-Based Product Support Website” refers to the RCL and/or ESF Subscription-Based Product Support web page, on which the commercial terms and these Term and Conditions are located or linked.

“Professional Services” are technical or unique functions performed by staff members, independent contractors or consultants whose occupation is the rendering of specialized services that fall outside the scope of Subscription-Based Product Support.

“Resolution” refers to the efforts employed to address an Incident reported in a Support Request. Generally, Resolution is comprised of: (a) information that resolves the problem; (b) information on how to obtain a software solution that will resolve the problem; (c) notice that the problem is caused by a known, unresolved issue or an incompatibility issue with the Products/Services; (d) information that identifies the problem as being resolved by upgrading to a newer release of the Products/Services; (e) notice that the problem has been identified as a hardware equipment issue; or (f) if none of the foregoing are possible despite commercially reasonable efforts to identify and provide such a solution, a determination that there is no solution to the Incident. An Incident for which a Resolution is provided is referred to as “Resolved.”

“Software” refers to the pfSense® or Netgate® Products/Services with respect to which you submit a Support Request pursuant to these terms and conditions. If Products/Services are included as part of a bundled package, suite, or series, the term “Software” means each individual product delivered to you as part of that bundled package, suite, or series and described in the User Documentation. You shall have to submit a Support Request for each product of the bundled package, suite or series.

“Support Request” refers to your request for Subscription-Based Product Support. A valid Support Request requires that you provide all required information set forth below.

“Support Ticket” refers to a ticket acquired and paid by you to receive Subscription-Based Product Support.

“Support Ticket ID” refers to the identification number we send you once you have acquired and paid the fees for the Support Ticket.

“User Documentation” refers to the printed or electronic documentation that we or our authorized distributor incorporate in or deliver with or on a package with the Software or send to you on an invoice, via email, facsimile, or otherwise when or after you acquire or install Software, including, but not limited to, license and/or technical specifications, activation code, license files, and/ or instructions on how to use the Software.

## **2. Fees and Services.**

Upon your submission of a Support Request, we will evaluate the validity of the Incident described, and will determine if we will be able to support you via the Subscription-Based Product Support. If we consider your incident to be a valid Incident for the Subscription-Based Product Support, and you do not have a current support agreement, we will send you a purchase

link to acquire a Support Ticket. You may purchase a Support Subscription by paying the fees specified on the Subscription-Based Product Support Website. Once you have paid the applicable fees, you will receive a Support Ticket ID. Upon registration, completion of your Support Ticket purchase and receiving a Support Ticket ID, you may contact us to receive Subscription-Based Product Support on the Products/Services in accordance with these terms and conditions. We reserve the right to modify any terms, requirements and limitations of Subscription-Based Product Support provided and/or the Products/Services covered under a Support Subscription, at any time, by either updating these terms and conditions or the Subscription-Based Product Support Website. In the event of any inconsistencies between the terms and conditions and any other terms at the Subscription-Based Product Support Website, the terms of these terms and conditions will govern.

### **3. Delivery of Subscription-Based Product Support; Limitations.**

We will use commercially reasonable efforts to provide a Resolution for each Incident purchased and covered by Subscription-Based Product Support. We, in our sole and reasonable discretion, will determine if the Incident is Resolved.

We will make commercially reasonable efforts to respond to a Support Request within a reasonable time and subject to the specified hours of availability, but do not guarantee that a response will be provided within any specific time period.

No Incident will consume more than one (1) hour of time. If it is anticipated that a solution to an Incident will take longer, you should be aware that the Subscription-Based Product Support will be exhausted or that additional Subscription-Based Product Support will need to be purchased.

Examples of requests not included with Subscription-Based Product Support include, but are not limited to, the following: questions relating to the function of third party applications or systems, product training, end-to-end product deployment walk-through, implementing network security outside the context of the Products/Services, CARP configuration, network design, or other tasks that fall within Professional Services.

### **4. Exclusions.**

We will not provide Subscription-Based Product Support for problems or issues arising out of or from (a) the use or modification of the Products/Services in a manner for which the Products/Services are not intended to be used or modified; (b) third-party libraries, products (including, but not limited to third party hardware) or technologies and their effects on or interactions with the Products/Services; (c) damage to the hardware (*i.e.*, mobile, computer) on which the Products/Services are installed; (d) use of hardware (*i.e.*, mobile, computer system or subsystem), that is incompatible with the Products/Services; and (e) issues relating to Internet, email, network configuration, resource management, training, on-site diagnosis, or other issues not within the scope of the Subscription-Based Product Support described above.

### **5. Your Responsibilities.**



To receive Subscription-Based Product Support, you must (a) follow the registration instructions provided by us and provide all the correct information requested by us; (b) pay the Subscription-Based Product Support fees, as applicable in your service plan; (c) cooperate with us by providing all information necessary, to assist us in diagnosing the cause of an Incident; and (d) establish and maintain email and telephone communications with us.

You are also responsible for: (a) any and all restoration or reconstruction of lost or altered files, data, or programs; (b) maintaining and implementing data backup measures; (c) all fees in establishing and maintaining email and telephone communications with us; (d) any and all security of your confidential, protected or sensitive information; (e) not disclosing to us any confidential, proprietary or other information that is subject to third party intellectual property rights that may expose us to liability; (f) having a reasonable understanding of the Software for which you seek Subscription-Based Product Support and the computer system (and/or any other hardware) it operates on.

Subscription-Based Product Support is non-transferable to any third party as it is provided for your internal use only. Unauthorized transfer of Subscription-Based Product Support, including any Resolutions received, will be grounds for immediate termination of all Support Subscriptions without refund. You will take reasonable measures to prevent the unauthorized use of Subscription-Based Product Support by any third party. You will not abuse the receipt or use of Subscription-Based Product Support, including but not limited to, accessing Per Incident Support for issues that have already been Resolved or contacting us after any six (6) month period of inactivity following the initial usage of such Support Subscription.

## **YOUR ACCOUNT**

If you use any Products/Services, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. RCL does not sell products for or to children. RCL sells products to adults, who can purchase with a credit card or other permitted payment method. If you are under 18, you may use the Products/Services only with involvement of a parent or guardian. RCL reserves the right to refuse service, terminate accounts, remove or edit content, or cancel orders in its sole discretion.

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You alone are responsible for the content of any messages you post in the community section of the site and the consequences of any such messages. We reserve the right to terminate your access to our website(s) if we become aware and determine, in our sole discretion, that you are violating these guidelines.

You agree that you will not post any message or material that is unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene, profane, sexually oriented, racially offensive, inaccurate, invasive of privacy, infringing of intellectual property rights, or otherwise objectionable or injurious material of any kind or nature or that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. You agree you will not post any message or material that consists of or contains software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of “spam.” We will cooperate fully with any law enforcement officials and/or agencies in the investigation of any person or persons who violate the terms of this section.

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- A description of where the material that you claim is infringing is located on our website;
- Your address, telephone number, and e-mail address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Our copyright agent for notice of claims of copyright infringement on its site can be reached as follows:

Copyright Agent  
Rubicon Communications LLC  
7212 McNeil Drive, Suite 204  
Austin, Texas 78729

Please note that this procedure is exclusively for notifying us that your copyrighted material has been infringed by us.

## **RISK OF LOSS**

All items purchased from RCL or ESF are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier.

## **RETURNS, REFUNDS AND TITLE**

We do not take title to returned items until the undamaged and unused item arrives at our fulfillment center.

## **PRODUCT OR SERVICE DESCRIPTIONS**

We attempt to be as accurate as possible. However, we do not warrant that product descriptions or other content of any Products/Services is accurate, complete, reliable, current, or error-free. If a product offered by us is not as described, your sole remedy is to return it in unused condition. The availability of the products or services described on this site, and the product or service descriptions, may vary from country to country.

## **PRICING**

Except where noted otherwise, the list price or suggested price displayed for products on any Products/Services represents the full retail price listed on the product itself, suggested by the manufacturer or supplier, or estimated in accordance with standard industry practice; or the estimated retail value for a comparably featured item offered elsewhere. The list price or suggested price is a comparative price estimate and may or may not represent the prevailing price in every area on any particular day. For certain items that are offered as a set, the list price or suggested price may represent "open-stock" prices, which means the aggregate of the

manufacturer's estimated or suggested retail price for each of the items included in the set. Where an item is offered for sale by one of our merchants, the list price or suggested price may be provided by the merchant.

With respect to items sold by us, we cannot confirm the price of an item until you order. Despite our best efforts, a small number of the items in our catalog may be mispriced. If the correct price of an item sold by us is higher than our stated price, we will, at our discretion, either contact you for instructions before shipping or cancel your order and notify you of such cancellation. Other merchants may follow different policies in the event of a mispriced item.

We generally do not charge your credit card until after your order has entered the shipping process.

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We may provide links to the sites of affiliated companies and certain other businesses. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or individuals or the content of their websites. We do not assume any responsibility or liability for the actions, product, and content of all these and any other third parties. You should carefully review their privacy statements and other terms and conditions of use.

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**ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO YOUR USE OF ANY PRODUCTS/SERVICES, OR TO ANY PRODUCTS OR SERVICES SOLD OR DISTRIBUTED BY RCL OR ESF WILL BE RESOLVED BY BINDING ARBITRATION IN AUSTIN, TEXAS, RATHER THAN IN COURT.** The Federal Arbitration Act and federal arbitration law apply to this agreement.

**THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. HOWEVER, AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING INJUNCTIVE AND DECLARATORY RELIEF OR STATUTORY DAMAGES), AND MUST FOLLOW THE TERMS OF THESE TERMS AND CONDITIONS OF USE AS A COURT WOULD.**

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the following:

Rubicon Communications LLC  
Attn.: Legal Dept.  
7212 McNeil Drive, Suite 204  
Austin, Texas 78729  
legal@netgate.com

The arbitration will be conducted by the American Arbitration Association (AAA) under its rules. The AAA's rules are available at [www.adr.org](http://www.adr.org). Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules.

**We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** We also both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

## **APPLICABLE LAW**

By ordering or using any Products/Services, you agree that the Federal Arbitration Act and the laws of the state of Texas, without regard to principles of conflict of laws, will govern these terms and conditions of use and any dispute of any sort that might arise between you and RCL and/or ESF. Any claim or cause of action concerning these terms and conditions or use of the RCL and/or ESF website must be brought within one (1) year after the claim or cause of action arises. Exclusive jurisdiction and venue for any dispute or claim arising out of or relating to the parties' relationship, these terms and conditions, or the RCL and/or ESF website, shall be with the arbitrator and/or courts located in Austin, Texas. The judgment of the arbitrator may be enforced by the courts located in Austin, Texas, or any other court having jurisdiction over you.

## **SITE POLICIES, MODIFICATION, AND SEVERABILITY**

Please review our other policies, such as our pricing policy, posted on this site. These policies also govern your use of Products/Services. We reserve the right to make changes to our site, policies, service terms, and these terms and conditions of use at any time.

## **MISCELLANEOUS**

If any provision of these terms and conditions of use, or our terms and conditions of sale, are held to be invalid, void or unenforceable, the invalid, void or unenforceable provision shall be modified to the minimum extent necessary in order to render it valid or enforceable and in keeping with the intent of these terms and conditions. If such modification is not possible, the invalid or unenforceable provision shall be severed, and the remaining terms and conditions shall be enforced as written. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. These terms and conditions set forth the entire understanding and agreement between us with respect to the subject matter hereof, and supersede any prior oral or written agreement pertaining thereto, except as noted above with respect to any conflict between these terms and conditions and our reseller agreement, if the latter is applicable to you.