



## AVAYA APPLICATION PROGRAMMING INTERFACE LICENSE AGREEMENT

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1.3 "API Key" means the security key Avaya makes available for you to access the API.

1.4 "Avaya Offering" means any Avaya product, service, platform, solution, including subscription services and software applications, functionalities, tools, interfaces, and/or documentation provided in connection therewith.

1.5 "Change In Control" shall be deemed to have occurred if any person, entity or group comes to own or control, directly or indirectly, beneficially or of record, voting securities (or any other form of controlling interest) which represent more than fifty percent (50%) of the total voting power of the Licensee.

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1.9 “Permitted Modification(s)” means Your modifications of the Sample Application Code as needed to create Your Application.

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1.11 “Source Code” means human readable or high-level statement version of software written in the source language used by programmers and includes one or more programs. Source Code programs may include one or more files, such as user interface markup language (.mxml), action script (.as), precompiled Flash code (.swc), java script (.js), hypertext markup language (.html), active server pages (.asp), C# or C#.Net source code (.cs), java source code (.java), java server pages (.jsp), java archives (.jar), graphic interchange format (.gif), cascading style sheet (.css), audio files (.wav) and extensible markup language (.xml) files.

1.12 “Sample Application Code” means software provided for the purposes of demonstrating functionality of an Avaya Offering through the API.

1.13 “Your Application” means any application, service, solution, workflow, or process developed by you to interact with the API and interoperate with an Avaya Offering.

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2.16 No Virus. Licensee warrants that (i) the applications, interfaces, value-added services and/or solutions, workflows or processes Licensee develops using the API will not contain any computer program file that includes time code limitations, disabling devices, or any other mechanism which will prevent the Avaya product (including other software, firmware, hardware), services and networks from being functional at all times (collectively "Time Bombs"); and (ii) the applications, interfaces, value-added services and/or solutions, workflows or processes Licensee develops using this API will be free of computer viruses, malicious or other harmful code, black boxes, malware, trapdoors, and other mechanisms which could: a) damage, destroy or adversely affect Avaya product, or services and/or end users; b) allow remote/hidden attacks or access through unauthorized computerized command and control; c) spy (network sniffers, keyloggers), and d) damage or erase such applications, interfaces, value-added services and/or solutions, workflows or processes developed using this API or data, or any computer files or systems of Avaya, Affiliates, and/or end users (collectively "Virus"). In addition to any other remedies permitted in the Agreement, if Licensee breaches its warranties under this Section, Licensee will, at its expense, take remedial action to eliminate any Time Bombs and/or Viruses and prevent re-occurrence (including implementing appropriate processes to prevent further occurrences) as well as provide prompt, reasonable assistance to Avaya to materially reduce the effects of the Time Bomb and/or Virus.

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**4.2 Licensee Obligations.** You acknowledge and agree that You are solely responsible for developing, supporting, and monitoring Your Application, including but not limited to (i) developing, testing and deploying Your Application; (ii) configuring Your Application

to interface and communicate properly with an Avaya Offering; and (iii) updating and maintaining Your Application as necessary for integration with (a) the API as a result of an Update (as described in Section 4.1) or (b) the then-current Avaya Offering.

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## **10.0 TERM AND TERMINATION.**

10.1 The term of this Agreement commences when you access the API and will continue in effect unless terminated as specified in Section 10.2 or 10.3 below.

10.2 Either party shall have the right to terminate the Agreement, upon thirty (30) days written notice to the other party.

10.3 Notwithstanding language to the contrary, Avaya may terminate or suspend this Agreement immediately, upon written notice to Licensee or by revoking access to the API for breach of Section 2 (License Grant), Section 5 (Confidentiality) or Section 12 (Compliance with Laws). Avaya may also terminate this Agreement immediately by giving written notice or by revoking access to the API if a Change In Control should occur or if Licensee becomes insolvent, or voluntary or involuntary proceedings by or against Licensee are instituted in bankruptcy or under any insolvency law, or a receiver or custodian is appointed for Licensee, or proceedings are instituted by or against Licensee for corporate reorganization or the dissolution of Licensee, which proceedings, if involuntary, have not been dismissed within thirty (30) days after the date of filing, or Licensee makes an assignment for the benefit of its creditors, or substantially all of the assets of Licensee are seized or attached and not released within sixty (60) days thereafter, or if Licensee has ceased or threatened to cease to do business in the regular course.

10.4 Upon termination of this Agreement, all licenses and rights granted to you under this Agreement will terminate and you must cease using, destroy, and permanently erase from all devices and systems you directly or indirectly control all copies of the API. Any terms that by their nature are intended to continue beyond the termination or expiration of this Agreement will survive termination. Termination will not limit any of Company's rights or remedies at law or in equity. Further, Licensee will immediately cease a) all uses of the Confidential Information; b) Licensee agrees to destroy all adaptations or copies of the Confidential Information stored in any tangible medium including any document or work containing or derived (in whole or in part) from the Confidential Information, and certify its destruction to Avaya upon termination of this License. Licensee will promptly cease use of, distribution and sales of Licensee products that embody any such Confidential Information, and destroy all Confidential Information belonging to Avaya as well as any materials that embody any such Confidential Information. All licenses granted will terminate.

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### **14.0 SEVERABILITY.**

If any provision of this Agreement is determined to be unenforceable or invalid, this Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law.

### **15.0 GOVERNING LAW AND DISPUTE RESOLUTION.**

**15.1 Governing Law.** This Agreement and any dispute, claim or controversy arising out of or relating to this Agreement ("Dispute"), including without limitation the formation, interpretation, breach or termination of this Agreement, or any issue regarding whether a Dispute is subject to arbitration under this Agreement, will be governed by New York State laws, excluding conflict of law principles, and the United Nations Convention on Contracts for the International Sale of Goods.

**15.2 Dispute Resolution.** Any Dispute will be resolved in accordance with the provisions of this Section 15. The disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of this Agreement. The parties will attempt in good faith to resolve each controversy or claim within 30 days, or such other longer period as the parties may mutually agree, following the delivery of such notice, by negotiations between designated representatives of the parties who have dispute resolution authority.

**15.3 Arbitration of Non-US Disputes.** If a Dispute that arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States cannot be settled under the procedures and within the timeframe set forth in Section 15.2, it will be conclusively determined upon request of either party by a final and binding arbitration proceeding to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time), except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed One Million US Dollars at the time all claims, including cross claims and counterclaims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of Section 8 and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of this Agreement. The ruling by the arbitrator(s) will be final and binding on the parties and may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees, but Avaya and Customer will each bear its own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure



of the existence, content and results of the arbitration will be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed.

15.4 Choice of Forum for US Disputes. If a Dispute by one party against the other that arose in the United States or is based upon an alleged breach committed in the United States cannot be settled under the procedures and within the timeframe set forth in Section 15.2, then either party may bring an action or proceeding solely in either the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York. Except as otherwise stated in Section 15.3 each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Agreement.

15.5 Injunctive Relief. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including, but not limited to, temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights, including its rights pending arbitration, at any time. The parties agree that the arbitration provision in Section 15.3 may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order.

15.6 Time Limit. Actions on Disputes between the parties must be brought in accordance with this Section within 2 years after the cause of action arises.

## **16.0 AGREEMENT IN ENGLISH.**

The parties confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

## **17.0 ENTIRE AGREEMENT.**

This Agreement, its exhibits, schedules and other agreements or documents referenced herein, constitute the full and complete understanding and agreement between the parties and supersede all contemporaneous and prior understandings, agreements and representations relating to the subject matter hereof. No modifications, alterations or amendments shall be effective unless in writing signed by both parties to this Agreement.