

Engelbart Software GmbH END USER LICENSE AGREEMENT

Definitions:

End User means a customer buying the Products for its own use and benefit and not for resale or sublicense.

End User License Agreement or EULA means the following terms and conditions under which the Software is licensed to End User by Engelbart.

License means the licenses for the Software granted by Engelbart to End User necessary to cover the scope of use stipulated in the underlying contract between Avaya and the End User.

Software means certain Engelbart software products the End User has purchased from Avaya.

1. Subject and scope of the license

1.1 The License grants to End User a non-exclusive, worldwide, non-transferable right of use to the Software limited to use the Software (i) with those Avaya Solutions and (ii) with such types of Avaya or other devices and products included in the License, and (iii) and for the number of users and devices covered by the scope of the license.

1.2 If the underlying contract between Avaya and the End User is limited to a certain duration, the License will cease at the expiration or termination of the underlying contract.

1.3 End User may only use the Software for its internal operations or for internal operations of such companies that are affiliated with the End User according to section 15 et seq. of the German Stock Corporations Act [Aktiengesetz] ("Affiliates").

1.4 The End User may not copy or use the Software (i) to provide data center services to third parties; or (ii) temporarily provide or use the Software (e.g. application service providing) to third parties who are not Affiliates of End User; or (iii) copy and use the Software to train persons who are neither employees of the End User nor employees of an Affiliate without Engelbart's prior written approval.

1.5 The Source Code for the Software is not subject to the License and will not be provided by Engelbart or any other party.

1.6 End User may create back-up copies of the Software as necessary for the use of the Software granted by the License. Back-up copies on removable media shall be designated as Software back-up copies and carry a copyright notice for Engelbart's copyright in the Software.

1.7 End user is not entitled to modify, transform or re-work the Software unless to the extent granted under indispensable applicable statutory law. Prior to remedy a defect in the Software by itself or have a defect remedied by a third party, End User shall permit Engelbart at least two attempts to remedy such defect. End User does not gain any right of exploitation in such adaptations or modifications of the Software beyond the scope of the License granted under this EULA. For an appropriate remuneration, Engelbart can demand to be granted an exclusive or non-exclusive and neither territorially nor temporally restricted right of use with the right to sub-license in such aforementioned adaptations or modifications.

- 1.8 The End user may only de-compile the Software (i) to the extent granted under indispensable applicable statutory law and (ii) in that case is only entitled to de-compile the Software if Engelbart did not provide the necessary data and/or information to establish interoperability with other hardware or software.
- 1.9 If either Engelbart provide additions to the Software (for example patches or updates to the manual) or newer versions of the Software (for example updates or upgrades) to the End User that replace earlier versions of the Software provided to End User, the terms of this EULA shall also apply to such newer versions of the Software.

2. Transfer of the License

- 2.1 The End User may not transfer the License to third parties.

3. Termination Rights

- 3.1 This EULA shall remain effective until the expiration of the applicable license or subscription term. This EULA will immediately terminate if End User breaches its terms, or if End User fails to pay any portion of the applicable license fees and End User fails to cure that payment breach within thirty (30) days of notice. Upon termination of this EULA, End User shall destroy all copies of Software in his possession or control.

4. Warranty and limitation period

- 4.1 Engelbart warrants that the Software is conform to provided documentation and suitable for the intended purpose as specified in the underlying contract between Avaya and the End User and that no third party rights are infringed by using the Software under the License and the terms of this EULA.

- 4.2 Section 377 of the German Commercial Code [HGB] shall apply.

- 4.3 In case of a defect in the Software, Engelbart will primarily rework the Software by providing in its sole discretion either a newer version of the Software to End User that is free from defects or remedies the defect. A defect shall also deemed to be remedied if Engelbart points out to the End User a reasonable possibility to avoid the effects of the defect.

In case of legal deficiencies in the Software, Engelbart will primarily rework the Software by providing in its sole discretion to End User a possibility to use in a legally unobjectionable manner either the Software or a modified, different or newer version of the Software that is equivalent to the Software.

Engelbart may deny End User's warranty rights if End User has not paid at least an appropriate amount of the price for the License.

- 4.4 End User is obligated to use a newer version of the Software (for example updates or upgrades) if the functional range as specified in the underlying contract between Avaya and

the End User is maintained. End User's rights according to § 439 German civil code [BGB] remain untouched.

- 4.5 If Engelbart fails to remedy a defect or legal deficiencies of the Software, End User may set a reasonable period for remedy. End User has to expressly inform Engelbart in writing that in case of a repeated failure to remedy, the right to withdraw from the EULA and/or to claim damages remains reserved. If remedy by Engelbart also fails within the aforementioned period and the defect or legal deficiencies of the Software are not negligible, End User may withdraw from the EULA or reduce the remuneration for the License. The limitations of liability according to section 5 shall apply to damages or compensation for futile expenses. When the period according to sentence 1 of this section has expired, Engelbart may demand that End User exercises its rights resulting from the expiration of the aforementioned period for remedy within two weeks after receipt of such demand. If End user fails to exercise its rights within this two week period, Engelbart may decide in its sole discretion which of such rights will be exercised.
- 4.6 If Engelbart makes efforts to detect or remedy defects without being obligated to do so, in particular if a defect cannot be proved or is attributable to the End User, Engelbart may ask for additional remuneration for such efforts.
- 4.7 In case any third party raises a claim that prevents End User from using its rights granted under the License, End user will fully inform Engelbart in writing without undue delay. End User hereby authorizes Engelbart, to take all necessary legal steps and to take legal action against such third parties on its own. In case legal action is taken against End User, End User will coordinate with Engelbart and will only undertake procedural acts, in particular confessions and settlements, with Engelbart's prior approval. Engelbart is obligated to defend against such claims at its own cost and to indemnify End User from all costs related to and/or damages caused by the defence against such claims unless such costs or damages have been caused by obligation violations of the End User.
- 4.8 End User may only raise claims from any other obligation violations by Engelbart if End User has objected such violations in writing and has set a reasonable period for remedy of such violations except in such cases when due to its nature a violation cannot be remedied. The limitations of liability according to section 5 shall apply to damages or compensation for futile expenses.
- 4.9 The limitation period for all warranty claims from a defect or legal deficiencies of the Software is twelve (12) months. The limitation period begins with the delivery of the Software to End User or when the End User has been informed that the Software has been made available to the End User through download or by other equivalent means.
- 4.10 The statutory limitation periods shall apply to claims (i) for damages which have been caused by an intentional (wilful) or grossly negligent breach of an obligation by Engelbart; (ii) for any damages to life, body, or health; (iii) in cases of malicious concealment of a

defect; (iv) for legal deficiencies according to § 438 Abs. 1 Nr. 1a German Civil Code [BGB]; (iv) for guarantees according to § 444 German Civil Code [BGB] and (vi) for claims resulting from the German product liability act [Produkthaftungsgesetz].

5. Limitation of Liability

5.1 In all cases of contractual and non-contractual liability, Engelbart shall be liable to End user for damages or compensation for futile expenses exclusively within the following limits according to the subsections of this section 5.1.

5.1.1 Engelbart will be fully liable for (i) a willful breach of its obligations or (ii) a fraudulent misrepresentation by Engelbart or (iii) if the Software lacks a characteristic guaranteed by Engelbart according to § 444 German Civil Code [BGB].

5.1.2 The liability for a grossly negligent breach of an obligation by Engelbart shall be limited to an amount for such a damage ordinarily expected to be prevented by compliance to the breached obligation.

5.1.3 Limited to an amount ordinarily expected for such a damage, Engelbart will be liable for any further breaches only in case of a breach of an essential contractual obligation and if such breach would put the contractual goal at risk [wesentliche Vertragspflichtverletzung].

5.2 The limitation of liability according to section 5.1 and its subsections shall not apply to any liability for damages to life, body, or health or resulting from the German product liability act [Produkthaftungsgesetz].

5.3 Engelbart's right to raise the objection of contributory negligence remains untouched.

5.4 For the limitation period, section 4.9 shall apply mutatis mutandis with the limitation that the statutory limitation period shall apply to claims according to subsections 5.1.1, 5.1.2 and 5.2. The limitation period stipulated in sentence 1 begins at the point in time according to § 199 sect. 1 German Civil Code [BGB]. At the latest at the expiry of the maximum statutory limitation period according to § 199 sect. 3 and sect. 4 German Civil Code [BGB], the statute of limitation [Verjährungseintritt] will occur.

6. Liability of End User

6.1 End User shall be liable for any breach of this EULA, including but not limited to any breach of its Affiliates or the respective Representatives, and shall keep Engelbart harmless against all damages, and indemnify Engelbart from all third party claims arising as a result of such breach.

6.2 End User acknowledges and agrees that any breach of this EULA by End User or its Affiliates will be detrimental to Engelbart's business and cause it irreparable harm and damage, which monetary damages may not sufficiently remedy. Therefore, in addition to all other rights and remedies that may be available by law, contract, in equity or otherwise,

Engelbart shall be entitled to seek interim relief by way of injunction, specific performance or any other equitable measures applicable by law, without proof of actual damages.

7. General Terms

- 7.1 This EULA is drafted in the English language, which shall be authoritative, except with regard to legal terms, defined by law itself or by jurisdiction, for which cases the English term shall refer to the applicable German legal term and shall only be a translation and description of such German legal term.
- 7.2 This EULA shall be binding on both Engelbart and End User and their legal successors. However, End User shall not assign or transfer this EULA nor any rights nor obligations hereunder to a third party without Engelbart's prior written consent thereto.
- 7.3 All legal relationships arising out of or in connection with this EULA, including any concurring statutory claims (e.g. tort), shall be governed and interpreted exclusively by the laws of Germany without giving effect to its conflict of law principles (to the extent legally possible). The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 7.4 The exclusive jurisdiction for all disputes arising out of or in connection with the negotiation, the conclusion, the performance, the termination and/or a violation of this EULA shall be with the courts of Stuttgart, Germany.
- 7.5 Should any provision of this EULA, or the application thereof, for any reason be or become wholly or partly invalid or unenforceable under applicable law, then such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement, unless the invalid or unenforceable provision is of such importance that it cannot be reasonably assumed that the Parties would have entered into this EULA without the invalid or unenforceable provision. The Parties shall replace any such invalid or unenforceable provision with a valid and enforceable provision designed to achieve, to the extent possible, the commercial purpose and the intention of such invalid and unenforceable provision.

