



## **AVAYA SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT**

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1.1 “Avaya Affiliates” means any entity that is directly or indirectly controlling, controlled by, or under common control with Avaya Inc. For purposes of this definition, “control” means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

1.2 “Avaya Software Development Kit” or “SDK” means Avaya technology, which may include object code, Client Libraries, Specification Documents, software libraries, application programming interfaces (“API”), software tools, Sample Application Code, published specifications and Documentation.

1.3 “Client Libraries” mean any enabler code specifically designated as such and included in a SDK. Client Libraries may also be referred to as “DLLs”, and represent elements of the SDK required at runtime to communicate with Avaya products or other SDK elements.

1.4 “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 or to Licensee.

1.5 “Derivative Works” means: (a) for copyrightable or copyrighted material, any translation (including translation into other computer languages), port, compiling of source code into object code, combination with a pre-existing work, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted or which would otherwise constitute a derivative work under the United States Copyright Act; (b) for patentable or patented material, any changes, additions, modifications or improvements thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. Permitted Modifications will be considered Derivative Works.

1.6 “Documentation” includes, but is not limited to programmer guides, CDs, manuals, materials, and information appropriate or necessary for use in connection with the SDK. Documentation may be provided in machine-readable or hard copy form.

1.7 “Intellectual Property” means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and maskworks, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, algorithms, designs and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

1.8 “Open Source Software” (“OSS”) is as defined by the Open Source Initiative at <http://www.opensource.org/docs/osd> .

1.9 “Permitted Modification(s)” means Licensee’s modifications of the Source Code as needed to create applications, interfaces, workflows or processes for use with Avaya products.

1.10 “Specification Document” means any notes or similar instructions in hard copy or machine readable form, including any technical, interface and/or interoperability specifications that define the requirements and conditions for connection to and/or interoperability with Avaya products, systems and solutions.

1.11 “Source Code” means the high-level statement version of the Sample Application Code or Software written in the source language used by programmers and includes one or more programs. Source Code programs may include one or more files, but is not limited to, 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) and extensible markup language (.xml) files. Source Code files may also be provided in binary object format, may require explicit compilation into binary object format for execution, or may be interpreted natively using a separate application execution program or platform.

1.12 “Sample Application Code” means Source Code and/or executable Software provided for the purposes of demonstrating functionality of the Avaya Product through the Avaya Software Development Kit.

1.13 “Software” means intangible information constituting one or more computer or apparatus programs. For purposes of this Agreement, Software will mean the Avaya software in Source Code or in machine-readable, compiled object code form.

## **2.0 LICENSE GRANT.**

### **2.1 SDK License.**

A. Provided Licensee pays to Avaya the applicable license fee (if any), Avaya hereby grants Licensee a limited, non-exclusive, non-transferable, license (without the right to sublicense, except as set forth in 2.1B(iii)) to use the SDK (including Sample Application Code) solely for the purpose of Licensee's internal development efforts to develop applications, interfaces, value-added services and/or solutions, workflows or processes to work in conjunction with Avaya products provided, however, that Licensee shall have no right to distribute, license (whether or not through multiple tiers) or otherwise transfer the SDK to any third party or incorporate the SDK in any software, product, or technology. Avaya further grants Licensee the right, if the Licensee so chooses, to package Client Libraries for redistribution with Licensee's complementary applications that have been developed using this SDK, subject to the terms and conditions set forth herein. Where SDK includes Specification Document(s), Licensee is granted a license to use such Specification Documents solely to enable Licensee's products, services and application solutions to exchange messages and signals with Avaya products, systems and solutions to which the Specification Document(s) apply. Avaya's support obligations for the SDK, Sample Application Code and any derivative works are set forth in Section 4 of this Agreement.

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D. Licensee agrees that it is licensed to use the SDK only in connection with Avaya products (and if applicable, in connection with services provided under the Avaya DevConnect Program Agreement). In the event of any conflict between the terms and conditions of this Agreement and the Avaya DevConnect Program Agreement, the terms and conditions of the Avaya DevConnect Program Agreement shall prevail.

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F. Avaya shall have the right, upon reasonable notice and at its cost and expense, to conduct during normal business hours an audit of the appropriate records reflecting Licensee's use of the SDK to verify compliance with this Agreement.

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2.12 Feedback and Support. Licensee agrees to provide any comments and suggestions regarding the performance of the SDK on the developer forum of the DevConnect Program on [www.avaya.com/devconnect](http://www.avaya.com/devconnect). Avaya agrees to monitor the forum but is under no obligation to implement any of the suggestions and/or proposals, or be required to respond to any questions asked in the forum. Self-support tools are available via the Avaya DevConnect program's portal and requires self registration. Licensee hereby assigns to Avaya all right, title, and interest in and to Feedback provided to Avaya.

2.13 Fees and Taxes. To the extent that fees are associated with the license of the SDK, Licensee agrees to pay to Avaya or pay directly to the applicable government or taxing authority, if requested by Avaya, all taxes and charges, including without limitation, penalties and interest, which may be imposed by any federal, state or local governmental or taxing authority arising hereunder excluding, however, all taxes computed upon Avaya's net income.

2.14. No Endorsement. Neither the name Avaya, its Affiliates nor the names of contributors may be used to endorse or promote products derived from the Avaya SDK without specific prior written permission from Avaya.

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### **3. OWNERSHIP.**

3.1 As between Avaya and Licensee, Avaya or its licensors shall own and retain all proprietary rights, including all patent, copyright, trade secret, trademark and other intellectual property rights, in and to the SDK and any corrections, bug fixes, enhancements, updates, improvements, or modifications thereto and Licensee hereby irrevocably transfers, conveys and assigns to

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#### **4.0 SUPPORT.**

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#### **5.0 CONFIDENTIALITY.**

5.1 Protection of Confidential Information. Licensee shall take all reasonable measures to maintain the confidentiality of the SDK, Specification Documents and other Avaya technical information obtained by it (collectively, the "Confidential Information"), and will not disclose the Confidential Information to any third party. Licensee agrees at all times to protect and preserve the SDK in strict confidence and perpetually, and shall not use such Confidential Information other than as expressly authorized by Avaya under this Agreement, nor shall Licensee disclose any such Confidential Information to third parties without Avaya's written consent. Licensee further agrees to immediately return to Avaya all Confidential Information (including copies thereof) in Licensee's possession, custody, or control upon termination of this Agreement at any time and for any reason. The obligations of confidentiality shall not apply to information which (a) has entered the public domain except where such entry is the result of Licensee's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in Licensee's possession; (c) subsequent to disclosure hereunder is obtained by Licensee on a non-confidential basis from a third party who has the right to disclose such information to the

Licensee; (d) is required to be disclosed pursuant to a court order, so long as Avaya is given adequate notice and the ability to challenge such required disclosure.

5.2 Press Releases. Any press release or publication regarding this Agreement is subject to prior review and written approval of Avaya.

## **6.0 NO WARRANTY.**

The SDK and Documentation are provided “AS-IS” without any warranty whatsoever. AVAYA SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND SATISFACTORY QUALITY. AVAYA DOES NOT WARRANT THAT THE SDK AND DOCUMENTATION ARE SUITABLE FOR LICENSEE'S USE, THAT THE SDK OR DOCUMENTATION ARE WITHOUT DEFECT OR ERROR THAT OPERATION WILL BE UNINTERRUPTED, OR THAT DEFECTS WILL BE CORRECTED. FURTHER, AVAYA MAKES NO WARRANTY REGARDING THE RESULTS OF THE USE OF THE SDK AND DOCUMENTATION.

## **7.0 CONSEQUENTIAL DAMAGES WAIVER**

EXCEPT FOR PERSONAL INJURY CLAIMS AND WILLFUL MISCONDUCT, AVAYA SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR USE OF THE SDK, OR FOR THE LOSS OF DATA, INFORMATION OF ANY KIND, BUSINESS, PROFITS, OR OTHER COMMERCIAL LOSS, HOWEVER CAUSED, AND WHETHER OR NOT AVAYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

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EXCEPT FOR PERSONAL INJURY CLAIMS AND WILLFUL MISCONDUCT, IN NO EVENT SHALL AVAYA'S TOTAL LIABILITY TO LICENSEE IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED FIVE HUNDRED DOLLARS (\$500). THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **9.0 INDEMNIFICATION**

Licensee shall indemnify and hold Avaya and its officers, directors, agents, suppliers, customers and employees harmless from and against all claims, damages, losses, liabilities, costs and expenses (including reasonable fees of attorneys and other professionals) incurred by reason of any claim in respect of the distribution or sale of software or other products (including but not limited to applications, interfaces and application programming interfaces) developed utilizing



the SDK, including but not limited to, products liability claims and claims of infringement of third party intellectual property rights.

## **10.0 TERM AND TERMINATION.**

10.1 This Agreement will continue through December 31<sup>st</sup> of the current calendar year. The Agreement will automatically renew for one (1) year terms and run concurrently with Licensee's membership in the Avaya DevConnect Program unless terminated as specified in Section 10.2 or 10.3 below, and provided Licensee is a member of the Program in a good-standing as determined by Avaya at its sole discretion.,.

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 this Agreement immediately, upon written notice to Licensee for breach of Section 2 (License Grant), Section 5 (Confidentiality) or Section 11(Compliance with Laws). Avaya may also terminate this license by giving written notice 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, Licensee will immediately cease using the SDK Development Kit, and Licensee agrees to destroy all adaptations or copies of the SDK and Documentation, or return them to Avaya upon termination of this License.

10.5 The rights and obligations of the parties contained in Sections 2.3, 2.6, 2.10, 2.11, 3, and 5 through 16 shall survive any expiration or termination of this Agreement.

## **11.0 ASSIGNMENT.**

Avaya may assign all or any part of its rights and obligations hereunder. Licensee may not assign this Agreement or any interest or rights granted hereunder to any third party without the prior written consent of Avaya. The term "assign" includes, but is not limited to, any transaction in which there is a Change In Control or reorganization of Licensee pursuant to a merger, sale of assets or stock. This Agreement shall terminate immediately upon occurrence of any prohibited assignment.

## **12.0 COMPLIANCE WITH LAWS.**

Licensee shall comply with all applicable laws and regulations, including those applicable to the export or re-export of technology and will not export or re-export the SDK or any other technical

information provided under this Agreement in any form in violation of the export control laws of the United States of America and of any other applicable country. For more information on such export laws and regulations, you may refer to the resources provided in the websites maintained by the U.S. Commerce Department, the U.S. State Department and the U.S. Office of Foreign Assets Control.

### **13.0 WAIVER.**

No failure by either party to exercise or enforce any of its rights under this Agreement will 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.

### **14.0 SEVERABILITY.**

If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent possible and the other provisions of this Agreement will remain in force.

### **15.0 GOVERNING LAW.**

This Agreement will be governed by and construed in accordance with the laws of the State of New York. Avaya hereby specifically disclaims the UN Convention on Contracts for the International Sale of Goods. If a dispute cannot be settled by good faith negotiation between the parties within a reasonable period of time, it must be finally settled upon request of either party by arbitration 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). The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator. The arbitrator will have authority only to award compensatory damages and will not award punitive or exemplary damages. The arbitrator will not have the authority to limit, expand or otherwise modify the Agreement. The ruling by the arbitrator will be final and binding on the parties and may be entered in any court having jurisdiction. Avaya and you will each bear its own attorneys' fees associated with the arbitration. Notwithstanding the foregoing, Avaya shall be entitled to take immediate legal action where required to protect its confidential or proprietary information, or to obtain any interim injunction.

If you are a resident of Canada, the following will also apply:

Please note that this Section refers to U.S. export and re-export controls in connection with U.S.-origin products and, therefore, does not raise issues under Canada's Foreign Extraterritorial Measures Act.

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.

#### **16.0 ENTIRE AGREEMENT.**

This Agreement, its exhibits 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 (excluding the Avaya DevConnect Program Agreement) 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.

#### **17. REDISTRIBUTABLE CLIENT FILES.**

The list of SDK client files that can be redistributed are in the SDK in a file called Redistributable.txt.