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**REVISED: October 14, 2019**

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Licensee shall comply with all applicable laws and regulations, including without limitation those applicable to data privacy, intellectual property, trade secret, fraud, music performance rights and 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, Licensee 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.**

The failure to assert any rights under this Agreement, including, but not limited to, the right to terminate in the event of breach or default, will not be deemed to constitute a waiver of the right to enforce each and every provision of this Agreement in accordance with their terms.

## **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 IMPORT/EXPORT CONTROL.**

Licensee is advised that the SDK is of U.S. origin and subject to the U.S. Export Administration Regulations ("EAR"). The SDK also may be subject to applicable local country import/export laws and regulations. Diversion contrary to

U.S. and/or applicable local country law and/or regulation is prohibited. Licensee agrees not to directly or indirectly export, re-export, import, download, or transmit the SDK to any country, end user or for any use that is contrary to applicable U.S. and/or local country regulation or statute (including but not limited to those countries embargoed by the U.S. government). Licensee represents that any governmental agency has not issued sanctions against Licensee or otherwise suspended, revoked or denied Licensee's import/export privileges. Licensee agrees not to use or transfer the SDK for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. and/or any applicable local government by regulation or specific written license. Additionally, Licensee is advised that the SDK may contain encryption algorithm or source code that may not be exported to government or military end users without a license issued by the U.S. Bureau of Industry and Security and any other country's governmental agencies, where applicable.

#### **17.0 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.

#### **18.0 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.

#### **19. REDISTRIBUTABLE CLIENT FILES.**

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

**Schedule 1 to Avaya SDK License Agreement**  
**Third Party Notices**

1. **CODECS:** WITH RESPECT TO ANY CODECS IN THE SDK, YOU ACKNOWLEDGE AND AGREE YOU ARE RESPONSIBLE FOR ANY AND ALL RELATED FEES AND/OR ROYALTIES, IF ANY. IT IS YOUR RESPONSIBILITY TO CHECK.

THE H.264 (AVC) CODEC IS LICENSED UNDER THE AVC PATENT PORTFOLIO LICENSE FOR THE PERSONAL USE OF A CONSUMER OR OTHER USES IN WHICH IT DOES NOT RECEIVE REMUNERATION TO: (I) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD ("AVC VIDEO") AND/OR (II) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION FOR THE H.264 (AVC) CODEC MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://www.mpegla.com).