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**REVISED: January 14, 2022**

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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 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.

#### **18.0 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**

**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).

**SCHEDULE 2 LICENSE TO END USER AND PASS THRU REQUIREMENTS**

1. Each distribution of a Licensee's application that has been created using this SDK (including Client Libraries, Sample Application Code and Permitted Modifications) to an end user shall be pursuant to Licensee's current end user license agreement ("Licensee EULA") which must (a) acknowledge that the Licensee EULA is concluded between Licensee and the end user only, and not with Avaya; (b) acknowledge that Licensee is solely responsible for the Licensee's application and any content thereof, including any and all maintenance and support (as specified in the Licensee EULA, or as required under applicable law), warranties (whether express or implied by law), product claims (including, but not limited to, claims of product liability, failure to conform with applicable laws and consumer protection law violations), intellectual property infringement claims (including, but not limited to, investigation, defense, settlement and discharge of any such claims), and legal and regulatory compliance (including, but not limited to, all applicable import and export laws of any country in which end users may access the Licensee's application and the Avaya product or services that will run the Licensee's application); (c) state the Licensee's name and address, and the contact information (telephone number; e-mail address) to which any end user questions, complaints or claims with respect to the Licensee's application should be directed; (d) include, and may not be inconsistent with, the terms and conditions for a disclaimer of support and warranties and a limitation of liability for Avaya substantially conforming to the pertinent text in Exhibit A, End User Flow Down Terms, and (e) otherwise comply with all applicable laws in all countries in which end users may access the Avaya product or services.
2. **Third Party Beneficiary.** In addition, Licensee and the end user must acknowledge and agree in the Licensee EULA for each Licensee application that Avaya, and Avaya's Affiliates, are third party beneficiaries of the Licensee EULA, and that, upon the end user's acceptance of the terms and conditions of the Licensee EULA, Avaya will have the right (and will be deemed to have accepted the right) to enforce the Licensee EULA against the end user as a third party beneficiary thereof. The acknowledgment and agreement required in this sub-section 3 shall substantially conform with, and may not be inconsistent with, the pertinent terms and conditions for a third party beneficiary text in Exhibit A attached hereto.
3. **Privacy Policy and Compliance.** Licensee is solely responsible for ensuring that Licensee's application or service complies, with all applicable privacy laws and regulations, including but not limited to any notice or consent requirements, in all countries in which end users may use, purchase or access the Licensee's application, Avaya product or services, especially if there is any form of user or device data collection, or image, picture or voice capture or recording (collectively "Recordings"), and any form of data, content or information collection, processing, maintenance, uploading, syncing, storage, transmission, sharing, disclosure or use performed by, through or in connection with a Licensee's application. Each distribution of Licensee's application to an end user shall be pursuant to Licensee's current privacy policy governing the application ("Licensee Privacy Policy"). Licensee hereby agrees to maintain, and strictly comply with the terms of its Licensee Privacy Policy and provide clear and complete information to end users regarding the collection, and disclosure of any user or device data in compliance with applicable law.

4. Licensee agrees and shall provide to Licensee's end user details of the "Avaya Client SDK Commercial Model" see: [http://www.devconnectprogram.com/site/global/products\\_resources/avaya\\_client\\_sdk/licensing](http://www.devconnectprogram.com/site/global/products_resources/avaya_client_sdk/licensing) (or such successor site as designated by Avaya) which describes the end user's responsibility to purchase run time licenses from Avaya to enable the use of Licensee's application created using the SDK; and the applicable information for the named user licenses, server licenses, and/or agent licenses.

5. Licensee agrees and shall provide to Licensee's end user the following notice:

**CODECS:** WITH RESPECT TO ANY CODECS, 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).

## **EXHIBIT A**

### **END USER FLOW DOWN TERMS**

The meanings of capitalized terms used but not defined herein are as defined in the Agreement. Additional defined terms may be set forth herein

1. Any Licensee EULA between Licensee and its end users regarding the end user's use of the Licensee's application shall include language covering the following:
  - a. **NO MAINTENANCE AND SUPPORT BY AVAYA.** Avaya shall have no obligation to perform any warranty services, technical support, or other services with respect to the software. Licensee shall provide repair and replacement of, and perform all other obligations in respect of, defective software to you without any involvement or obligation by Avaya.
  - b. **NO WARRANTY BY AVAYA.** AVAYA MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WHATSOEVER AND HAS NO WARRANTY OBLIGATIONS WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR THIS EULA. AVAYA EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. AVAYA FURTHER SHALL HAVE NO LIABILITY TO YOU OR ANY OTHER PARTY ARISING FROM OR RELATED IN ANY MANNER TO THE SOFTWARE AND DOCUMENTATION, INCLUDING WITHOUT LIMITATION PRODUCT PERFORMANCE, COMPATIBILITY OR SUITABILITY. THE ONLY WARRANTIES PROVIDED WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION SHALL BE THOSE PROVIDED DIRECTLY FROM DEVELOPER.
  - c. **THIRD PARTY BENEFICIARY.** You acknowledge and agree that Avaya, and Avaya's affiliates, are third party beneficiaries of this EULA and that, upon your acceptance of the terms and conditions of the EULA, Avaya will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third party beneficiary thereof.
  - d. End User acknowledges that the software is subject to the end user making payment for licenses ("Run Time Licenses") see:  
[http://www.devconnectprogram.com/site/global/products\\_resources/avaya\\_client\\_sdk/licensing](http://www.devconnectprogram.com/site/global/products_resources/avaya_client_sdk/licensing) (or such successor site as designated by Avaya).