Cisco Jabber Software Development Kit License Agreement

CISCO SYSTEMS, INC. AND/OR ITS AFFILIATES INCLUDING CISCO TECHNOLOGY, INC. ("**CISCO**") ARE WILLING TO LICENSE THE CISCO JABBER SOFTWARE DEVELOPMENT KIT ("**CISCO JABBER SDK**") TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS CISCO JABBER SDK LICENSE AGREEMENT ("**AGREEMENT**"). Indicate your acceptance of these terms by selecting the "accept" button at the end of this agreement as part of the installation and download process. By downloading or installing the software and selecting the "accept" button, you are binding yourself, individually or the business entity that you represent ("**LICENSEE**" OR "**DEVELOPER**") to this agreement. If you do not agree to all of the terms of this agreement, then Cisco is unwilling to license the software to you. Select the "decline" button at the end of the agreement if you do not agree to all the terms of this agreement. IF YOU DECLINE, YOU SHALL NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

AS PART OF THE SDK FOR JABBER GUEST, CISCO PROVIDES AN IMPLEMENTATION OF THE ADVANCED VIDEO CODING/H.264 ("**H.264**") CODEC. THE H.264 CODEC IS SUBJECT TO CISCO'S PATENT LICENSE FROM MPEG LA LLC ("**MPEG LA**") AND IS PROVIDED TO DEVELOPER ON A ROYALTY-FREE BASIS. HOWEVER, IF YOU USE THE H.264 CODEC AND DO NOT FOLLOW THE PROCESS SET FORTH IN THE "VIDEO LICENSE" SECTION OF THE DOCUMENTATION FOR YOUR END USERS TO ACTIVATE IT, THEN YOUR USE OF THE H.264 CODEC IS NOT COVERED BY CISCO'S LICENSE FROM MPEG LA AND YOU MUST SEPARATELY LICENSE H.264 FROM MPEG LA AND PAY THE APPROPRIATE FEES TO THEM. The Video License section in the Documentation will explain, in detail, the process that you must follow to take advantage of Cisco's patent license from MPEG LA.

1.   DEFINITIONS

"**Affiliate(s)**" means (a) with respect to Developer, an entity that wholly (100%) owns or is wholly owned by the Developer, and (b) with respect to Cisco, any corporation, firm, partnership, or other entity, whether *de jure* or *de facto*, that directly or indirectly owns, is owned by, or is under common ownership with Cisco Systems, Inc. to the extent of at least fifty (50%) percent of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation, or other entity actually controlled by, controlling, or under common control with Cisco Systems, Inc.

"**Bug Fixes**" means any patches, work-arounds, corrections, features, functionality, enhancements, updates, modifications, fixes whether for software bugs, security vulnerabilities or otherwise, and any other improvements to the SDK.

"**Cisco Trademark**" means the Cisco logo(s) incorporated into the SDK.

"**Contractor**" means an independent contractor retained by the Developer directly or through a staffing or temporary agency, who has been issued a Developer personnel badge in accordance with the Developer's standard human-resource practices and who works on-site at the Developer's facilities.

"**Developer Application(s)**" means only those application(s) developed by Developer using the SDK and that are designed to work with Cisco products.

"**Documentation**" means any explanatory information in a written format (whether electronically on a compact disc, on a web page or otherwise) that Cisco provides to you in association with the SDK. Examples of documentation include developer guides, technical manuals, and application programming interface documentation, release notes, readme.txt files, feature notes, a copy of this Agreement, and

explanatory as well as other information provided on Cisco's DevNet (http://developer.cisco.com), Cisco.com (http://www.cisco.com) or other Cisco websites. Cisco may provide you with other types of documentation other than the types listed in the examples.

"**Feedback**" means suggestions, comments or other feedback that the Developer provides to Cisco with respect to the SDK, Cisco products, roadmaps and development plans and improvements thereto; Feedback excludes Bug Fixes.

"**Intellectual Property Rights**" means all current and future worldwide patents, patent applications, trade secrets, copyrights, copyright registrations and applications therefor, and all other intellectual property rights and proprietary rights, whether arising under the laws of the United States or any other state, country, or jurisdiction.

"**Open Source Software**" means any software subject to license terms that make the source code available to and permit anyone to copy, create derivative works of, and distribute the software without fee or cost.

"**Resellers**" means resellers, distributors, sub-distributors, value added resellers, any other resale channel through which Cisco or Developer, as applicable, offers its Products either as standalone products or incorporated into the products or services of the resale channel.

"**Redistributable"** means sample source code ("**Sample Code**") and web browser plug-ins or add-ons as well as other SDK components that are marked as "Redistributable" in the Documentation.

"**Software Development Kit**" or "**SDK**" means Cisco technology, which may include one or more of the following: object code, software libraries ("**Libraries**"), application programming interfaces ("**API**"), software tools, Redistributables, published specifications and Documentation.

2.0   LICENSE

2.1   License Grant. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco hereby grants to Developer a revocable, royalty-free, non-exclusive, non-transferable, world wide, and limited license to:

> (a)   Use the SDK for the purpose of internal development, testing, maintenance and support of Developer Applications to work in conjunction with the Cisco products referenced in the SDK and for which the SDK was provided, and for no other purpose;

> (b)   Use and reproduce a reasonable number of copies of the SDK solely for the internal development, testing, back-up, maintenance and support of Developer Applications as permitted under this Agreement;

> (c)   Reproduce and distribute unmodified Libraries and Redistributables solely as incorporated in the Developer Applications directly to end users or through multiple tiers of Resellers to end users;

> (d)   Use, modify, or incorporate all or portions of the Sample Code with Developer Applications and distribute it only as part of Developer Applications.

> (e)   Reproduce the Cisco Trademark without modification in the Developer Applications, only as incorporated into and connected with the video functionality of the SDK, other than as permitted in Section 2.8 (Proprietary Notices).

> (d)   Sublicense: (i) the rights set forth in Sections 2.1(c) and (d) to Resellers in accordance with Section 2.11; (ii) the rights set forth in Section 2.1(a), (b), and (d) to Contractors in accordance with Section 2.12.

2.2   Open Source Software Components. Certain components of the SDK are subject to Open Source Software licenses as described in the Documentation. Such Open Source Software components are subject solely to the applicable Open Source Software license terms.

2.3   Third Party Technology and Other Cisco Software Not Included in the SDK. Licensee acknowledges that effective utilization of the SDK may require the use of a development tool, compiler and other software

and technology of third parties or Cisco. Licensee is solely responsible for procuring such third party software or Cisco software and technology and the necessary licenses for the use thereof.

2.4   Restrictions. Developer shall not use the SDK to develop features or functionality in stand-alone applications or products that operate independently of the Cisco applications or products that are referenced in the SDK or for any purposes not explicitly permitted under this Agreement and shall not reproduce or use the Cisco Trademark in connection with any such applications, products, or other purposes. Developer shall not, and shall not permit any third party to, (a) sublicense the SDK to any third party except as expressly set forth herein, (b) reverse assemble, decompile, reverse engineer or otherwise attempt to derive source code, or the underlying ideas, algorithms, structure or organization, from the SDK, (c) use the SDK for any unlawful or illegal activity, or to develop any application which would commit or facilitate the commission of a crime or other tortious, unlawful, or illegal act, or (d) create any application or code of any kind that interferes with, disrupts, damages, accesses in an unauthorized manner, facilitates unauthorized access, or otherwise adversely affects the software, hardware, network, services, systems, data, or any other property of any third party including, without limitation, Cisco ("**Malware**").   If Developer knows or has reason to know of the existence of any Malware in or relating to Developer Applications, Developer shall promptly notify Cisco. You shall not sell, rent, loan or lease any portion of the SDK.   Cisco reserves all rights not expressly granted in this Agreement. No licenses or rights are granted by Cisco by implication or by estoppel.   The Developer shall not disclose, provide, or otherwise make available any trade secret contained within the SDK in any form to any third party.

2.5   Ownership/License to Cisco. As between Cisco and Developer, Developer acknowledges that Cisco or its licensors shall own and retain all Intellectual Property Rights in and to the SDK and any corrections, and Bug Fixes and Developer hereby irrevocably transfers, conveys and assigns to Cisco all of its right, title, and interest therein. The Developer acknowledges and agrees that all right, title and interest in and to the SDK and any derivatives, copies thereof and related Intellectual Property Rights are and shall remain the sole and exclusive property of Cisco and its licensors. Subject to the preceding sentences of this Section 2.5 (Ownership/License to Cisco), Developer shall have all right, title and interest in and to the Developer Applications created as permitted under this Agreement, including but not limited to all Intellectual Property Rights therein, with the exception of the Cisco Trademark, Libraries, and Redistributables, and any other components of the SDK, which remain the sole property of Cisco.

2.6   U.S. Government End Users. The SDK is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as defined in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, Licensee will provide the SDK to U.S. Government developers pursuant to the terms and conditions therein.

2.7   Non-assertion by the Developer. The Developer agrees not to assert any patent rights related to the SDK Software, SDK Documentation or any derivative works against Cisco, against Cisco's Resellers, customers, licensees, or sublicensees of the SDK or against other users of the SDK for making, having made, using, selling, offering for sale, or importing any products that embed, incorporate or otherwise use the SDK or any derivative works.

2.8   Proprietary Notices. The Developer agrees to maintain and reproduce all copyright, trademarks and other proprietary notices on all copies, in any form, of the SDK in the same form and manner that such copyright, trademarks, and other proprietary notices are included on the SDK. If the Documentation accompanying the SDK includes a section entitled, "Cisco Logo Color Customization," then Developer may customize only the logo color of the Cisco Trademark by selecting either a black or white Cisco logo color, whichever option provides greater contrast with the background, as specified in the Documentation. Any other customizations are prohibited.

2.9   Developer's Use of Open Source. The Developer shall not use any Open Source Software in exercising its rights under this Agreement in any manner that would require as a condition of its use, modification, or distribution that such Open Source Software or other software incorporated into, derived from or distributed with such Open Source Software be: (a) disclosed or distributed in source-code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge. Within fifteen

(15) days of any written request by Cisco, the Developer shall provide Cisco with: (a) detailed explanations of how any Open Source Software in the Developer Application interacts with any Cisco technology or any component thereof; (b) copies of the licenses governing the use and distribution of such Open Source Software; and (c) such additional engineering and other data as Cisco requests in connection with Open Source Software.

2.10   Third-parties. The Developer shall not allow anyone access to the SDK Documentation except: (a) its and its Affiliates' employees in accordance with Section 8 (Confidentiality) and (b) its Contractors in accordance with Sections 2.12 (Contractors) and 8 (Confidentiality).

2.11   Resellers and End Users. The Developer shall require each Reseller and end user to which the Developer Application is distributed to enter into a binding written agreement with the Developer that contains, at a minimum, terms and conditions no less protective of Cisco and its suppliers than the minimum terms and conditions set forth in this Agreement. The Developer shall not be required to specifically name Cisco in such agreements.

2.12   Contractors. The Developer may permit Contractors to use the SDK to perform services for the Developer solely in connection with the Developer's exercise of its rights under Sections 2.1(a), (b), and (d) of this Agreement. The Developer may do so only if Developer:

a) Has a written agreement with the Contractor which agreement binds the Contractor to the same obligations and limitations to which Developer is bound under this Agreement;
b) Guarantees and shall remain liable for the Contractor's acts and omissions with respect to the Agreement;
c) Indemnifies Cisco for all damages and costs of any kind that are caused by Contractors acts and omissions;
d) Ensures that as between Developer and Contractor, no Intellectual Property Rights arising from the Contractor's work for Developer, as it relates to the Agreement, vest in the Contractor; and
e) Requires Contractor to take all reasonable measures to maintain the confidentiality of the Jabber SDK and other Cisco Confidential Information that is provided to Contractor in the course of providing services to Licensee.

The Developer shall promptly deliver a copy of each such agreement to Cisco upon Cisco's request.

2.13   Affiliates. The Developer may permit Affiliates, subject to all terms and conditions applicable to the Developer, to have access to the SDK and perform services for the Developer solely in connection with the Developer's exercise of its rights under Sections 2.1 (License Grant) of this Agreement. Cisco may, at its option, terminate rights granted to any Affiliates. The Developer shall be liable to Cisco for any breaches by any Affiliate of such agreements.

2.14   End User Data Privacy and Security. Developer is solely responsible for any data, content, or resources that Developer creates, transmits or displays through Developer Applications. Developer shall provide a minimum of legally adequate (a) privacy notices and protections for end users of Developer Applications and (b) security measures to protect end user data and other sensitive information.

3.   SUPPORT.

Nothing in this Agreement shall require Cisco to provide any support, services, updates, upgrades, Bug Fixes or any other modifications to the SDK Software. The Developer shall be solely responsible for supporting: (a) Developer Applications and any functionality thereof; and (b) the Developer's Resellers and end users.

Cisco may, at its own sole discretion, update, extend, enhance, or otherwise modify the SDK without notice. If Cisco provides updates to Developer and no separate agreement accompanies such updates, then Cisco licenses such updates to Developer under the terms and conditions of this Agreement.

4.   NO WARRANTY – WARRANTY DISCLAIMER.

THE SDK IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY WHATSOEVER. CISCO SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE,

INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CISCO DOES NOT WARRANT THAT THE SDK IS SUITABLE FOR DEVELOPER'S USE, THE SDK IS WITHOUT DEFECT OR ERROR, THE OPERATION OF THE SDK WILL BE UNINTERRUPTED, OR DEFECTS WILL BE CORRECTED. CISCO MAKES NO WARRANTY REGARDING THE RESULTS OF THE USE OF THE SDK OR PORTIONS OF THE SDK.

5.   CONSEQUENTIAL DAMAGES WAIVER.

CISCO SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY 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 CISCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6.   LIMITATION OF LIABILITY.

IN NO EVENT SHALL CISCO'S TOTAL LIABILITY IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY USE OF THE SDK EXCEED FIFTY U.S. DOLLARS (USD $50). THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SECTION SHALL APPLY EVEN IF ANY REMEDY PROVIDED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

7.   INDEMNITY.

The Developer shall indemnify, defend and otherwise hold Cisco and its Affiliates harmless against any third party claims, losses, damages, liability or expenses (including attorneys' and other professionals' fees) incurred by Cisco arising out of or relating to: (a) the Developer Applications, including without limitation products liability claims, data breach or data loss claims, warranty claims, claims concerning Malware, and claims of infringement of third party Intellectual Property Rights; and (b) the use, marketing, sale or distribution of the SDK by the Developer, its Resellers and end users.

8.   CONFIDENTIALITY.

8.1   The SDK, whether in whole or in part, and all related technical information is confidential and proprietary to Cisco ("**Confidential Information**"). The Developer shall keep the SDK in strict confidence. The Developer shall take all reasonable steps to ensure that its personnel (including Developer's or its Affiliate's employees and Contractors) treat the SDK in the same manner they treat the Developer's own software code and confidential information.

8.2   The Developer may disclose the SDK only to its employees and Contractors (or those of its Affiliates) who: (i) have a need to know or access the SDK solely for internal development and testing of Developer Applications; (ii) have been advised of the obligations in this Agreement by, at a minimum, providing a copy of this Agreement with the SDK; and (iv) are under confidentiality obligations substantially similar to those set out in this Agreement.

8.3   The Developer shall take all reasonable steps, both during and after the term of this Agreement, to ensure that: (a) no unauthorized person has access to the SDK; (b) no Confidential Information is disclosed to any third parties; and (b) no unauthorized copies, in whole or in part, of the SDK are made.

8.4   The Developer shall be fully responsible for the conduct of its and its Affiliates' employees and Contractors who may, in any way breach, this Agreement, and the Developer shall immediately notify Cisco of any known breach of this Agreement.

8.5   Each party shall obtain the other's written consent prior to any publication, presentation, public announcement, or press release concerning the existence or terms and conditions of this Agreement.

9.   HEALTHCARE APPLICATIONS SUITABILITY. LICENSEE SHALL BE SOLELY RESPONSIBLE FOR ANY PRODUCT USE OR APPLICATION DEVELOPED USING THE SDK THAT MAY BE SUBJECT TO UNITED STATES FOOD AND DRUG ADMINISTRATION REGULATION, OR OTHER SUCH SIMILAR REGULATORY JURISDICTION, INCLUDING ANY AND ALL RESPONSIBILITY FOR COMPLIANCE TO

SUCH REGULATION AS MAY BE APPLICABLE. LICENSEE ACKNOWLEDGES THAT CISCO PROVIDES THE SDK ONLY AS A GENERAL PURPOSE DEVELOPMENT TOOL TO LICENSEE.

10.   FEEDBACK/BUG FIXES.

10.1   The Developer grants to Cisco a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, including the right to sublicense to Cisco's licensees, Resellers, Affiliates, customers and end users, under the Developer's Intellectual Property Rights, the rights to use and disclose Feedback without any confidentiality obligation in any manner Cisco chooses and to display, perform, copy, have copied, modify, create derivative works, make, have made, use, sell, offer to sell, import and otherwise directly or indirectly distribute Feedback.

10.2   The Developer hereby assigns, and Cisco shall own, all right, title and interest in and to all Bug Fixes made or provided by Developer. The Developer agrees to execute, at Cisco's request and expense, all documents and other instruments necessary or desirable to confirm such assignment. In the event that the Developer does not, for any reason, execute such documents within a reasonable time of Cisco's request, the Developer hereby irrevocably appoints Cisco as the Developer attorney-in-fact for the purpose of executing such documents on Developer's behalf.

11.   TERM AND TERMINATION.

This Agreement and the license granted herein begin on the Effective Date and terminate five (5) years after the Effective Date. Developer may terminate this Agreement and the license at any time by destroying all copies of all items included in the SDK. Developer's rights under this Agreement will terminate immediately without notice from Cisco if Developer fails to comply with any provision of this Agreement or with the provisions of the Cisco Developer Network Agreement. Cisco may terminate this Agreement at any time in its sole discretion for any reason or no reason. Either party may terminate this Agreement immediately should any portion of the SDK become, or in either party's opinion be likely to become, the subject of a claim of infringement of any intellectual property right. Upon termination, Developer shall destroy all copies of the SDK in its, its affiliates, and its Contractor's possession or control and shall refrain from any and all reproduction or use of the Cisco Trademark. All confidentiality obligations of Developer and all limitations of liability, disclaimers, damages waivers, warranty limitations, and limitations of liability shall survive termination of this Agreement. In addition, the following provisions shall survive termination of this Agreement: 2.7 (Non-assertion by the Developer), 2.4 (Restrictions, with respect to Malware), 2.14 (End User Data Privacy and Security), 7 (Indemnity), 9 (Healthcare Applications Suitability), 10 (Feedback/Bug Fixes), 12 (Export Controls), 13 (Governing Law), 14 (Assignment), and 15 (Severability).

12.   EXPORT CONTROLS.

The SDK, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Developer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import the SDK.

13.   GOVERNING LAW.

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, United States of America, as if performed wholly within the State and without giving effect to the principles of conflict of laws, and the State and federal courts of California shall have exclusive jurisdiction over any claim arising under this Agreement. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, Cisco may seek interim injunctive relief (or equivalent remedy) in any court of appropriate jurisdiction with respect to any alleged breach of (a) Cisco's intellectual property or proprietary rights or (b) this Agreement. This Agreement has been written in the English language, and the parties agree that the English version will govern.

14.   ASSIGNMENT.

Developer may not assign this Agreement or any interest or rights granted hereunder to any third party without Cisco's prior written consent.

15.   SEVERABILITY.

If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

16.   ENTIRE AGREEMENT.

Except as expressly provided herein, this Agreement constitutes the entire legal agreement between the parties with respect to the SDK and supersedes any prior agreements among the parties and any conflicting or additional terms contained in any purchase order, master purchase agreements, end user license agreements, or any other agreement between the parties that is not a written amendment to this Agreement.

17.   WAIVER.

No failure by any party to exercise or enforce any of its rights under this Agreement shall 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. No waiver of any term or condition of this Agreement will be valid or binding on either party unless the same is mutually assented to in writing by an authorized representative of both parties.

18.   AUTHORITY.

You warrant and represent that you are an authorized representative of the Developer and have the right, power, and authority to enter into this Agreement on behalf of Developer.