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1.1 “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 Work(s)” 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.

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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 mask works, (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 an Avaya product through the Avaya Software Development Kit.

1.13 “Software” means Avaya’s intangible information constituting one or more computer or apparatus programs, including, but not limited to, Avaya software in Source Code or in machine-readable, compiled object code form.

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in no event shall the standard of care be less than a reasonable degree of care. Under no circumstances shall Licensee enable the use or activation of any of Avaya's Intellectual Property by an end user, without such end user having acquired the additional necessary licenses to Avaya Intellectual Property. 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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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. 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.

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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.

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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 31st 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 Avaya DevConnect 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 12 (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, 2.7, 2.10, 2.11, 3, and 5 through 18 shall survive any expiration or termination of this Agreement.

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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, 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.

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 AND DISPUTE RESOLUTION.

This Agreement will be governed by and construed in accordance with the laws of the State of New York, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods.

Any disputes, including without limitation the formation, interpretation, breach or termination of this Agreement or any issue regarding whether a dispute is subject to arbitration hereunder, that cannot be settled by good faith negotiation between the parties within a reasonable period of time, will be conclusively determined by a final and binding arbitration proceeding to take place in New York City, New York. Such proceeding will be conducted in English and administered by JAMS pursuant to the JAMS Comprehensive Arbitration Rules and Procedures then in effect, or in the event one of the parties is located outside of the United States, pursuant to the JAMS International Arbitration Rules then in effect, before a panel of one (1) arbitrator chosen in accordance with such rules. The arbitrator will not award punitive or exemplary damages, and will not have the authority to limit, expand or otherwise modify the terms of this Agreement. The ruling by the arbitrator 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 each party will bear its own attorneys' fees and other costs associated with the arbitration or any other proceedings to enforce the terms of this Agreement. The parties agree that this arbitration provision 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.

Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the aggrieved party will be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including interim equitable relief, temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights pending arbitration or adjudication by competent court, as applicable. A request by a party to a court for interim relief or other provisional remedy will not affect either party's obligation under this Agreement (where applicable) to arbitrate.

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 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.

19. REDISTRIBUTABLE CLIENT FILES.

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