



AVAYA GLOBAL SOFTWARE LICENSE TERMS
Version: May 2023

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In case the End User has a valid agreement in place with Avaya or an Avaya authorized channel partner that can be used to purchase Software, the following sections from these Software License Terms will not apply and the existing agreement will take precedent (as long as they are included in the existing agreement): Warranty, Limitation of Liability, International Trade Compliance and Third Party Terms.

B. License Grant. Avaya grants the End User a non-sublicensable, non-exclusive, non-transferable license to use Software and associated Documentation obtained from Avaya or an Avaya Channel Partner, and for which applicable fees have been paid, for End User’s internal business purposes at the indicated capacity and features and within the scope of the applicable license types described in the documented posted at <http://support.avaya.com/LicenseInfo> (or a successor site) and at locations where the Software is initially installed. Licenses provided under these Software License Terms may be perpetual or if the license is provided as part of a subscription, the license grant will be limited to the duration specified on the order or subscription Documentation. Documentation shall be used only in support of the authorized use of the associated Software. Software installed on mobile-devices and clients, such as a laptop or mobile phone, may be used outside of the country where the Software was originally installed, provided that such use is on a temporary basis only.

C. License Move/Transfer Rights. Notwithstanding the foregoing limitation permitting use of the Software only at the location where it is initially installed, the End User may move RTUs for certain specified Software from one location to another in accordance with the License Portability Policy. If End User wants to transfer RTU’s to another Affiliate, End User will have to notify Avaya in writing detailing the name and address of the new Affiliate and Avaya can provide a proposal or quote to do so that may include additional fees. Such quote being subject to such new Affiliate agreeing to be bound by Avaya’s Software License Terms and signing a separate maintenance services agreement for or expanding its maintenance coverage to such new RTUs.

Additional License Transfer Rights applicable to the EU. Notwithstanding the limitations in this Section C (License Move/Transfer Rights) and Section F (General License Restrictions Below), below, solely to the extent an End User’s resale rights cannot be precluded or restricted by mandatory applicable law, End Users located in a member state of the European Union may resell licenses subject to the following conditions:

- (i) Prior to resale of a license, End User will promptly, but not less than 30 days prior to a resale, notify Avaya in writing of its intention to resell a license.
- (ii) Unless expressly agreed otherwise in writing, End User will not be permitted to resell less than its entire license to a buyer.
- (iii) End User will resell the Software subject to these Software License Terms and shall ensure that the buyer is bound by these Software License Terms.
- (iv) Upon resale of a license, End User shall immediately and permanently cease all use of and destroy all copies of the Software and any related materials in End User’s possession or control and, upon Avaya’s request, certify such destruction in writing. Avaya may audit End User’s compliance with the foregoing in accordance with Section K (Compliance) below.
- (v) End User will keep appropriate records of all license resale including, but not limited to, the name and location of the buyer and the number and types of licenses resold.
- (vi) End User acknowledges that: (a) resale of a license is subject to any relevant Third Party Terms; (b) maintenance services do not cover system errors caused by license resale not performed by Avaya; (c) Avaya is not responsible for any programming, administration, design assurance, translation or other activity to make sure the Software will scale and perform as specified as a result of any license resale, and if any such resale results in a requirement for Avaya system engineering or requires the use of on-site Avaya personnel, End User will be charged the then applicable Avaya time and materials rates for such activity; (d) any resale of a maintenance services agreement between Avaya and the original licensee is subject to Avaya’s prior written approval. Avaya reserves the right to withhold such approval and/or offer the new licensee a maintenance services agreement subject to different terms and conditions; and (e) if not expressly agreed by Avaya in writing otherwise, the resale of licenses does not entitle the End User to cancel or partially cancel a maintenance services agreement during the agreed term.

If the Software is rightfully located in a member state of the European Union and End User needs information about the Software in order to achieve interoperability of an independently created software program with the Software, End User will first request such information from Avaya. Avaya may charge End User a reasonable fee for the provision of such information. End User agrees to protect such information in accordance with Section O (Protection of Software and Documentation) below and shall use such information only in accordance with the terms and conditions under which Avaya provides such information. To the extent that the End User is expressly permitted by applicable mandatory law to undertake any activities related to achieving interoperability of an independently created software program with the Software, End User will not exercise those rights until End User has given Avaya twenty (20) days written notice of its intent to exercise any such rights.

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F. General License Restrictions. End User may not (i) decompile, disassemble, reverse engineer, reverse translate or in any other manner decode the Software except as permitted by applicable law; (ii) alter, modify or create any derivative works or enhancements, adaptations, or translations of the Software or Documentation; (iii) sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorized by Avaya in writing, and any attempt to do so is void; (iv) distribute, disclose or allow use of the Software or Documentation, in any format, through any timesharing service, service bureau, network or by any other similar means, such as hosting or cloud, except as expressly authorized by Avaya in writing; (v) allow any service provider or other third party, with the exception of Avaya’s authorized maintenance providers or Avaya Channel Partners who are acting solely on behalf of and for the benefit of End User, to use or execute any software commands that facilitate the maintenance or repair of any product; (vi) gain access to or the use of any Software or part thereof without authorization from Avaya; (vii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Avaya, Avaya’s authorized maintenance providers or Avaya Channel Partners; (viii) publish the results of any tests run on the Software; (ix) disclose, provide, or otherwise make available to any third party any trade secrets contained in the Software or Documentation; (x) use the Software in a virtualized environment except as expressly authorized by these Software License Terms, or (xi) permit or encourage any third party to do any of the foregoing.

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G. Proprietary Rights Notices. End User agrees to retain, in the same form and location, all proprietary legends and/or logos of Avaya and/or Avaya’s suppliers on any permitted copies of the Software or Documentation.

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K. Compliance. Avaya and/or the Avaya Channel Partners have the right to inspect and/or audit (i) by remote polling or other reasonable electronic means at any time and (ii) in person during normal business hours and with reasonable notice End User’s books, records, and accounts, to determine End User’s compliance with these Software License Terms, including but not limited to usage levels. In the event such inspection or audit uncovers non-compliance with these Software License Terms, then without prejudice to Avaya’s termination rights hereunder, End User shall promptly pay Avaya any applicable license fees. End User agrees to keep a current record of the location of the Software.

L. Termination of License; Effect of Termination/ Expiration. If the End User breaches these Software License Terms and if within ten (10) business days of Avaya’s written request to cure, the End User has not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate End User’s licenses granted without prejudice to any other rights and remedies Avaya may have. Upon termination or expiration of the license for any reason, the End User must immediately destroy all copies of the Software and any related materials in End User’s possession or control and, upon Avaya’s request, certify such destruction in writing. The provisions that by their nature, are intended to survive termination will survive any termination or expiration of the Software License Terms.

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N. Limitation of Liability. EXCEPT FOR PERSONAL INJURY CLAIMS OR WILLFUL MISCONDUCT, AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER AVAYA, AVAYA AFFILIATES, THEIR LICENSORS OR SUPPLIERS, NOR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS SHALL BE LIABLE FOR (i) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, (ii) ANY LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, OR COST OF COVER, SUBSTITUTE GOODS OR PERFORMANCE, OR (iii) ANY DIRECT DAMAGES ARISING UNDER THESE SOFTWARE LICENSE TERMS IN EXCESS OF THE FEES PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. REGARDLESS OF WHETHER THE END USER WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER THE LIMITED REMEDIES FAIL THEIR ESSENTIAL PURPOSE, THESE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE.

O. Protection of Software and Documentation. End User acknowledges that the Software and Documentation are confidential information of Avaya and its suppliers and contain trade secrets of Avaya and its suppliers. End User agrees at all times to protect and preserve in strict confidence the Software and Documentation using no less than the level of care End User uses to protect its own information of a confidential nature and to implement reasonable security measures to protect the trade secrets of Avaya and its suppliers.

P. Privacy. When the End User is downloading or using the Software, Avaya might process certain data about the End User, the End User’s network and the End User’s device (e.g., email address, phone - extension number, device IDs, IP addresses, location, etc.). Avaya will keep End User’s data confidential

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Q. High Risk Activities. The Software is not designed, manufactured, or intended for any use in any environment that requires fail-safe performance in which the failure of the Software could lead to death, personal injury, or significant property damage ("High Risk Activities"). Customer assumes the risk for use of the Software in any High-Risk Activities.

R. International Trade Compliance. Each Party agrees to conduct its operations in relation to these Software License Terms in compliance with all International Trade Laws. Each Party shall be responsible for obtaining the necessary authorizations required by international Trade Laws that are applicable to the Party's import, export, reexport, in-country transfer or other foreign trade activity in connection with its performance under these Software License Terms. Each party confirms that they are not engaging in transactions involving comprehensive or selective embargoes, sanctioned countries, and have not been designated as Denied Parties or Restricted Parties under applicable International Trade Laws unless government authorizations have been obtained. The Parties agree to not use any Products obtained under these Software License Terms to engage in activities related to weapons of mass destruction, nuclear proliferation, nuclear, chemical, or biological weaponry, or to permit or facilitate such prohibited uses of Products by a third party.

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T. Acknowledgement. End User acknowledges that certain Software may contain programming that: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the End User making payment for licenses to such features, functionality or capacity; or (ii) periodically deletes or archives data generated by use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time; or (iii) may rely on a third party analytics service to collect and generate aggregated user data which Avaya may use to improve product performance and its functionality. For Google Analytics, please refer to the following website for more information: <http://www.google.com/policies/privacy/partners/> (or such successor site as designated by Google). By accepting these Software License Terms and continued use of the Software, service, or subscription, End User consents to the use of such an analytics service to analyze such data.

U. Third Party Terms. Customer may elect to purchase Third-Party Products and Third-Party Services from Avaya, and, in that case, Customer acknowledges and agrees to be bound by certain Third-Party Terms. In case of a conflict, the Third-Party Terms take precedence over these Software License Terms only for those Third-Party Products and/or Third-Party Services.

V. Miscellaneous. These Software License Terms and any Dispute, including any issue regarding whether a Dispute is subject to arbitration under these Software License Terms, 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.

In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each controversy or claim within thirty (30) days, (or other mutually agreed period), following the delivery of notice, by referral to designated representatives of the parties authorized to negotiate resolution thereof.

Any Dispute that: (i) arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States; (ii) cannot be settled under the procedures and within the timeframe set forth above; and (iii) is not based upon non-payment, will be conclusively resolved by a final and binding arbitration proceeding 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, except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed One Million US Dollars (\$1,000,000.00) at the time all such claims 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 (3) 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 N (Limitation of Liability) 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 these Software License Terms. 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 will each bear their 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.

If a Dispute arises in the United States or is based upon an alleged breach committed in the United States and cannot be settled as indicated in the second paragraph, 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 this Section 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 these Software License Terms.

Nothing in this Section will preclude Avaya from seeking monetary damages and remedies from any court of competent jurisdiction for monies owing under these Software License Terms or any order. If Avaya chooses to commence legal action in a court of competent jurisdiction for the aforesaid purposes, each party hereby irrevocably (i) waives any objection which it may have to the laying of venue of any legal action brought in such courts or that such legal action has been brought in an inconvenient forum, and (ii) further waives the right to object with respect to such legal action that any such court does not have jurisdiction over such party.

Nothing in these Software License Terms will be construed to preclude either party from seeking provisional remedies, including 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 this Section 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.

Except for actions for non-payment or breach of Avaya's proprietary rights, actions on Disputes between the parties must be brought in accordance with this Section within 2 years after the cause of action arises.

The parties will cause their Affiliates to comply with the dispute resolution procedures described in this Section.

If any provision of these Software License Terms is determined to be unenforceable or invalid, these Software License Terms 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. The failure to assert any rights under the Software License Terms, 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 the Software License Terms in accordance with their terms. If End User moves any Software, and as a result of such move, a jurisdiction imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Software), then End User is solely liable for, and agree to pay, any such duty, taxes, levy or other fees.

W. Agreement in English. The parties confirm that it is their wish that these Software License Terms, 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.



EXHIBIT A-Definitions

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in these Software License Terms. This Exhibit A is incorporated into and part of the Software License Terms.

- **"Affiliate"** means any entity that is directly or indirectly controlling, controlled by, or under common control with Avaya LLC or End User. 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.
- **"Avaya"** means Avaya LLC or the applicable Avaya Affiliate.
- **"Avaya Channel Partner"** means an Avaya reseller, distributor, direct partner, system integrator, service provider or other partner authorized to provide Software to End Users in the applicable territory
- **"Dispute"** means any dispute arising out of or relating to these Software License Terms.
- **"Documentation"** means information published in varying media which may include product information, subscription or service descriptions, operating instructions and performance specifications that are generally made available to users of products. Documentation does not include marketing materials.
- **"EAR"** means Export Administration Regulations.
- **"End User"** means the entity or person authorized to act on behalf of an entity that downloads or uses the Software or authorizes other to do so.
- **"High Risk Activities"** mean any environment that requires fail- safe performance in which the failure of the Software could lead to death, personal injury or significant property damage.
- **"International Trade Laws"** means US and all other applicable import, export, re-export, in-country transfer, and other foreign trade control statutes, laws, regulations, enactments, directives, and ordinances of any governmental authority with appropriate jurisdiction over such International Trade Laws.
- **"License Portability Policy"** means Avaya's then-current software license portability policy located at <https://support.avaya.com/support/en/helpcenter/GenericDetail/C2009223142629795043> or such successor site as designated by Avaya
- **"OSS"** means Open-Source Software.
- **"Personal Data"** means data that identifies or may be used to identify an individual.
- **"RTUs"** means the rights granted to use the Software.
- **"Software"** means computer programs in object code, provided by Avaya or an Avaya Channel Partner, including software pre- installed on hardware, and any upgrades, updates, patches, bug fixes, or modified versions thereto.
- **"Third Party Components"** mean: (i) third-party software licensed to you under their own license terms set out at <http://support.avaya.com/Copyright>; and/or (ii) OSS not owned by Avaya that is subject to separate license terms as set out at: <http://support.avaya.com/Copyright>.
- **"Third Party Products"** means any product made or provided by a party other than Avaya, including: (i) products ordered by customer from third parties; (ii) products provided by Avaya that are recognizable as standalone items, and; (iii) products identified as separate items on Avaya's price list, quotes, order specification forms or documentation.
- **"Third Party Services"** means any non-Avaya branded service provided under your agreement with Avaya or an Avaya partner.
- **"Third Party Terms"** mean additional terms and conditions in effect as of the date of an order that apply to Third Party Products and Third-Party Services and are located at <https://support.avaya.com/copyright> or its successor site under the applicable product or service name.