



AVAYA GLOBAL SOFTWARE LICENSE TERMS
REVISED: FEBRUARY 2012

THIS END USER LICENSE AGREEMENT ("SOFTWARE LICENSE TERMS") GOVERNS THE USE OF AVAYA'S PROPRIETARY SOFTWARE AND THIRD-PARTY PROPRIETARY SOFTWARE. READ THESE SOFTWARE LICENSE TERMS CAREFULLY, IN THEIR ENTIRETY, BEFORE INSTALLING, DOWNLOADING OR USING THE AVAYA SOFTWARE (AS DEFINED IN SECTION A BELOW). BY INSTALLING, DOWNLOADING OR USING THE AVAYA SOFTWARE, OR AUTHORIZING OTHERS TO DO SO, YOU, ON BEHALF OF YOURSELF AND THE ENTITY FOR WHOM YOU ARE DOING SO (HEREINAFTER REFERRED TO INTERCHANGEABLY AS "YOU" AND "END USER"), AGREE TO THESE SOFTWARE LICENSE TERMS AND CONDITIONS AND CREATE A BINDING CONTRACT BETWEEN YOU AND AVAYA INC. OR THE APPLICABLE AVAYA AFFILIATE ("AVAYA"). IF YOU ARE ACCEPTING THESE SOFTWARE LICENSE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE SOFTWARE LICENSE TERMS. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO BE BOUND BY THESE SOFTWARE LICENSE TERMS, YOU MUST RETURN OR DELETE THE SOFTWARE WITHIN TEN (10) DAYS OF DELIVERY FOR A REFUND OF THE FEE, IF ANY, YOU PAID FOR THE LICENSE OR IF SOFTWARE IS ACCESSED ELECTRONICALLY, SELECT THE "DECLINE" BUTTON AT THE END OF THESE SOFTWARE LICENSE TERMS.

A. Scope. These Software License Terms are applicable to anyone who installs, downloads, and/or uses Avaya Software and/or Documentation, obtained from Avaya or an Avaya reseller, distributor, direct partner, system integrator, or other partner authorized to provide Avaya Software to End Users in the applicable territory ("Avaya Channel Partner"). You are not authorized to use the Software if the Software was obtained from anyone other than Avaya or an Avaya Channel Partner.

These Software License Terms govern your use of the Software and/ or Documentation except to the extent 1) you have a separate signed agreement with Avaya governing your use of the Software, 2) the Software is accompanied by a Shrinkwrap License, or 3) the Software is governed by Third Party Terms. If you have a separate signed purchase agreement with Avaya governing your use of the Software, such agreement shall take precedence over these Software License Terms to the extent of any conflict. With respect to third party elements subject to a Shrinkwrap License or other Third Party Terms, the Shrinkwrap License or other Third Party Terms shall take precedence over any signed purchase Agreement with Avaya and these Software License Terms to the extent of any conflict.

"Software" means computer programs in object code, provided by Avaya or an Avaya Channel Partner, whether as stand-alone products or pre-installed on hardware products, and any upgrades, updates, bug fixes, or modified versions thereto. "Documentation" means information published by Avaya in varying mediums which may include product information, operating instructions and performance specifications that Avaya generally makes available to users of its products. Documentation does not include marketing materials.

B. License Grant. Avaya grants you a personal, 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 your internal business purposes at the indicated capacity and features and within the scope of the applicable license types described below and at locations where the Software is initially installed. 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.

- (i) **Right to Move License Entitlements.** Notwithstanding the foregoing limitation permitting use of the Software only at the location where it is initially installed, you may move right to use license entitlements (RTU's) for certain specified types of Software from one location to another in accordance with Avaya's then-current software license move policy for that Software ("License Portability Policy"), which is available upon request, subject to the following conditions:
 - (a) You shall provide written notice within ten (10) days to Avaya of any RTU moves including but not limited to, the number and type of licenses moved, the location of the original Server and the location of the new Server, the date of such RTU moves and any other information that Avaya may reasonably request;
 - (b) You may only move RTU's to and from Designated Processors or Servers supporting the same Software application;
 - (c) You must reduce the quantity of the licenses on the original Server by the number of RTU's being moved to the new Server.
 - (d) You acknowledge that (1) you may be charged additional fees when moving RTU's as per Avaya's then-current License Portability Policy, (2) maintenance services do not cover system errors caused by moves not performed by Avaya, (3) you are 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 moves, and if any such transfer results in a requirement for Avaya system engineering or requires the use of on-site Avaya personnel, you will be charged the Time & Materials fees for such activity;
 - (e) If your maintenance coverage differs on licenses on the same product instance at the location of the new Server, service updates, recasts and/or fees may apply and any fee adjustments for differences in coverage will only be made on a going forward basis as of the date Avaya receives notice of the RTU move; and
 - (f) You may move RTU's from one Affiliate to another Affiliate provided that you comply with all of the conditions of this section, including, without limitation, providing the name and address of the new Affiliate in your written notice under subpart (a) above, and provided such new Affiliate agrees to be bound by these Software License Terms. "Affiliate" means any entity that is directly or indirectly controlling, controlled by, or under common control with Avaya Inc. 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.
- (ii) **Non-Production License Grant.** With respect to Software distributed by Avaya to you for non-production purposes, the scope of the license granted herein shall be to use the Software in a non-production environment solely for testing or other non-commercial purposes on a single computer ("Non-Production License").

C. All Rights Reserved. Avaya retains title to and ownership of the Software, Documentation, and any modifications or copies thereof. Except for the limited license rights expressly granted in these Software License Terms, Avaya reserves all rights, including without limitation copyright, patent, trade secret, and all other intellectual property rights, in and to the Software and Documentation and any modifications or copies thereof. The Software contains

trade secrets of Avaya, its suppliers, or licensors, including but not limited to the specific design, structure and logic of individual Software programs, their interactions with other portions of the Software, both internal and external, and the programming techniques employed.

D. General License Restrictions. To the extent permissible under applicable law, you agree not to: (i) decompile, disassemble, reverse engineer, reverse translate or in any other manner decode the Software; (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 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 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 or Avaya's authorized maintenance providers; (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; or (x) permit or encourage any third party to do any of the foregoing.

End User agrees not to allow anyone other than its authorized employees, agents or representatives who have a need to use the Software or Documentation to have access to the Software or Documentation. End User agrees to inform any third party to whom you give access to the Software or Documentation of these Software License Terms and shall obligate such third party to comply with such terms and provisions. End User shall be responsible for any third party's failure to comply with these Software License Terms and shall indemnify Avaya for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Avaya as a result of non-compliance with this section.

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 shall maintain such information in strict confidence using no less than the same care it uses to protect its own confidential information 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.

E. Proprietary Rights Notices. End User shall affix to each copy of the Software made by End User, in the same form and location, a reproduction of the copyright notices, trademarks, and all other proprietary legends and/or logos of Avaya and/or Avaya's suppliers appearing on the original copy of the Software delivered to End User, and shall retain the same without alteration on all original copies.

F. Backup Copies. End User may create a reasonable number of archival and backup copies of the Software and the Documentation.

G. Upgrades – End User's right to use any upgrades to the Software shall be conditioned upon End User having a valid license to use the original Software and paying the applicable license fee to Avaya or an Avaya Channel Partner for such upgrade.

H. Warranty. Avaya's Global Product Warranty Policy for End Users, which details a limited warranty for Software and Software media and the applicable procedures, exclusions, and disclaimers, is available through the following website: <http://support.avaya.com>. Please note that if you are acquiring the Software from an Avaya Channel Partner outside the United States of America or Canada, the warranty is provided to you by said Avaya Channel Partner and not by Avaya.

I. Compliance. Avaya and the Avaya Channel Partner who provided the Software have the right to inspect or audit by remote polling or other reasonable means, and to inspect End User's books, records, and accounts during normal business hours and with reasonable notice, 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.

J. Termination of License; Effect of Termination/ Expiration. If you breach these Software License Terms and if within ten (10) business days of your receipt of a reasonably detailed written request to cure, you have not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the licenses granted in these Software License Terms without prejudice to any available rights and remedies Avaya may have at law or in equity. Upon termination or expiration of the license for any reason, you must immediately permanently destroy all copies of the Software and any related materials in your possession or control and, upon Avaya's request, certify such destruction in writing. The provisions concerning confidentiality, the protection of trade secrets and proprietary rights, indemnity, license restrictions, export control, and all limitations of liability and disclaimers and restrictions of warranty (as well as any other terms which, by their nature, are intended to survive termination) will survive any termination or expiration of the Software License Terms.

K. License Types. Avaya grants you a license within the scope of the license types described below, with the exception of Heritage Nortel Software, for which the scope of the license is detailed in Section L below. Where the order documentation does not expressly identify a license type, the applicable license will be a Designated System License. The applicable number of licenses and units of capacity for which the license is granted will be one (1), unless a different number of licenses or units of capacity is specified in the documentation or other materials available to you. "Designated Processor" means a single stand-alone computing device. "Server" means a Designated Processor that hosts a software application to be accessed by multiple users.

Designated System(s) License (DS). End User may install and use each copy of the Software only on a number of Designated Processors up to the number indicated in the order. Avaya may require the Designated Processor(s) to be identified in the order by type, serial number, feature key, location or other specific designation, or to be provided by End User to Avaya through electronic means established by Avaya specifically for this purpose.

Concurrent User License (CU). End User may install and use the Software on multiple Designated Processors or one or more Servers, so long as only the licensed number of Units are accessing and using the Software at any given time. A "Unit" means the unit on which Avaya, at its sole discretion, bases the pricing of its licenses and can be, without limitation, an agent, port or user, an e-mail or voice mail account in the name of a person or corporate function (e.g., webmaster or helpdesk), or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software. Units may be linked to a specific, identified Server.

Database License (DL). End User may install and use each copy of the Software on one Server or on multiple Servers provided that each of the Servers on which the Software is installed communicates with no more than a single instance of the same database.

CPU License (CP). End User may install and use each copy of the Software on a number of Servers up to the number indicated in the order provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the Software. End User may not re-install or operate the Software on Server(s) with a larger performance capacity without Avaya's prior consent and payment of an upgrade fee.

Named User License (NU). You may: (i) install and use the Software on a single Designated Processor or Server per authorized Named User (defined below); or (ii) install and use the Software on a Server so long as only authorized Named Users access and use the Software. "Named User," means a user or device that has been expressly authorized by Avaya to access and use the Software. At Avaya's sole discretion, a "Named User" may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software.

Shrinkwrap License (SR). You may install and use the Software in accordance with the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "clickthrough" license accompanying or applicable to the Software ("Shrinkwrap License").

L. Heritage Nortel Software. "Heritage Nortel Software" means the software that was acquired by Avaya as part of its purchase of the Nortel Enterprise Solutions Business in December 2009. The Heritage Nortel Software currently available for license from Avaya is the software contained within the list of Heritage Nortel Products located at <http://support.avaya.com/licenseinfo> under the link "Heritage Nortel Products." For Heritage Nortel Software, Avaya grants Customer a license to use Heritage Nortel Software provided hereunder solely to the extent of the authorized activation or authorized usage level, solely for the purpose specified in the Documentation, and solely as embedded in, for execution on, or (in the event the applicable Documentation permits installation on non-Avaya equipment) for communication with Avaya equipment. Charges for Heritage Nortel Software may be based on extent of activation or use authorized as specified in an order or invoice.

M. Third Party Components. Certain software programs or portions thereof included in the Software may contain software (including open source software) distributed under third party agreements ("Third Party Components"), which may contain terms that expand or limit rights to use certain portions of the Software ("Third Party Terms"). Information regarding distributed Linux OS source code (for those product that have distributed Linux OS source code) and identifying the copyright holders of the Third Party Components and the Third Party Terms that apply is available in the Documentation or on Avaya's website at: <http://support.avaya.com/Copyright>. You agree to the Third Party Terms for any such Third Party Components.

N. Limitation of Liability. EXCEPT FOR PERSONAL INJURY CLAIMS OR WILLFUL MISCONDUCT AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER AVAYA, ITS 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, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER 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. REGARDLESS OF WHETHER THEY WERE ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THE 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. Personal Data. The download or use of the Software may require the processing of personal data (including, but not limited to contact name, company address, company phone or fax, or company email) pertaining to your company or to your company's personnel. Such data will be used by Avaya for communication, administrative, and operational purposes related to the Software, including but not limited to tracking Software activations, communicating regarding trouble tickets and alarms, and providing Software updates. Personal data required to download or use the Software must be submitted to Avaya. Failing the submission of such data, the download or use of the Software may not be possible. You or your personnel have a right to access and correct erroneous personal data pertaining to you or your personnel and to object for legitimate reasons to the processing and transfer of this data. You can exercise this right by contacting in writing the Data Privacy Officer of the applicable Avaya Affiliate.

Q. High Risk Activities. The Software is not fault-tolerant and 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"). Such environments include, among others, control systems in a nuclear, chemical, biological or other hazardous facility, aircraft navigation and communications, air traffic control, and life support systems in a healthcare facility. End User assumes the risks for its use of the Software in any such High Risk Activities.

R. Export Control. End User is advised that the Software is of U.S. origin and subject to the U.S. Export Administration Regulations (EAR). The Software also may be subject to applicable local laws and regulations. Diversion contrary to U.S. and/ or applicable local country law and/ or regulation is prohibited. You agree not to directly or indirectly export, re-export, import, download, or transmit the Software 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). You represent that neither the U.S. Bureau of Industry and Security (BIS) nor any other governmental agency has issued sanctions against End User or otherwise suspended, revoked or denied End User's export privileges. You agree not to use or transfer the Software for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. and applicable local government by regulation or specific written license. Additionally, you are advised that the Software 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. BIS and any other country's governmental agencies, where applicable.

S. U.S Government End Users. The Software is classified as "commercial computer software" and the Documentation is classified as "commercial computer software documentation" or "commercial items," pursuant to 48 CFR FAR 12.212 or DFAR 227.7202, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the Government of the United States shall be governed solely by the terms of these Software License Terms and shall be prohibited except to the extent expressly permitted by these Software License Terms, and any use of the Software and/ or Documentation by the Government constitutes agreement to such classifications and to these Software License Terms.

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.

U. Miscellaneous. These Software License Terms will be governed by New York law, excluding choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods. Any claim, dispute or controversy (collectively a "Claim") arising out of or relating to these Software License Terms, including without limitation the formation, interpretation, breach or termination hereof, or any issue regarding whether a Claim 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 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 Software License Terms. 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 their own attorneys' fees and other costs associated with the arbitration. 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. In addition and notwithstanding the foregoing, Avaya shall be entitled to take any necessary legal action, including without limitation seeking immediate injunctive relief from a court of competent jurisdiction, in order to protect Avaya's intellectual property and its confidential or proprietary information (including but not limited to trade secrets). 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 you move 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 you are solely liable for, and agree to pay, any such duty, taxes, levy or other fees.

V. 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. Las partes ratifican que es su voluntad que este Contrato, así como cualquier otro documento relacionado con el mismo, incluyendo todo tipo de notificaciones, han sido redactados y deberán continuar siendo redactados únicamente en el idioma inglés.