



## Software Warranty and End User License Agreement

### Limited Warranty

Appia Communications, Inc. ("Appia") warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Appia reseller, commencing not more than ninety (90) days after original shipment by Appia), and continuing for a period of the longer of (i) ninety (90) days or (ii) the software warranty period (if any) set forth in the warranty card accompanying the Product (if any): (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. The date of shipment of a Product by Appia is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Appia and its suppliers and licensors under this limited warranty will be, at Appia's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to Appia or the party supplying the Software to Customer. In no event does Appia warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Appia does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

This warranty does not apply if the Software (i) has been altered, except by Appia or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Appia, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is licensed, for beta, evaluation, testing or demonstration purposes.

This warranty also does not apply to (i) any temporary Software modules; (ii) any Software not posted on [www.AppiaServices.com](http://www.AppiaServices.com) or such URL where Appia makes the Software publicly available to licensed customers); (iii) any Software removed by Appia, such as software removed for catastrophic issues or for security vulnerabilities; or (iv) any Software for which Appia does not receive a license fee.

### DISCLAIMER OF WARRANTY

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY APPIA, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY.

THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

### **End User License Agreement**

DOWNLOADING, INSTALLING OR USING APPIA OR APPIA-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

APPIA IS WILLING TO LICENSE THE SOFTWARE TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS LICENSE AGREEMENT. BY DOWNLOADING OR INSTALLING THE SOFTWARE, OR USING THE EQUIPMENT THAT CONTAINS THIS SOFTWARE, YOU ARE BINDING YOURSELF AND THE BUSINESS ENTITY THAT YOU REPRESENT (COLLECTIVELY, "CUSTOMER") TO THIS AGREEMENT.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN APPIA IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND, OR, IF THE SOFTWARE IS SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM APPIA OR AN AUTHORIZED APPIA RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

The following terms of this End User License Agreement ("Agreement") govern Customer's access and use of the Software, except to the extent (i) there is a separate signed agreement between Customer and Appia governing Customer's use of the Software or (ii) the Software includes a separate "click-accept" license agreement as part of the installation and/or download process. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence shall be (1) the signed agreement, (2) the click-accept agreement, and (3) this End User License Agreement.

License. Conditioned upon compliance with the terms and conditions of this Agreement, Appia grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees.

"Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the Software and made available by Appia with the Software in any manner (including on CD-ROM, or on-line).

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or that number of agent(s), concurrent users, sessions, IP addresses, port(s), seat(s), server(s) or site(s), as set forth in the applicable Purchase Order which has been accepted by Appia and for which Customer has paid to Appia the required license fee.

Unless otherwise expressly provided in the Documentation, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Appia equipment) for communication with Appia equipment owned or leased by Customer and used for Customer's internal business purposes.

Note: For evaluation or beta or free copies for which Appia does not charge a license fee, the above requirement to pay license fees does not apply.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Appia retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Appia, its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Agreement, Customer shall have no right, and Customer specifically agrees not to:

(i) transfer, assign or sublicense its license rights to any other person or entity, or use the Software on unauthorized or secondhand Appia equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;

(ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;

(iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;

(iv) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Appia; or

(v) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Appia. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Appia shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Appia's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Appia makes such information available.

Software, Upgrades and Additional Copies. For purposes of this Agreement, "Software" shall include (and the terms and conditions of this Agreement shall apply to) computer programs, including firmware, as provided to Customer by Appia or an authorized Appia reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by Appia or an authorized Appia reseller. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (i) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (ii) USE OF UPGRADES IS LIMITED TO APPIA EQUIPMENT FOR

WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (iii) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

**Proprietary Notices.** Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Appia.

**Term and Termination.** This Agreement and the license granted herein shall remain effective until terminated. Customer may terminate this Agreement and the license at any time by destroying all copies of Software and any Documentation. Customer's rights under this Agreement will terminate immediately without notice from Appia if Customer fails to comply with any provision of this Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License" shall survive termination of this Agreement.

**Customer Records.** Customer grants to Appia and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Appia the appropriate license fees, plus the reasonable cost of conducting the audit.

**Export.** Software and Documentation, 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. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software and Documentation.

**U.S. Government End User Purchasers.** The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this End User License Agreement may be incorporated, Customer may provide to Government end user or, if this Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in this End User License Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

## General Terms Applicable to the Limited Warranty Statement and End User License

Disclaimer of Liabilities. REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL APPIA OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF APPIA OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Appia's or its suppliers' or licensors' liability to Customer, whether in contract, tort (including negligence), breach of warranty, or otherwise, exceed the price paid by Customer for the Software that gave rise to the claim or if the Software is part of another Product, the price paid for such other Product. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or any other product or service delivered by Appia. Customer acknowledges and agrees that Appia has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

The Warranty and the End User License shall be governed by and construed in accordance with the laws of the State of Michigan, without reference to or application of choice of law rules or principles. The United Nations Convention on the International Sale of Goods shall not apply. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

Except as expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any purchase order or elsewhere, all of which terms are excluded.

This Agreement has been written in the English language, and the parties agree that the English version will govern.