

## POLYCOM DEBUG AND/OR TEST SOFTWARE AGREEMENT

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This Polycom Debug and/or Test Software Agreement ("Agreement") by and between you and/or any company you represent ("Licensee") and Polycom, Inc., a Delaware Corporation with its principal place of business at 6001 America Center Drive, PO Box 641390, San Jose, CA 95002 ("Polycom"), and is effective as of the date of your acceptance of this Agreement.

Licensee acknowledges that the Products are in pre-release form and are not supported products, accordingly any use of the Products shall be at Licensee's own risk. PLEASE REVIEW THE TERMS BELOW, AS YOUR USE OF THE PRODUCTS IS CONDITIONED ON YOUR AGREEMENT TO THESE TERMS IN THEIR ENTIRETY. IF YOU DO NOT AGREE WITH THESE TERMS YOU MAY NOT USE THE PRODUCTS.

### 1. Licensee Obligations.

#### 1.1 Evaluation and Reporting.

(a) Licensee is solely responsible for installing the Products, and for determining whether the Products are suitable, secure, and reliable for its evaluation purposes.

(b) Licensee will use diligent efforts to notify Polycom of any errors or deficiencies in the Products, suggestions for improvements, compatibility problems, usage data and the other information regarding the Products (collectively, "Feedback"). Licensee acknowledges that Polycom may or may not incorporate Feedback into the general release version of the Products at Polycom's sole discretion.

(c) Licensee agrees that it will enable features which automate collection and sending of usage data. Polycom's collection and use of this data complies with Polycom's Privacy Policy at <http://www.polycom.com/company/privacy-policy.html>.

1.2 Indemnity. Licensee shall indemnify and hold harmless Polycom from and against any and all costs, damages, losses, liability or expenses (including reasonable attorneys' fees) arising from Licensee's failure to comply with the terms of this Agreement.

### 2. Use and License.

2.1 Grant. Subject to all the terms of this Agreement, Polycom grants Licensee a non-sublicensable (except as expressly provided below), non-transferable, non-exclusive right during the Term to use the Products internally, in accordance with the Products' accompanying documentation, solely to test the Products in a non-production, evaluation environment.

2.2 Non-Exclusive. The rights granted to Licensee hereunder are non-exclusive and nothing hereunder shall be deemed to limit Polycom's ability to enter into any type

of agreement with any other party anywhere in the world.

3. License Restrictions. Licensee shall not (and shall not allow any third party to):

(a) decompile, disassemble, or otherwise reverse engineer the Products or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Products by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and in such case Licensee shall notify Polycom in advance of its intent to reverse engineer);

(b) distribute, sell, sublicense, rent, lease or use the Products (or any portion thereof) for any purpose, including without limitation time sharing, hosting, service provider;

(c) remove any product identification, proprietary, copyright or other notices contained in or on the Products;

(d) modify any part of the Products or create a derivative work of any part of the Products;

(e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Products; or

(f) separate any software included in the Products from the Products themselves, or use any software included with the products separately from the Products.

### 4. Ownership.

4.1 Products Not Sold. Licensee is licensing, not purchasing the Products; and the Product (including any software in the Product) is licensed, not sold, to Licensee.

4.2 Polycom Ownership. Notwithstanding anything to the contrary contained herein (except for the limited license rights expressly provided herein), Polycom and its

suppliers have and will retain all rights, title and interest in and to:

(a) the Products (including, without limitation, all patent rights, mask works, copyrights, trademarks, service marks, related goodwill, and confidential and proprietary information);

(b) all modifications to, and derivative works based upon, the Products; and

(c) any Feedback; and

(d) any changes or improvements to the Products resulting from Feedback.

4.3 Assignment of Rights. Licensee acknowledges that it is fundamental to Polycom's benefit of the bargain to own feedback regarding the Products, and that absent the ability to own and use this information, Polycom would not make the Products available to Licensee or allow Licensee the benefit of testing products without charge prior to their general availability. Accordingly, Licensee irrevocably assigns to Polycom all right, title and interest worldwide in and to the Feedback and all applicable intellectual property rights related to the Feedback, including without limitation, copyrights, mask works, trademarks, trade secrets, patents, moral rights, contract and licensing rights. Licensee retains no rights to use the Feedback and agrees not to challenge the validity of Polycom's ownership in the Feedback. If Licensee has any rights to the Feedback that cannot be assigned to Polycom, then Licensee unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Polycom with respect to such rights, and agrees, at Polycom's request and expense, to consent to and join in any action to enforce such rights. If Licensee has any right to the Feedback that cannot be assigned to Polycom or waived by Licensee, Licensee unconditionally and irrevocably grants to Polycom during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, create derivative works of, distribute, publicly perform and publicly display by all means now known or later developed, such rights. Licensee agrees to cooperate with Polycom or its designee(s), both during and after the term of this Agreement, in the procurement and maintenance of Polycom's rights in Feedback and to execute, when requested, any other documents deemed necessary by Polycom to carry out the purpose of this Agreement.

5. **Termination**. At such time as this Agreement is no longer in effect for any Products, this Agreement shall terminate in its entirety.

5.1 Expiration. This Agreement is effective as of the Effective Date and with respect to each Product expires sixty (60) days from the Effective Date.

5.2 Termination. Polycom may terminate this Agreement with respect to any or all Products on 15 days' notice to Licensee without cause and may terminate this Agreement immediately upon notice upon any breach by Licensee. Licensee may terminate this Agreement with respect to any Product upon notice.

5.3 Effect of Termination or Expiration. Upon any termination or expiration of this Agreement, Licensee shall immediately (a) cease any and all use of any Products, and to the extent that any Products included software that was not embedded on hardware, destroy all copies of such software whether partial or complete and so certify to Polycom in writing; and b) return all Products and copies of Confidential Information, catalogs, literature and other Polycom materials in its possession or control, or at Polycom's option and written request, destroy such materials and so certify to Polycom in writing. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

5.4 Survival. This Section 5.4 and Sections 1.1, 3, 4, 5.3, 6, 7, 8, and 9 shall survive any termination or expiration of this Agreement.

6. **Warranty Disclaimer**. THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Licensee acknowledges that the Products are "beta release" products and are not intended for production or commercial use, only for evaluation and testing purposes. Licensee acknowledges that the Products may not work properly or in accordance with their documentation. Polycom does not warrant that Licensee's use of the Products will be uninterrupted or error-free or that any security mechanisms implemented by the Products will not have inherent limitations. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION AND SCOPE OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED.

7. **Limitation of Remedies and Damages**.

7.1 NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND

(INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THIS SECTION 7.1 SHALL NOT APPLY TO LICENSEE WITH RESPECT TO ANY CLAIM ARISING UNDER THE SECTIONS TITLED "LICENSE RESTRICTIONS" OR "CONFIDENTIAL INFORMATION".

7.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, POLYCOM'S ENTIRE LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED \$1,000.

7.3 The parties agree that the limitations specified in this Section 7 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

**8. Confidential Information.** Licensee agrees that all code, inventions, know-how, business, technical and financial information it obtains (or, in the case of Feedback, creates) regarding the Products constitute the confidential property of Polycom ("Confidential Information"). Licensee will hold in confidence and not use or disclose any Confidential Information except as expressly permitted in this Agreement. Licensee's nondisclosure obligation shall not apply to information which Licensee can document: (i) is or has become public knowledge through no fault of Licensee; or (ii) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to Polycom). Licensee acknowledges that disclosure of Confidential Information would cause substantial harm to Polycom that could not be remedied by the payment of damages alone, and therefore that upon any such disclosure by Licensee, Polycom shall be entitled to seek appropriate equitable relief.

**9. General.**

9.1 Export Compliance. Licensee acknowledges that the Products may contain encryption technology that is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Licensee shall not, and shall not allow any third-party to, remove or export from the United States or allow the export or re-export of any part of the Products or any direct product thereof: (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval

at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Licensee agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products are restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the United States government.

9.2 Compliance Audit Rights. Upon Polycom's written request, Licensee shall furnish Polycom with a signed certification certifying that the Products are being used pursuant to the terms of this Agreement including any copy and user limitations. With prior reasonable notice, Polycom may audit the Products in use by Licensee provided such audit is during regular business hours.

9.3 Government End-Users. The Products provided under this Agreement contain commercial computer software programs developed solely at private expense. As defined in U.S. Federal Acquisition Regulations (FAR) section 2.101 and U.S. Defense Federal Acquisition Regulations (DFAR) sections 252.227-7014(a)(1) and 252.227-7014(a)(5) (or otherwise as applicable to Licensee), the software portion of Products licensed in this Agreement are deemed to be "commercial items" and "commercial computer software" and "commercial computer software documentation." Consistent with FAR section 12.212 and DFAR section 227.7202, (or such other similar provisions as may be applicable to Licensee), any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. government (or any agency or contractor thereof) shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

9.4 Other. This Agreement shall be governed by and construed under the laws of the State of California without regard to the conflict of laws provisions thereof. Any suit or proceeding relating to this Agreement shall be commenced exclusively in the Superior Court of San Francisco County and/or the United States District Court for the Northern District of California, and each party irrevocably submits to the exclusive jurisdiction and venue of such courts. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. The parties are independent contractors and no employment, agency, or joint venture is created hereunder. All notices, requests and other communications under this Agreement

must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. Headings and titles are for convenience only and are not intended to be of operative effect or modify the terms of this Agreement. This Agreement may not be assigned by Licensee or amended without the prior written consent of both parties. Any purported assignment or amendment in violation of

the foregoing shall be void. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect. This Agreement is the final, complete and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written.