

SAVAPI SDK End User License Agreement – SAVAPI SDK EULA

IMPORTANT NOTICE: CAREFULLY READ AND BE SURE YOU UNDERSTAND THIS SAVAPI SDK EULA (“EULA”) BEFORE YOU ACCEPT ITS PROVISIONS. AVIRA IS WILLING TO LICENSE THE SAVAPI SDK TO YOU ONLY IF YOU ACCEPT ALL OF THE PROVISIONS OF THIS EULA. BY CLICKING THE “I AGREE” OR “YES” BUTTON, BY LOADING THE SAVAPI SDK OR BY OTHERWISE INDICATING ASSENT, YOU ACCEPT THIS EULA AND THIS EULA WILL BECOME A LEGAL AND ENFORCEABLE CONTRACT BETWEEN AVIRA AND YOU. IF YOU DO NOT AGREE TO THESE PROVISIONS, THEN CLICK “CANCEL”, “NO” OR “CLOSE WINDOW” AND DO NOT OTHERWISE USE THE SAVAPI SDK.

The company AVIRA GMBH & CO. KG, Kaplaneiweg 1, 88069 Tettnang (referred to hereinafter as "Avira") grants you (referred to hereinafter as “Licensee” or “You”) the right to use this SDK (referred to hereinafter as “SAVAPI SDK”), subject to the present End User License Agreement (hereinafter “SAVAPI SDK EULA”). The Software is copyrighted and it is licensed to you under this SAVAPI SDK EULA, not sold to you.

With the installation of the SAVAPI SDK by the Licensee, Avira and the Licensee enter into a contract governing the use of the SAVAPI SDK pursuant to the SAVAPI SDK EULA.

1. Disclaimer and Limited Warranty

(1) The sole purpose of this SAVAPI SDK is to give the Licensee the right to evaluate the SAVAPI SDK for a limited period of time prior to entering into a SAVAPI Software Licensing Agreement (hereinafter referred to as “Testing”). The SAVAPI SDK is made available to Licensee free of charge and no warranty shall be provided for the Software, except for the operability of the SAVAPI SDK.

(2) CONSEQUENTLY, THE SAVAPI SDK AND DOCUMENTATION ARE PROVIDED TO YOU “AS IS” AND TO THE EXTENT AUTHORIZED BY LAW, AVIRA MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SAVAPI SDK OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AVIRA ALSO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES RELATING TO NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY,

SATISFACTORY QUALITY, OR ABILITY TO INTEGRATE THE SOFTWARE WITH OTHER PRODUCTS.

2. Test license

(1) In connection with this Agreement and subject to the restrictions set forth herein, Avira hereby grants to Licensee, a royalty-free, limited, non-exclusive, non-transferable license (i) to install the SAVAPI SDK solely and exclusively on a hard- and software environment owned and controlled by the Licensee and set-up by the Licensee for the sole purpose of testing the operability and functionality of the SAVAPI SDK (hereinafter referred to as the "Test System"), and (ii) to copy, use and reproduce the SAVAPI SDK solely and exclusively within the Test System, in each case solely and exclusively for the purpose of Testing; provided that, the Test System must not be used as productive system or for other than internal purposes under any circumstances.

(2) Avira reserves the right in its sole discretion to edit, add to or delete any of the documentation, computer software program(s), data files or other components of the SAVAPI SDK from time to time. Furthermore, Avira shall have the right at any time and from time to time to modify or provide Update(s) or Upgrade(s) to the SAVAPI SDK or components thereof as Avira may determine in its sole discretion. The parties agree and acknowledge that no product or service of Avira not specifically described in this Agreement shall be deemed to have been licensed hereby.

(3) Licensee shall have no right to grant any sublicenses with respect to the SAVAPI SDK or any component(s) thereof.

(4) Except for the license rights granted to Licensee hereunder, Licensee shall have no right, title or interest in and to the SAVAPI SDK or any component(s) thereof, including, without limitation, the Documentation, or to any of the patents, copyrights, trade secrets, trademarks, mask works, inventions, source code, object code, listings and documentation related thereto, together with all revisions, modifications, alterations, and derivative works thereof in all forms.

(5) The parties expressly agree and acknowledge that Avira shall provide Licensee the SAVAPI SDK pursuant to the terms of this Agreement in object code only and that Licensee shall have no rights to access the source code of the SAVAPI SDK or any component thereof or any Update(s) or Upgrade(s) (if any) thereto.

(6) Licensee is expressly prohibited from editing, revising, changing or otherwise modifying or seeking to decompile the SAVAPI SDK's object code or to attempt to reverse engineer or otherwise generate source code versions therefrom (hereinafter referred to as "decompiling"), unless with written approval from Avira or if is explicitly permitted pursuant to mandatory legal provisions such as Sections 69 c No. 3, 69 d (2) and (3) and Section 69 e UrhG (German

Copyright Act); provided however that, Licensee undertakes to contact Avira at support@avira.com prior to decompiling the SAVAPI SDK and to obtain the information necessary for such interoperability. If Avira provides this information without an inappropriate delay, the Licensee is not entitled to any decompiling of the SAVAPI SDK.

(7) Licensee is expressly prohibited from removing or modifying any references to copyright, the marking of other industrial property rights or serial numbers and other features that serve to identify the SAVAPI SDK. The removal of copy protection or similar protective routines is not allowed

3. Open Source

Any combination or other use of the SAVAPI SDK or individual elements thereof with Open Source software or Open Source components of any kind (including but not limited to programs, libraries and tools), irrespective of the license terms to which such components are subject in the present or in the future (e.g. GPL, LGPL, MPL, BSD Copyright, Apache Software License and any others), shall be prohibited without exception. The Licensee's rights granted under this Agreement in relation to the SAVAPI SDK shall automatically cease at the time at which the prohibited combination or use is first commenced.

4. Use of SOFTWARE in high-risk environments

Use of the SAVAPI SDK or individual components thereof by the Licensee in high-risk environments that require error-free permanent running of relevant systems shall be prohibited. This shall also include, in particular, high-risk activities and high-availability activities, such as the operation of nuclear energy facilities, weapon systems or any other systems in the military and defence sector, aviation navigation and communication systems, traffic systems and equipment and machinery in the clinical and healthcare sector and other applications that are relevant to the life and health of individuals.

5. Term

(1) The term of this agreement shall commence upon the acceptance of the terms and conditions of this SAVAPI SDK EULA by the licensee and shall terminate upon the earlier of (i) lapse of the license according the description of the product (ii) termination of this agreement by Avira for any reason (iii) the conclusion of a SAVAPI Software License Agreement between Licensee and Avira (iv) discontinuation of the SAVAPI SDK by Avira.

(2) Upon any expiration or termination of this Agreement, the rights and licenses granted to licensee under this agreement shall immediately terminate, and licensee shall immediately cease using, the SAVAPI SDK.

6. Limitation of Liability

(1) Notwithstanding the legal nature of the relevant claim, the following shall apply to damage claims and claims for expenses incurred in vain ("Ersatz vergeblicher Aufwendungen") by the licensee:

(2) Avira shall be liable for any of the Licensee's damages resulting from gross negligent or intentional behaviour of Avira, which arise due to one of the following: (i) culpable injury to life, body and health, (ii) the assumption of a guarantee by Avira or (iii) according to the Product Liability Act ("Produkthaftungsgesetz").

(3) In all other cases Avira's liability for damages is limited to the infringement of material obligations of the agreement ("Kardinalspflichten"). Material obligations are only such obligations the fulfilment of which allow the proper execution of the agreement in the first place and where the Customer may rely on the compliance with these obligations.

(4) Avira's liability in case of negligent infringement of material obligations of the agreement by Avira shall be limited to foreseeable damages which are typical for this type of contract.

(5) If the SAVAPI SDK is provided by Avira for a limited period of time, the strict liability of Avira for defects existing at the time of conclusion of the agreement pursuant to Sec. 536 a para. 1, alternative 1 German Civil Code (BGB) is hereby expressly excluded.

(6) IN NO EVENT WILL AVIRA BE LIABLE TO LICENSEE OR ANY THIRD PARTY WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF THE SAVAPI SDK THAT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. TO THE EXTENT AUTHORIZED BY LAW, AVIRA WILL NOT BE LIABLE FOR THE LOSS OF DATA. REFERENCE IS MADE TO THE LICENSEES OBLIGATION NOT TO USE THE SAVAPI SDK FOR ANY OTHER PURPOSE THAN THE TESTING AND ON ANY OTHER SYSTEM THAN THE TEST SYSTEM ACCORDING TO CLAUSE 2 (1) ABOVE.

(7) The foregoing limitations of liability also apply in regard to all Avira's representatives, including but not limited to its directors, legal representatives, employees and other vicarious agents.

7. Governing Law and Venue

(1) This EULA and all and any disputes derived from or in connection therewith shall be exclusively subject to the law of the Federal Republic of Germany to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11. April 1980 (CISG).

(2) If You are an entrepreneur, the registered seat of Avira shall be the sole place of jurisdiction for all disputes derived from or in connection with this EULA. Avira retains the right to bring legal action against You at Your seat of business.

8. Miscellaneous

(1) This EULA sets forth all of Your rights to use the Software and makes up the entire agreement between You and Avira. This EULA supersedes any other communications, representations or advertising relating to the Software.

(2) No provision hereof shall be deemed waived unless there is a written waiver signed by an authorized Avira representative.

(3) If any provision of this EULA is held invalid, the remainder of this EULA shall remain in full force and effect. To the extent that an otherwise invalid provision can be construed so as to be valid, that provision shall be so construed.

(4) All rights not expressly set forth hereunder are reserved by Avira.

(5) The descriptive headings in this EULA have been inserted for convenience and shall not limit or otherwise affect the construction or interpretation of this EULA.

(6) You may not assign Your rights under this EULA without the express written permission of Avira.

Avira Operations GmbH & Co. KG | Kaplaneiweg 1 | 88069 Tettnang | Germany

Status: February 2012