



**SUPPORT, MANAGED AND SUBSCRIPTION SERVICES TERMS (UNITED STATES)
(MASTER VERSION 05-2017)**

By placing orders as described in Section 1.1, Customer agrees that these Support, Managed and Subscription Services Terms (the “**Agreement**”) will govern the purchase of certain Services described below by Customer from Avaya Inc. (“**Avaya**”). The “**Effective Date**” of this Agreement is the date Avaya accepts an order in accordance with Section 1.1 below and continues until terminated in accordance with Section 6 below.

1. ORDER, PROVISION AND SCOPE OF SERVICES

1.1 Ordering Services for Supported Products. Customer (as such term is defined in Section 1.1.1) may purchase Services (as such term is defined in Section 1.2) for Supported Products (as defined herein) by issuing an order to Avaya. “**Supported Products**” are: (i) the hardware or software products identified in the accepted order, (ii) Added Products (defined in Section 1.8), and (iii) the hardware and software products that are within the scope of orders that are renewed as described in Section 6.1. Supported Products may include Products made available for Customer’s use as part of Subscription Services and non-Avaya products to the extent they are specified in the order or Service Description. The “**Supported Sites**” for such Support Products are the locations covered under this Agreement.

“*Support Services*” means Services to maintain Supported Products. “*Managed Services*” means Services to manage Supported Products with may include, without limitation, automated client notifications, configuration management, incident and problem management, service desk, and monitoring, as more fully described in the applicable Service Description. “*Subscription Services*” means time-bound subscription services provided by Avaya to Customer, against a periodic fee, for Customer’s internal business purposes, which may include Subscription Services hosted by or on behalf of Avaya or as described in the applicable Service Description.

1.1.1 Any United States Affiliate (as defined below) of the Customer shall be permitted to place orders hereunder; however, such Affiliates are subject to credit approval by Avaya. All orders shall reference this Agreement and shall specify, as applicable, the Services quantity, price, location, Avaya quotation, proposal number or Statement of Work. However, Customer’s orders issued during the term specified in Section 6 will be governed by the terms of this Agreement even if the orders lack an express reference to this Agreement (except if Customer’s orders reference a separate valid and applicable agreement between the parties). All other terms and conditions contained in any Customer order or other document not expressly referenced in this Agreement will have no effect. Orders are subject to acceptance by Avaya. Avaya may accept an order by commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to this Agreement. Each order placed and accepted hereunder shall be deemed to constitute a separate agreement, incorporating the terms and conditions hereof, between, as applicable, Avaya and Customer or Avaya and the Customer Affiliate placing the order. Such Customer entity will be deemed “**Customer**” for purposes of this Agreement. To the extent agreed by the parties, Customer may submit orders to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication. Any electronic order will be binding upon Customer’s electronic submission as if submitted in writing.

1.1.2 “Affiliate” means, with respect to either party, any entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of this Agreement. 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. Customer and Avaya will cause their Affiliate(s) to comply with the provisions of this Section.

1.1.3 Documents and Order of Precedence. Unless otherwise provided for in this Agreement, in the event of conflict among the Agreement, the various Service Description documents, and any ancillary attachments to or documents referenced in the Service Description, the order of precedence is: (i) the Terms of Use; (ii) this Agreement; (iii) SOW; (iv) SAS and/or SDD; and (vi) any ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority. In the event of any conflict between: (a) the SAS or SDD; and (b) a SOW, the SOW will govern.

1.2 Provision of Services. In return for the payment of applicable fees and subject to compliance with the terms of this Agreement, Avaya will provide the Support, Managed or Subscription Services options that are delivered in the United States (for purposes of this Agreement, “**Services**”) for Supported Products at Supported Sites, as described further in this Agreement and the Service Description. “**Service Description**” means; (i) the applicable Avaya service agreement supplement (“**Service Agreement Supplement**” or “**SAS**”) or service description document (“**Service Description Document**” or “**SDD**”), as the case may be, then current as of the date of Avaya’s acceptance of an order for Services and available to Customer upon request; and/or (ii) a statement of work executed by the parties describing specific Services to be provided by Avaya (“**Statement of Work**” or “**SOW**”).

1.3 Monitoring. Avaya may electronically monitor Supported Products for the following purposes: (i) remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv), to assess Customer needs for additional Products or Services to address or resolve Services issues; (v) as otherwise provided in the Service Description.

1.4 Incident Correction. Some Services options may include correction of Incidents. An “**Incident**” means a failure of a Supported Product to conform in all material respects to the manufacturer’s specifications that were currently applicable when the Supported Product was purchased or licensed. The Incident categories and the corresponding support level, if any, are further described in the applicable Service Description.

1.5 Help Line Support. Where the selected Services option includes help line support, Avaya will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Customer has selected and purchased from Avaya.

1.6 End of Support. Periodically, Avaya or a third party manufacturer may declare “end of life”, “end of service”, “end of support”, “manufacture discontinue” or similar designation (“**End of Support**”) for certain Supported Products. Customer may access Avaya’s user support website (<http://support.avaya.com>) or such successor site as designated by Avaya) for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Supported Products subject to End of Support, Avaya will continue to provide the support described in the applicable Service Description, except for the End of Support exceptions listed therein (“**Extended Support**”). If the Service Description does not include Extended Support information, Avaya will make available the description of Extended Support (if available) for the Supported Products affected by such End of Support notification. For Supported Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly. Unless the applicable Service Description expressly states otherwise, Subscription Services hosted by or on behalf of Avaya may be discontinued at any time and Avaya will endeavor to provide advance notice by posting the relevant information on <https://support.avaya.com/products> or such successor site as designated by Avaya.

1.7 Replacement Hardware. Replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya’s property. Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer when it arrives at the Supported Site.

1.8 Added Products. If Customer acquires from Avaya or an Avaya authorized channel partner additional products of the same type and manufacturer(s) as the existing Supported Products and locates them with existing Supported Products at a Supported Site, they will be considered “**Added Products**”, and will be added to the order automatically for the remainder of the order term at the applicable rates. Customer will inform Avaya without undue delay of any Added Products not acquired from Avaya. Added Products purchased from a party other than the manufacturer or an Avaya authorized channel partner may be added to or declined from being added to the Support Products at Avaya’s discretion, and may be subject to certification by Avaya at Avaya’s then current Services rates.

1.9 General Limitations. Unless the applicable Service Description indicates otherwise, Avaya will provide software Services only for the unaltered current release of the Supported Products software and the prior release. The following items are included in the Services only if the Service Description specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Incidents arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or that have had their serial numbers altered, defaced or deleted.

2. INVOICING AND PAYMENT

2.1 Avaya will invoice Customer for Services in advance unless another payment option is specified in the order or as otherwise specified in the Service Description. Unless otherwise requested by Customer in writing, Avaya will invoice to and process payments from Customer via Avaya’s electronic bill application.

2.2 Payment of invoices is due within 30 (thirty) days from the date of Avaya’s invoice. Customer will inform Avaya in writing of any disputed portion of an invoice within 15 (fifteen) days from the date of Avaya’s invoice. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with other methods of invoicing and payment. Avaya may suspend performance of orders for which payment is overdue until the overdue amount is paid in full. Overdue payments will be subject to a late payment charge of the lesser of one and one half percent (1.5%) per month or the maximum rate allowed by applicable law. Customer will reimburse Avaya for reasonable attorneys’ fees and any other costs associated with collecting delinquent payments.

2.3 Taxes. Unless Customer provides Avaya with a current tax exemption certificate, Customer is solely responsible for paying all legally required taxes, including without limitation any sales, excise or other taxes and fees which may be levied upon (i) the sale, movement, transfer of ownership, license, installation or use of the Supported Products; or (ii) the Services, except for any income tax assessed upon Avaya.

3. ADDITIONAL CUSTOMER RESPONSIBILITIES

3.1 General. At Customer’s expense, Customer will cooperate with Avaya as reasonably necessary for Avaya’s performance of its obligations, such as, without limitation,: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them and (iv) any other responsibilities as set out in the applicable Service Description. All items and Customer cooperation will be provided by Customer at Customer’s expense. If Avaya provides an update, patch or other new release of software for Supported Products as part of the Services, Customer will implement it promptly. Customer is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good data retention and security practices. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans or makes available to Customer (“**Avaya Tools**”) for the purpose of providing Services under this Agreement, such as, but not limited to, the Secure Access Link. Customer will bear risk of loss and damage to Avaya Tools until returned to Avaya. Avaya Tools are not considered Supported Products as that term is defined in this Agreement. If Customer fails to meet its cooperation obligations under this Section or as otherwise provided in this Agreement, Avaya may delay or suspend its performance of Services relating to Customer’s failure.

3.2 Provision of Supported Products and Systems. Except for Avaya hosted facilities identified in the applicable Service Description, Customer will provide all Supported Products and Supported Sites. Customer continuously represents and warrants

that: (i) Customer is either the owner of, or is authorized to access and use, each of them; and (ii) Avaya, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

3.3 Moves of Supported Products. Customer will notify Avaya in advance before moving Supported Products. Identical Services may not be available in all locations and in such circumstances either cancellation charges or additional charges may apply if Avaya incurs additional costs in providing the Services as a result of moved Supported Products.

3.4 Vendor Management. Where Avaya is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors ("**Vendor Management**"), Customer will provide Avaya, upon request, a letter of agency or similar document, in a form reasonably satisfactory to Avaya, permitting Avaya to perform the Vendor Management. Where the third party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

3.5 Third Party Hosting. In the event one or more network address(es) to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third party service provider ("**Host**"), Customer will: (i) notify Avaya of the Host prior to commencement of the Services; (ii) obtain the Host's advance written consent for Avaya to perform the Services on the Host's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the Host in connection with the Services.

3.6 Access to Personal Data. From time to time, Customer may require Avaya to access a Supported Product or Supported System containing employee, customer or other individual's personal data (collectively, "**Personal Data**"). Where Customer instructs Avaya to access any Personal Data, or to provide Customer or a third party identified by Customer with access, Customer will: (i) notify all relevant employees and other individuals of the fact that Avaya will have access to such Personal Data in accordance with Customer's instructions, and (ii) indemnify Avaya and its officers, directors, employees, subcontractors and Affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

4. SOFTWARE LICENSE AND TERMS OF USE

4.1 Software License. Where Services include provision of patches or updates for Supported Products, they will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original Supported Product software from Avaya. Services that include an upgrade (defined as a major change to the Software that introduces new features and functionality and typically designated as a change in the digit(s) to the left of the first decimal point (e.g., [n].y.z), the upgrade will be provided subject to the license grant and restrictions contained the then current Avaya global end user license, which can be found at <http://support.avaya.com/licenseinfo> or such successor site as designated by Avaya. Where there is no existing license from Avaya, Supported Products software will be provided subject to the manufacturer's then current license terms and restrictions for the applicable software. Supported Product software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the "shrinkwrap" or "clickthrough" end user license agreement accompanying them.

4.2 Terms of Use. Where Services include Subscription Services hosted by or on behalf of Avaya, they will be provided subject to the applicable Terms of Use or Terms of Service for Hosted Services ("**Terms of Use**"), the Terms of Use will apply in addition to this Agreement and any applicable Service Description. The Terms of Use can be found at <http://support.avaya.com/LicenseInfo>, or such successor site designated by Avaya, and incorporated into this Agreement by reference. Avaya may from time to time post a successor version of the Terms of Use, which will then automatically replace the previously applicable Terms of Use upon the date of posting.

5. WARRANTY AND LIMITATION OF LIABILITY

5.1 Warranty. Avaya warrants to Customer that Services will be carried out in a professional and workmanlike manner by qualified personnel. Any warranty or remedy for Subscription Services hosted by or on behalf of Avaya will be provided in accordance with the Terms of Use.

5.2 Remedy. If Support Services or Managed Services are not in conformance with the above warranty and Avaya receives Customer's detailed request to cure a non-conformance within thirty 30 (thirty) days of its occurrence, Avaya will re-perform those Support Services or Managed Services. THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF SUPPORT SERVICES OR MANAGED SERVICES.

5.3 Disclaimer. Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of software in violation of the license granted in Section 4 above or in a manner inconsistent with the Documentation (as defined below); (ii) normal wear due to Supported Product use, including but not limited to Supported Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software or facilities with Supported Products (except to the extent provided in the Documentation); (iii) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (iv) Customer's failure to permit Avaya timely access, remote or otherwise, to Supported Products; or (v) failure to implement all new updates to software provided under this Agreement. Warranties do not extend to Supported Products that have been serviced or modified other than by Avaya or a third party specifically authorized by Avaya to provide the service or modification. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SERVICES INCLUDING ANY SOFTWARE PROVIDED HEREUNDER OR ANY SUPPORTED PRODUCTS OR OTHERWISE RELATED TO THIS AGREEMENT. AVAYA DOES NOT

WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF SUPPORTED PRODUCTS OR THAT THE SERVICES, INCLUDING ANY SOFTWARE PROVIDED HEREUNDER, WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN SECTION 5.2 ABOVE WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. "**Documentation**" means information published in varying mediums which may include product information, operating instructions and performance specifications that are generally made available to users of products. Documentation does not include marketing materials. Documentation shall be used only in support of the authorized use of the associated software supported hereunder.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall continue in effect unless terminated in accordance with this Section. Either party may terminate this Agreement and/or any order hereunder, subject to the termination or cancellation fees specified below, by written notice to the other party effective immediately upon receipt, if the other party fails to cure any material breach of this Agreement within a 30 day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured. Either party may terminate this Agreement for convenience upon 90 (ninety) days written notice. The provisions concerning confidentiality, license grant, license restrictions, import and export control, all limitations of liability, disclaimers and restrictions of warranty, and any terms which, by their nature, are intended to survive termination or expiration of this Agreement will survive any termination or expiration of this Agreement and any order. The provisions contained in this Agreement will continue to apply to any accepted orders until their completion or expiry of their term. Except for termination for uncured breach, any termination of this Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of this Agreement became effective except that the order(s) shall not automatically renew. The imposition and/or payment of cancellation or termination fees in connection with a termination of this Agreement or an order for breach will be without prejudice to the non-breaching party's other remedies available at law or in equity.

6.2 Support Services Term. Unless a different term is mandated in the applicable order or Service Description, Avaya will provide Support Services for an initial term of one year. Support Services will be renewed automatically for successive one year terms (unless a longer renewal period is mandated in the applicable Service Description) applying the then most similar current generally available support plan offering and then current rates, unless either party gives the other written notice of its intent not to renew at least 30 (thirty) days prior to the expiration of the applicable initial or renewal term.

6.3 Managed Services. Unless a longer initial term or different renewal terms are defined in the order or Statement of Work, Avaya will provide Managed Services for an initial term of 3 (three) years or 4 (four) years and such initial term will be renewed automatically for subsequent 1 (one) year periods, unless either party gives the other party written notice of its intent not to renew at least 90 (ninety) days prior to the expiry.

6.4 Subscription Services. The term or termination of Subscription Services, including applicable termination fees, if any, will be in accordance with the applicable Service Description. Termination or expiry of any Subscription Service order will be deemed to terminate the applicable Subscription Services for Customer and any and all licenses granted under that Subscription Service order. Except as set forth in this Section, in the event that this Agreement expires or terminates during the term of any Subscription Service order, this Agreement will remain in effect solely for purposes of enabling the underlying Subscription Service order. Notwithstanding the foregoing, termination or expiry of the Agreement for an uncured material breach in accordance with this Agreement will be deemed to terminate all underlying Subscription Services orders, unless the parties expressly agree otherwise in writing. Upon termination or expiry of this Agreement and/or termination or expiry of the Subscription Service order for any reason, unless Avaya expressly agrees in writing, Customer will immediately and permanently destroy any materials related to the Subscription Services in Customer's possession or control and immediately cease all access to the Subscription Services, and upon Avaya's request certify the foregoing in writing.

6.5 Termination for convenience. Unless otherwise specified in the applicable Service Description or SOW, Customer may terminate for the following Services in whole or in part as follows: (i) for Support and/or Subscription Services (identified on the order documentation) upon 30 (thirty) days advanced written notice subject to cancellation fees equal to Services fees for 12 (twelve) months or the remaining term whichever is less; or (ii) for Managed Services upon 90 (ninety) days advanced written notice subject to a termination charge which will be calculated using average monthly charge x6 wherein the average monthly charge is equal to the average charges due from the Customer to Avaya for the Managed Services fees provided in the contract in the 6 (six) months immediately preceding the month in which the termination notice was given, unless otherwise specified in the SOW.

6.6 Termination Notice. Customer's written notice of cancellation, intent not to renew, or termination of Agreement must be sent by: (i) letter via certified mail to the following address: Avaya Inc., Customer Care Center, 14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134; Attn: Maintenance Termination; (ii) email to mycontract@avaya.com; or (iii) fax to 800-441-6371.

7. NO SOLICITATION

During the period Avaya provides Services and one year after completion of all Services or payment by Customer of all fees for Services, whichever occurs later, Customer will not solicit for employment any Avaya employee performing the Services. In the event that Customer hires any Avaya employee performing the Services prior to the end of this period either as an employee or independent, Customer will pay Avaya a finder's fee equal to 100% of the Avaya employee's last gross annual salary, in addition to any other remedies available to Avaya, at law or in equity. Nothing in this Section will restrict Customer's right to recruit or solicit generally in the media or to hire an Avaya employee who answers any advertisement or who applies for hire without having been recruited or solicited personally by Customer.

8. CONFIDENTIAL INFORMATION

“**Confidential Information**” means either party’s business and/or technical information, trade secrets, unpatented inventions or confidential intellectual property, financial information including pricing, discounts, forecasting or other sales data, information acquired during any location visit and other information, regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if: (a) designated as confidential or proprietary at the time of disclosure and summarized in writing within 30 (thirty) days after disclosure, in which case Confidential Information contained in such summary (not information contained solely in the nontangible disclosure) will be subject to the restrictions in this Agreement; or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information, that the information should be treated as confidential. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination or disclosure; (iii) was known by the receiving party prior to its receipt and was not received from a third party in breach of that third party’s confidentiality obligations; (iv) was independently developed by the receiving party without use of the disclosing party’s Confidential Information. Notwithstanding the requirements in this Agreement, Confidential Information that is required to be disclosed by U.S. or foreign state or federal law, applicable regulatory authorities (including, but not limited to, either party’s obligation to disclose such information pursuant to the rules and regulations promulgated by the U.S. Securities and Exchange Commission), court order or other lawful government action, provided that, to the extent disclosure is required by court or governmental order, only to the extent the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt to obtain a protective order. The receiving party will take reasonable steps to attempt to preserve the confidentiality of the disclosing party’s Confidential Information and to provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order or other remedy. Each party will (i) protect such Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care; (ii) restrict disclosure of such Confidential Information to the receiving party’s employees, agents, directors, officers, professional legal advisers, Affiliates or subcontractors with a need to know and who are bound by confidentiality obligations with the receiving party at least as protective as the terms herein (“Authorized Parties”); (iii) advise such Authorized Parties of the obligations assumed herein; (iv) be responsible for any Authorized Party’s noncompliance with the terms of this Agreement; and (v) not disclose any Confidential Information to any third party (other than an Authorized Party). Neither party will use or disclose the other party’s Confidential Information except as permitted in this Section or for the purpose of performing obligations under this Agreement. The confidentiality obligations of each party will survive for 3 (three) years following the later of expiration or termination of this Agreement and all applicable orders hereunder, or the period required by applicable law, including law governing the protection of personally identifiable information and the protection of trade secrets; provided trade secrets shall remain confidential for so long as they remain trade secrets under applicable law. Upon expiration or termination of this Agreement, written request of the disclosing party or the receiving party’s determination that it no longer has a need for the disclosing party’s Confidential Information, the receiving party will cease all use of the disclosing party’s Confidential Information and will promptly return, or at the disclosing party’s request destroy, all Confidential Information, including any copies, in tangible form in that party’s possession or under its control, including Confidential Information stored on any medium. Notwithstanding the foregoing, the receiving party may retain copies of the disclosing party’s Confidential Information: (a) as part of the receiving party’s archival records (including backup systems) that the receiving party keeps in the ordinary course of its business, but only as required by the receiving party’s records retention policies, (b) as may be required by law, or (c) if and only to the extent they are relevant to a Dispute between the parties. Such retained Confidential Information may not be used or retained for any purpose other than as set out in subsections (a) through (c), and will be destroyed in the ordinary course of business in compliance with the receiving party’s records retention policies. Until such destruction has occurred, Confidential Information so retained will remain subject to the terms of this Agreement. Upon request, a party will certify in writing its compliance with this Section.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE 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, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, BREACHES OF EITHER PARTY’S CONFIDENTIAL INFORMATION, OR BREACHES OF AVAYA’S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 Governing Law. This Agreement and any disputes arising out of or relating to this Agreement (“**Disputes**”), including without limitation those relating to the formation, interpretation, breach or termination of this Agreement, or any issue regarding the application of Section 10.2 or this Agreement, will be governed by New York State laws applicable to contracts entered into and performed in New York, without regard to choice of law principles that might require application of any other law and/or the United Nations Convention on Contracts for International Sale of Goods.

10.2 Dispute Resolution and Forum. Any Dispute shall be resolved in accordance with the provisions of this Section. The disputing party shall first give the other party written notice of the controversy or claim in accordance with the notice provision of this Agreement. The parties will attempt in good faith to resolve each controversy or claim within 30 (thirty) days, or such other longer period as the parties may mutually agree, following the delivery of such notice, by negotiations between designated representatives of the parties who have dispute resolution authority. If the Dispute has not been resolved within the applicable time period, 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. Each party to this Agreement consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings.

10.3 Injunctive Relief. Nothing in Section 10.2 will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights at any time.

10.4 Time Limit. Actions on Disputes between the parties must be brought in accordance with this Section within 2 (two) years after the cause of action arises.

11. MISCELLANEOUS

11.1 Compliance. The parties will observe all applicable laws and regulations. Avaya products, technology and Services are subject to applicable import and export control laws and regulations of the United States and other countries. Each party, at its own expense, will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export to certain countries, for certain uses, or to certain end-users. Each party agrees to provide the other party the information, support documents and assistance as may be reasonably required in connection with securing necessary authorizations or licenses required for the transactions contemplated by this Agreement or in connection with associated reporting or recordkeeping obligations. Customer certifies that it is not on the U.S. Department of Commerce's Denied Parties List or affiliated lists, the U.S. Department of Treasury's Specially Designated Nationals List or on any other export exclusion list of any other U.S. or non U.S. governmental agency. Customer further certifies that neither the U.S. Bureau of Industry and Security nor any other U.S. or non-U.S. governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's import or export privileges. Additional information relevant to Avaya's compliance with applicable export and import laws and regulations can be obtained by contacting Avaya Global Trade Compliance at globaltrade@avaya.com.

11.2 Assignment & Subcontractors. Avaya may assign this Agreement and any order under this Agreement to any of its Affiliates or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under this Agreement. Any other assignment of this Agreement or any rights or obligations under this Agreement without the express written consent of the other party will be invalid. Avaya may subcontract any or all of its obligations under this Agreement, but will retain responsibility for the work.

11.3 Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities.

11.4 Notices. Any notice required or permitted under this Agreement except as set forth in Section 6.6 above shall be delivered by facsimile, courier or by first class mail (with all fees or postage prepaid) to the person executing the relevant order for Customer at the address on the order form; or if to Avaya: to the Vice President, Law, 4655 Great America Parkway, Santa Clara, CA 95054-1233. Notices will be deemed to have been given, as applicable, on the earlier of: (a) the date of receipt; (b) 2 (two) working days after sending by courier; (c) 5 (five) working days after first class posting; (d) next working day after sending by facsimile.

11.5 Publicity. Avaya may make reference to this Agreement in its marketing materials or otherwise; provided, that such publicity may only disclose the terms of this Agreement or a specific project under this Agreement with the prior consent of Customer.

11.6 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. The parties hereby agree that this Agreement shall be binding as between the parties and shall apply to orders placed in accordance with Section 1.1 above as though the Agreement and the orders were executed by hand. Orders may be executed by electronic signature, which will be binding between the parties as though handwritten. Any modifications or amendments to this Agreement must be in writing physically or electronically and signed by both parties. In no event shall electronic mail constitute a modification or amendment to this Agreement. If any provision of this Agreement is determined to be unenforceable or invalid by court decision, this Agreement 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 of either party to assert any of its rights under this Agreement, including, but not limited to, the right to terminate this Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms.

11.7 Interpretation. In this Agreement: (i) a reference to the singular includes the plural and vice versa, unless the context otherwise requires; (ii) the headings are inserted for convenience only and will not affect the interpretation of this Agreement; and (iii) whenever the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation".