



**DIRECT MASTER LICENSE AND CONFIDENTIALITY TERMS  
FOR BETA SOLUTIONS  
(UNITED STATES)**

This Direct Master License and Confidentiality Terms for Beta Solutions (United States) (the “**Agreement**”) will govern certain “**Beta Solutions**” provided by **Avaya Inc.**, with offices located at 4655 Great America Parkway, Santa Clara, CA 95054-1233, United States, (“**Avaya**”) to “**Licensee**” for testing. The “**Effective Date**” of this Agreement is the date Licensee and Avaya execute a “**Beta Letter**” and continues in effect until terminated in accordance with Section 14 below.

1. **DEFINITIONS.** Capitalized terms not defined elsewhere in this Agreement will have the meaning specified as follows:
  - 1.1. “**Affiliate**” means, with respect to either party, an entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of the applicable Beta Letter. 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 term “**controlled**” has the meaning correlative to the foregoing.
  - 1.2. “**Ancillary Solution**” means any currently generally available Avaya-manufactured or Avaya-branded hardware, Software or services (or a combination thereof as applicable) that are required to trial a specific Beta Solution.
  - 1.3. “**Avaya**” means Avaya Inc. which has executed a Beta Letter with Licensee.
  - 1.4. “**Beta Letter**” means a document which provides additional information of a particular Beta Trial in which Avaya and Licensee agree to participate and be bound by the terms of this Agreement.
  - 1.5. “**Beta Period**” means the period during which Licensee is authorized to use the Beta Solution. The Beta Period begins upon Beta Product delivery/installation or upon access or subscription to the Beta Service (the “**Beta Start Date**”) and ends upon the Beta Trial conclusion, as identified in the Beta Letter, or when the Beta Solution is declared by Avaya to be generally available, whichever is later (the “**Beta End Date**”).
  - 1.6. “**Beta Product**” means, as the context requires: (i) an Avaya-manufactured or branded product that consists of certain pre-release hardware and/or Software (or a combination thereof, as applicable) which is not yet generally available to customers; or (ii) an Avaya-developed custom solution which is not yet generally available to customers as a standard custom solution.
  - 1.7. “**Beta Service**” means a pre-release service which is not yet generally available for customer access or subscription.
  - 1.8. “**Beta Site**” means the Licensee’s test site(s) at which Licensee is authorized to use the applicable Beta Solution, as identified in the Beta Letter.
  - 1.9. “**Beta Solution**” means, as the context requires: (i) a Beta Product and / or a Beta Service, as further described in the Beta Letter (and, if the Beta Product is Software, in object code form), related Documentation supplied therewith, the media on which they are contained and any applicable hardware, and/or (ii) any Software, included therein or accessed thereby, related Documentation included therewith, and the media on which any of the foregoing are contained, and/or (iii) Ancillary Solution components not purchased by Licensee from Avaya.
  - 1.10. “**Beta Trial**” means the testing of the Beta Solution conducted by a Licensee.
  - 1.11. “**Documentation**” means information published in varying media which may include the Beta Product (hardware and/or Software) information, operating instructions and performance specifications that are made available to Licensee.
  - 1.12. “**GA Solution**” means the version of the Beta Solution made generally available to the public at the conclusion of the Beta Period.
  - 1.13. “**Licensee**” means a legal entity which has executed a Beta Letter with Avaya.
  - 1.14. “**Personal Data**” means any information supplied by Licensee, or collected or generated by Avaya on behalf of Licensee, that identifies, relates to, describes, or is capable of being associated with, a particular individual.
  - 1.15. “**Processing**”, “**Process**” or “**Processed**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval,

consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction.

- 1.16. **“Software”** means, as the context requires, computer programs in object code, provided by Avaya, whether as: (i) stand-alone Beta Products, (ii) generally available Avaya-manufactured or Avaya-branded products, (iii) pre-installed on hardware Beta Products / generally available Avaya-manufactured or Avaya-branded products, (iv) and any upgrades, updates, patches, bug fixes, or modified versions thereto.

## 2. DESCRIPTION AND DELIVERY OF A BETA SOLUTION

Avaya periodically develops and performs internal testing of Beta Solutions and may communicate to Licensee the availability of such Beta Solutions for testing (internal use only). Upon Licensee's request, Avaya may provide and Licensee may use one or more Beta Products, or receive / access a Beta Service, at a specified Licensee Beta Site during the Beta Period, subject to the terms of this Agreement and Beta Letter. Each Beta Letter executed by Licensee and Avaya constitutes a separate contract between those parties. All Beta Letters shall reference this Agreement and all Beta Trials shall be governed by the terms of this Agreement even if the Beta Letter lacks an express reference to this Agreement. This Agreement will not be construed to constitute or imply any commitment, promise or intention to enter into any Beta Letter by either party. Each Beta Letter will identify: (i) the Beta Solution to which it applies, (ii) the Licensee Beta Site(s), if applicable, (iii) the Beta Period, and (iv) such other technical details as are relevant to Licensee's use of/access to such Beta Solution. Once a Beta Letter is executed by Licensee, Avaya will supply, or make available as a download, the applicable Beta Solution to Licensee and Avaya will, or, where permitted by Avaya, Licensee may, install the Beta Solution at the Licensee Beta Site.

## 3. LICENSE GRANT

- 3.1. Effective upon the Beta Start Date, Avaya grants to Licensee a non-exclusive, non-sub-licensable, limited and non-transferable right for the duration of the applicable Beta Period to use the Beta Solution for the purposes set forth in Section 2 of this Agreement. If requested by Avaya, Licensee will maintain written maintenance and error logs documenting the performance of the Beta Solution and will provide (at no charge) Avaya with copies of, or other access to, such logs. Licensee agrees to discuss the performance of the Beta Solution periodically with Avaya at such times as Avaya may reasonably request. Licensee also agrees, where applicable: (a) to permit the Beta Solution to record metrics, logs or other information related to its performance, and (b) to establish arrangements whereby such records will be transmitted to Avaya via an electronic means that complies with Licensee's reasonable security standards. These metrics may include Beta Solution usage and resource statistics. Licensee will review all technical documentation for any applicable Beta Solution and will report comments and suggestions to Avaya promptly, with a target of submitting such report within two (2) weeks following Avaya's delivery of such documentation to Licensee. Avaya is under no obligation to implement any of Licensee's suggestions and/or proposals. Within seven (7) working days of the request by Avaya (or within other term mutually agreed by the parties), Licensee shall provide Avaya with secure remote and/or on-site access to the Beta Solution for purposes of: (i) evaluating the Beta Solution's performance, and (ii) permitting the installation or upgrade of each version of the Beta Solution.
- 3.2. Avaya reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interests in and to any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases, Documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively **“Intellectual Property”**) that Avaya owned prior to providing the Beta Solution under this Agreement, and any Intellectual Property that Avaya develops, creates, or otherwise acquires during the course of, or as a result of, this Agreement, (e.g., reports, designs, inventions, specifications, metrics, other materials). Licensee hereby assigns to Avaya any Intellectual Property developed by Licensee under this Agreement regarding improvement of the Beta Solution during the course of or as a result of this Agreement. All such reports, designs, inventions, specifications, and other materials shall be deemed part of Avaya's Confidential Information.

## 4. GENERAL LICENSE RESTRICTIONS

To the extent permissible under applicable law, Licensee agrees not to: (i) decompile, disassemble, reverse engineer, reverse translate or in any other manner decode the Beta Solution; (ii) alter, modify or create any derivative works or enhancements, adaptations, or translations of the Beta Solution; (iii) sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Beta Solution except as expressly authorized by Avaya in writing, it being understood that any attempt to do so would be considered as void; (iv) distribute, disclose or allow use of the Beta Solution in any format, through any timesharing service, service bureau, network or by any other similar means, such as hosting or cloud, except as expressly authorized by Avaya in writing; (v) allow any service provider or other third party, with the exception of Avaya authorized service maintenance providers who are acting solely on behalf of and for the benefit of Licensee, to use or execute any Software commands that facilitate the maintenance or repair of any Beta Solution; (vi) gain access to or the use of any Beta

Solution 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 authorized service maintenance providers; (viii) publish the results of any tests run on the Beta Solution; (ix) disclose, provide, or otherwise make available to any third party any trade secrets contained in the Beta Solution; (x) use the Beta Solution in a virtualized environment except as expressly authorized by this Agreement or Beta Letter; or (xi) permit or encourage any third party to do any of the foregoing. Licensee agrees not to allow anyone other than its authorized employees, agents or representatives (third parties), who have a need to use the Beta Solution, to have access to the Beta Solution. Licensee agrees to inform any such third party to whom Licensee grants access to the Beta Solution of this provision and will obligate such third party to comply with such terms and provisions. Licensee is responsible for any third party's failure to comply with this Section 4 and indemnifies 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 4 by Licensee or any third party to whom Licensee grants access to the Beta Solution.

## **5. THIRD PARTY COMPONENTS**

- 5.1. Licensee acknowledges that the license and rights granted by Avaya herein may not cover hosting of certain third party software components which are part of the Beta Solution and that the Licensee may be required to independently license those software components from a third party supplier. If applicable, such third party components will be identified in the Beta Letter.
- 5.2. Certain Software programs or portions thereof included in the Beta Solution may contain software (including open source software) distributed under third party agreements ("**Third Party Components**"), which contain terms and conditions regarding the rights to use certain portions of the Beta Solution ("**Third Party Terms**"). As required, information regarding distributed Linux OS source code (for a Beta Solution 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 Beta Solution, Documentation or on Avaya's website at <http://support.avaya.com/Copyright/>, or such successor site as designated by Avaya. Licensee agrees to the Third Party Terms for any such Third Party Components, and, if applicable, shall require its End Users to agree to the Third Party Terms before their access to the Beta Solution.

## **6. ENVIRONMENT / NETWORK ASSESSMENT**

Avaya and Licensee may agree in a Beta Letter that a Licensee Beta Site should be subject to a network / environment assessment. If Avaya and Licensee agree that a network / environment assessment is necessary, Licensee will comply with the applicable Avaya services policy communicated to Licensee by Avaya regarding network / environment assessments prior to the Beta Start Date. Network / environment assessments will be performed by Avaya. If the network / environment assessment indicates that Licensee does not have the necessary network / environment requirements for the Beta Solution and that Licensee cannot complete changes to meet the network / environment requirements prior to the Beta Start Date or another mutually agreed upon date, Avaya and Licensee each have the right to terminate the Beta Trial. In such event Beta Trial shall be deemed terminated when the written notice is provided by one party to the other party.

## **7. SERVICE AND SUPPORT**

If identified in a Beta Letter, for the duration of the Beta Period, and at no additional charge to Licensee, Avaya agrees to provide telephone and/or web-based support during each business day, Monday – Friday, 8 a.m. – 5 p.m. local time, excluding Avaya designated holidays. Licensee shall provide Avaya, upon reasonable request, with access to the Beta Solution for purposes of providing such support.

## **8. STORAGE OF THE BETA SOLUTION**

Licensee agrees to use and store the Beta Solution at all times at the Licensee Beta Site in such a manner as to keep the Beta Solution secure from unauthorized use and access. Licensee shall bear the risk of loss or damage to the Beta Solution and shall have sole responsibility for protection and preservation of data and files, whether its own or those of a third party. To the extent Licensee is provided remote access to the Beta Solution, Licensee agrees to keep such access secure from unauthorized use and access.

## **9. COST OF BETA TRIAL**

- 9.1. Some Beta Trials are offered without any cost to Licensee, however, participation in other Beta Trials may require the Licensee to purchase, license or subscribe to an Ancillary Solution in order to test the Beta Solution as described in the Beta Letter. Cost of the Ancillary Solution and any other services (including, but not limiting to, network assessment) associated with the Beta Trial will be identified in the Beta Letter, relevant quote, or SOW (whichever is applicable) and invoiced at the conclusion of the Beta Period. Unless otherwise agreed by Avaya in writing, Licensee shall order any required Ancillary Solution from Avaya under a separate agreement executed by Licensee and Avaya.

- 9.2. Some Beta Trials may require Licensee to commit to purchasing the GA Solution at the conclusion of the Beta Period. If the license, purchase or subscription to the GA Solution is conditioned on a participation in a particular Beta Trial, it will be identified in the Beta Letter. Any use, access or subscription to the GA Solution will be governed by the terms and conditions of a separate agreement executed by the parties.
- 9.3. If identified by Avaya in the Beta Letter, Licensee is required to purchase, license or subscribe to the GA Solution in order to participate in a specific Beta Trial, but if Avaya (for whatever reason) decides not to make the Beta Solution generally available to the public, Licensee without any charge or penalty shall immediately: (i) cease use of the Beta Solution and return the Beta Product and Ancillary Solution components not purchased by Licensee (including any Documentation and copies thereof) in the same condition as originally installed/delivered, ordinary wear and tear excepted, or (ii) cease use of the Beta Solution and, upon Avaya's written instruction, destroy the Beta Product (i.e., delete Software and decommission hardware) and Documentation (including any copies thereof).
- 9.4. If identified by Avaya in the Beta Letter, Licensee is not required to purchase, license or subscribe to the GA Solution in order to participate in a specific Beta Trial, and (a) Licensee (for whatever reason) decides not to purchase, license or subscribe to the GA Solution at the conclusion of the Beta Period, or (b) Avaya decides not to make the Beta Solution generally available, Licensee without any charge or penalty shall immediately, unless indicated otherwise in the Beta Letter: (i) cease use of the Beta Solution and return the Beta Product and Ancillary Solution components not purchased by Licensee (including any Documentation and copies thereof) in the same condition as originally installed/delivered, ordinary wear and tear excepted, or (ii) cease use of the Beta Solution and, upon Avaya's written instruction, destroy the Beta Product (i.e., delete Software and decommission hardware) and Documentation (including any copies thereof). In the event of the Beta Product and Documentation destruction, if requested by Avaya, Licensee shall provide a written certification by an authorized representative of Licensee that the Beta Product and Documentation (including any and all copies) has been properly destroyed.
- 9.5. Licensee understands and agrees that if the Beta Solution becomes generally available upon or after the conclusion of the Beta Period, unless stated otherwise in the Beta Letter, Licensee shall be entitled to receive only the GA Solution.
- 9.6. In no event shall Avaya have any liabilities to Licensee if Avaya decides (for whatever reason) not to make Beta Solution generally available.

## 10. CONFIDENTIAL INFORMATION

- 10.1. "**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 sales data, information concerning the Beta Solution, including its nature and existence and Licensee's participation in a Beta Trial, information about the performance of or feedback relating to the Beta Solution, 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: (i) designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure, (ii) 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.
- 10.2. Each party shall: (i) protect Confidential Information of 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 its employees, agents, directors, officers, 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 in this Agreement, (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. However, Confidential Information does not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach on the part of the receiving party, (ii) the receiving party can demonstrate to have had rightfully in its possession prior to receiving it from the disclosing party, (iii) is independently developed by the receiving party without the use of any Confidential Information where such information is not regarding improvement of the Beta Solution, or (iii) the receiving party rightfully obtains from a third party who has the right to transfer or disclose it.
- 10.3. The confidentiality obligations set forth herein will survive for three (3) years following expiration or termination of this Agreement or any Beta Letter, or the period required by applicable law, whichever is greater, including laws governing the protection of personally identifiable information and the protection of trade secrets, provided trade secrets will remain confidential for so long as they remain trade secrets under applicable law or until Confidential Information falls under one of the exceptions to the confidentiality obligations specified in Section 10.2.
- 10.4. Upon termination or expiration of this Agreement or any Beta Letter (as applicable), upon written request of the disclosing party, the receiving party will immediately cease all use of Confidential Information and will promptly return, or at the receiving party's written request destroy, all Confidential Information, including any copies, in tangible form in the receiving 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: (i) as part of its 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, (ii) as may be required by law, or (iii) 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 (i) through (iii) of this Section 10.4 and will be destroyed in the ordinary course of business in compliance with the Licensee's records retention policies. Until such destruction has occurred, Confidential Information so retained will remain subject to the terms of this Agreement. Upon request, the receiving party will certify in writing its compliance with this Section 10.4.

- 10.5. The receiving party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and it will be entitled, without waiving any other rights or remedies, to seek injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Nothing in this Agreement will be construed to preclude the disclosing party from seeking provisional remedies, including interim equitable relief, temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights.

## 11. PERSONAL DATA PROTECTION

- 11.1. **Compliance.** The parties acknowledge that, to the extent applicable, any Processing of Personal Data by Avaya on behalf of Licensee (acting as a controller) will be carried out in accordance with applicable laws. Licensee will, if required by law, notify all relevant data subjects of the fact that Avaya (acting as a processor), solely for the purpose described in Section 11.2, will have access to and Process Personal Data (including the transfer to and shared use with Avaya Affiliates in other countries) in accordance with Licensee's instructions. Licensee agrees that Personal Data, if not specified otherwise, will be Processed by Avaya Affiliates and by any subcontractor that Avaya uses to fulfil its obligations, which may include data transfer to other countries.
- 11.2. **Purpose.** The Personal Data will only be Processed by Avaya in accordance with the instructions of Licensee and solely for the purpose of providing the Beta Solution in compliance with Avaya's obligations under this Agreement, managing the contractual relationship with Licensee, as well as for the performance of promotional activities of Avaya's other products and services. Licensee hereby generally instructs Avaya to Process Personal Data relating to employees (such as end-users or representatives of Licensee), clients of Licensee or other individuals or legal entities solely for the above purpose.
- 11.3. **Technical and Organizational Measures.** Having regard to the state of technological development and the cost of implementing any such measures, Avaya ensures that appropriate technical and organizational measures are taken against accidental or unauthorized destruction, accidental loss, as well as against alteration of, access to and any other unauthorized Processing of the Personal Data.
- 11.4. **Exercise of Rights.** Where relevant, Avaya will provide in a prompt manner such co-operation as is reasonably necessary to enable Licensee to ensure compliance with applicable law, at Licensee's cost. Avaya will as soon as reasonably practicable and in any event in a manner that conforms to any time-scales set out in applicable law, as directed by Licensee, provide Licensee with a copy of Licensee's Personal Data that it Processes under this Agreement, and allow Licensee to allow the owner of the Personal Data to correct or delete any inaccuracies in such Personal Data and to oppose the Processing of such Data on legitimate grounds, by sending a request to the address of the Avaya Affiliate which executed Beta Letter with Licensee or its local Affiliate. Avaya will, at the reasonable request of Licensee, submit its data Processing facilities for audit of the Processing performed by Avaya, such audit to be carried out by the Licensee or a third party selected by Licensee to act on its behalf. Licensee agrees that in case such a third party is selected, it will be subject to a contractual confidentiality obligation and will not be a direct competitor of Avaya.

## 12. NO WARRANTY

THE BETA SOLUTION AND DOCUMENTATION DELIVERED BY AVAYA AND ALL INFORMATION ABOUT THE PERFORMANCE OF THE BETA SOLUTION SUPPLIED BY LICENSEE ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO ITS PERFORMANCE, IN THE CASE OF THE BETA SOLUTION, OR ITS ACCURACY, IN THE CASE OF DOCUMENTATION PROVIDED BY AVAYA AND INFORMATION PROVIDED BY LICENSEE. WITH RESPECT TO ANY BETA SOLUTION, AVAYA EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. LICENSEE ACKNOWLEDGES THAT, AT OR AFTER THE TIME THAT AVAYA MAKES A BETA SOLUTION AVAILABLE TO LICENSEE, AVAYA MAY NOT HAVE PUBLICLY ANNOUNCED THE COMMERCIAL AVAILABILITY OF THE BETA SOLUTION, THAT AVAYA WILL NOT HAVE PROMISED OR GUARANTEED TO LICENSEE THAT ANY SUCH BETA SOLUTION WILL BE ANNOUNCED OR MADE AVAILABLE TO ANYONE IN THE FUTURE, AND THAT AVAYA WILL NOT HAVE ANY EXPRESS OR IMPLIED OBLIGATION TO LICENSEE TO MAKE COMMERCIALY AVAILABLE SUCH BETA SOLUTION OR ANY SIMILAR OR COMPATIBLE PRODUCT/SERVICE/SOLUTION WHATSOEVER.

## 13. 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 OR ANY BETA LETTER SHALL BE LIMITED TO THE LESSER OF (i) ONE HUNDRED THOUSAND US DOLLARS (\$100,000) OR (ii) THE AMOUNT PAID OR PAYABLE TO AVAYA HEREUNDER IN THE TWELVE (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, THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, DEATH, BREACHES OF AVAYA'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, AFFILIATES, AVAYA RESELLER ASSIGNEES AND SUPPLIERS. THE LIMITATIONS OF AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS UNDER SECTION 4 OF THIS AGREEMENT.

#### 14. TERM AND TERMINATION

- 14.1. This Agreement will remain effective unless terminated in accordance with this Section 14.
- 14.2. Either party may terminate: (i) this Agreement or a Beta Letter, as applicable, by written notice to the other party effective immediately upon receipt, if the other party fails to cure any material breach of this Agreement or the Beta Letter, as applicable, within a thirty (30) calendar day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured; and (ii) this Agreement or a Beta Letter, as applicable, at any time (i.e., prior to the Beta Start Date or before the conclusion of the Beta Period – Beta End Date) for convenience upon ten (10) calendar days written notice.
- 14.3. The terms which, by their nature, are intended to survive termination or expiration of this Agreement or a Beta Letter, as applicable, will survive any termination or expiration of this Agreement or the Beta Letter, as applicable. Except as expressly provided otherwise in this Agreement or a Beta Letter, as applicable, and termination for uncured breach, any termination of this Agreement will not affect any rights or obligations of the parties under other Beta Letters executed before the termination of this Agreement became effective. The provisions contained in this Agreement will continue to apply to such Beta Letters until their completion or expiry of their term.

#### 15. NON SOLICITATION

During the Beta Trial period and one (1) year after its completion, Licensee will not solicit for employment any Avaya employee involved in the Beta Trial in which Licensee participates. If Licensee hires any such Avaya employee prior to the end of this period, either as an employee or independent contractor, Licensee 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 15 will restrict Licensee'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 Licensee.

#### 16. GOVERNING LAW AND DISPUTE RESOLUTION

- 16.1. **Governing Law.** This Agreement, all Beta Letters and any dispute, claim or controversy arising out of or relating to this Agreement ("**Dispute**"), including without limitation the formation, interpretation, breach or termination of this Agreement, any Beta Letter or any issue regarding whether a Dispute is subject to arbitration under this Agreement, will be governed by New York State laws, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods.
- 16.2. **Dispute Resolution.** Any Dispute will be resolved in accordance with the provisions of this Section 16. The disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of this Agreement or a Beta Letter, as applicable. The parties will attempt in good faith to resolve each Dispute within thirty (30) 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.
- 16.3. **Choice of Forum.** If a Dispute by one party against the other cannot be settled under the procedures and within the timeframe set forth in Section 16.2, 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 consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Agreement.

- 16.4. **Injunctive Relief.** Nothing in this Agreement 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, including its rights pending arbitration, at any time.
- 16.5. **Time Limit.** Actions on Disputes between the parties must be brought in accordance with this Section 16 within two (2) years after the cause of action arises.

**17. MISCELLANEOUS (OTHER PROVISIONS)**

- 17.1. **Compliance.** The parties will observe all applicable laws and regulations when using the Beta Solution. Beta Solutions are subject to applicable import and export 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. Licensee 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. Licensee 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 Licensee or otherwise suspended, revoked or denied Licensee'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](mailto:globaltrade@avaya.com).
- 17.2. **Assignment & Subcontractors.** Except as otherwise provided in this Agreement, neither party may assign this Agreement, any Beta Letter, or any purchase order for a GA Solution (if applicable under Section 9) without the prior written consent of the other party. Notwithstanding the foregoing, Avaya may assign this Agreement, any Beta Letter or purchase order for a GA Solution to an Avaya authorized channel partner, Avaya Affiliate 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 or the Beta Letter. Avaya will endeavour to provide Licensee with prompt notice of any such assignment. Any other assignment without the express written consent of the other party will be invalid. Avaya may subcontract any or all of its obligations to be performed by it under this Agreement or Beta Letter, but will retain responsibility for the work.
- 17.3. **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, or inability to secure materials or transportation facilities.
- 17.4. **Notices.** Any notice under this Agreement will be in writing in English and addressed to the other party at its address set forth below (or to any other address that the receiving party may designate from time to time in accordance with this Section). Notices will be delivered by: (i) personal delivery, (ii) courier or first class mail (with all fees or postage prepaid), (iii) facsimile (with confirmation of transmission), or (iv) an e-mail of a duly signed PDF document (with receipt confirmed). Notices will be deemed to have been given, as applicable, on the earlier of: (a) the date of receipt, (b) two working days after sending by courier; (c) five working days after first class posting; (d) next working day after sending by facsimile or email.

**FOR LICENSEE:**

Attention: Legal Department  
 Address and email - to be identified in the applicable Beta Letter

**FOR AVAYA:**

Attention: Legal Department  
 Avaya Inc.  
 4655 Great America Parkway Santa Clara,  
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- 17.5. **Reference.** Provided that Licensee is satisfied with the performance of the Beta Solution, upon Avaya's request, Licensee will act as a reference for Avaya. Licensee shall have the opportunity to review and approve any collateral that references Licensee's name. Licensee's approval shall not be unreasonably delayed or withheld. As a reference, Licensee will permit Avaya to use Licensee's company name externally and describe the Beta Solution application in one or more ways identified below:
- 17.5.1. Be named and quoted in an Avaya press release; allow use of Licensee's logo in collateral; talk to prospective customers;
- 17.5.2. Speak directly to journalists in support of the press release, as coordinated by Avaya Corporate Communications;
- 17.5.3. Speak directly to industry analysts in support of such press release, as coordinated by Avaya Corporate Communications;
- 17.5.4. Approve a public one-slide overview of the Beta Solution that may be used in public presentations by Avaya;
- 17.5.5. Work with Avaya to release a case study on use or potential use and/or benefits of Beta Solution (standard PDF case studies are published on Avaya.com and are available for general sales use);

- 17.5.6. Participate in a video that presents the case study in a visually compelling way;
- 17.5.7. Present perspective and activity at either Avaya events or public conferences.

- 17.6. **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. This Agreement may be executed in multiple counterparts, each of which will constitute an original and all of which will constitute but one agreement, subject to local law requirements. This Agreement may be executed by electronic signature, which will be binding between the parties as though handwritten. Subject to local law requirements, electronic signature will include either an electronic symbol adopted by a person with the intent to sign this Agreement or a photostatic copy of a handwritten signature. Any modifications or amendments to this Agreement must be in writing and physically or electronically signed by both parties. In no event will 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 this Agreement in accordance with its terms.
- 17.7. **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”.

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