



RESELLER AGREEMENT

This Reseller Agreement ("**Agreement**") is entered into by and between Avaya and the company identified in the Avaya Partner Registration Form ("**Reseller**") and governs Reseller's participation in Avaya's Channel program(s) for the purpose and within the scope of Reseller's authorization as further described in this Agreement.

1. DEFINITIONS

Capitalized terms used in this Agreement but not defined in the text have the meanings specified below in this Section 1:

- 1.1 "**Affiliate**" means, with respect to either party to this Agreement, any business entity that Controls or is Controlled by or is under common Control with such party.
- 1.2 "**Avaya**" means, as the case may be: (i) Avaya Inc., if the Territory is within the United States, the Caribbean or Latin America; (ii) Avaya Japan Ltd, if the Territory is Japan or any part thereof; (iii) Avaya Canada Corp., if the Territory is Canada or any part thereof; or (iv) Avaya International Sales Limited, if the Territory is elsewhere, or (v) any other Avaya Affiliate as advised by Avaya.
- 1.3 "**Avaya End User License**" means the applicable Avaya Software License Terms as posted at <http://support.avaya.com/LicenseInfo> or a successor site designated by Avaya and incorporated herein by reference. Avaya in its sole discretion may from time to time post a successor version of the Avaya End User License, which will then automatically replace the previously applicable Avaya End User License with respect to Software licenses granted on or after the date of posting.
- 1.4 "**Avaya Partner Registration Form**" means the on-line application in Avaya's Channel Partner on-boarding tool.
- 1.5 "**Channel Partner**" means a company authorized by Avaya, including without limitation Reseller, to purchase or license Avaya products or services and to resell them as so authorized.
- 1.6 "**Channel Policies**" means all the Avaya policies and programs applicable to Channel Partners, including without limitation Avaya Connect, and available on the Avaya partner portal (<https://www.avaya.com/salesportal> or successor site), as amended by Avaya from time to time.
- 1.7 "**Control**" or "**Controlled**" means the power to direct the management and policies of an entity, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.
- 1.8 "**Deliverable**" means any customized software, hardware, documentation, or other work product of Services. Deliverables do not include generally available hardware and Software and are not Products.
- 1.9 "**Delivery Date**" means: (i) for Deliverables, the date on which Avaya delivers the Deliverables to the named delivery point in accordance with the applicable terms; or (ii) for Software features, incremental units of capacity, additional ports, or additional mailboxes that can be enabled by Avaya remotely or delivered by electronic means, the date on which Avaya delivers the license key or any other tool allowing the features to be enabled, or the date on which the Software is downloaded to the target processor. Reseller agrees that for Software that Avaya delivers electronically to End Users, the instructions posted on Avaya's website for downloading and installation of the Software may be provided in English only.
- 1.10 "**Distributor**" means a distributor authorized by Avaya to purchase and resell Products and Services to Channel Partners.
- 1.11 "**Documentation**" means information published by Avaya in varying media which may include Product information, operating instructions and performance specifications that Avaya generally make available to users of its Products. Documentation does not include marketing materials.
- 1.12 "**Effective Date**" means the electronic acceptance by Avaya of this Agreement.
- 1.13 "**End User**" means a third party that purchases Products or Services from Reseller for the internal use by such third party and not for resale or sublicense.
- 1.14 "**Intellectual Property**" means, 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 tangible embodiments of it.
- 1.15 "**Internal Use**" means any business use of a Product or Deliverable for Reseller's own internal use, but excluding use of a Product or Service by Reseller for the purpose of providing a Managed Solution to an End User.
- 1.16 "**Licensed Trademarks**" means Avaya's trademarks, insignias, logos, promotional signatures, and symbols which are associated with the Products or Services and owned by Avaya.
- 1.17 "**Managed Solution**" means Reseller's use of the Products or Services as an outsource or managed service provider for a single End User where Reseller retains title to the hardware and operates the Products located on Reseller's or End User's premises as a service to an End User or to be accessed by an End User in the operation of such End User's internal business. Managed Solution does not include provision of use of Products or Services to multiple End Users.
- 1.18 "**Product**" means any Avaya product, including hardware and Software, or any combination thereof, that Reseller is authorized to resell under this Agreement. Products do not include Third Party Products.
- 1.19 "**Services**" means those Avaya hosted services, maintenance services, managed services, professional services or other services which Reseller is authorized to resell under this Agreement.
- 1.20 "**Software**" means the computer programs in object code form that Reseller is authorized to resell under this Agreement, whether as stand-alone Products or pre-installed on hardware Products, and any upgrades, updates, but fixes or modifications thereto.
- 1.21 "**Special Bids Process**" means the Avaya procedure whereby requests for decreased pricing or increased discounts for Reseller in relation to specific End Users or projects are considered by Avaya. The purpose of this procedure and Section 3.9 governing the Special Bids Process is to ensure that when Avaya approves a specific discount for a special bid to an End User, the End User benefits from such discount granted by Avaya. For the avoidance of doubt, if Reseller wants to grant further discounts to the End User, it may do so.
- 1.22 "**Territory**" means the country indicated on the Avaya Partner Registration Form.
- 1.23 "**Third Party Products**" means any products made by a party other than Avaya, and may include, without limitation, products ordered by Reseller or End User from third parties. However, components of Avaya-branded Products are not Third Party Products if they are both (i) embedded in Products (i.e., not recognizable as stand-alone items); and (ii) are not identified as separate items on Avaya's price list, quotes or Documentation.
- 1.24 "**Toll Fraud**" means unauthorized use of telecommunications services accessed by or connected to Products or Supported Products
- 1.25 "**Unauthorized Avaya Product**" means an Avaya branded product or component which (i) is acquired by Reseller or any predecessor in title from a source other than Avaya or a Distributor or (ii) is sold by Reseller to unauthorized third parties who are not End Users. Notwithstanding

the foregoing, if the Territory is a European Union (EU) country, Avaya branded products or components sold to or acquired from a Channel Partner authorized in another EU Country shall not be considered Unauthorized Avaya Products.

2. AUTHORIZATION

- 2.1 **Authorization as Reseller.** Subject to the terms and conditions of this Agreement and the Channel Policies, Avaya hereby appoints Reseller to be an authorized, non-exclusive reseller to (i) purchase and/or license Products and Services from a Distributor only for resale to End Users in the Territory, (ii) using the Products or Services to provide Managed Solutions to End Users in the Territory; and (iii) for Resellers Internal Use in its business. Notwithstanding the above, if Reseller has as part of its Territory any country within the European Union, it may purchase Products for resale which Avaya has put on the market in the European Economic Area from another authorized reseller of Avaya which also has as part of its Territory any country within the European Union, without needing Avaya's prior approval, provided the resale of such Products is going to take place within the European Union.
- 2.2 **Non-Exclusivity.** Avaya expressly reserves the right to engage and contract with others to market, sell, sublicense or service the Products and Services in the Territory.
- 2.3 **De-Authorization.** Avaya may rescind Reseller's authorization for any Products and/or Services at any time by giving Reseller 30 days advance written notice of the de-authorization.
- 2.4 **No Payment of Fee.** Reseller accepts the authorization described herein and acknowledges that no payment of any fee is required as a condition of such authorization.
- 2.5 **Restrictions on Resale and Marketing.** Reseller shall not market or sell the Products and Services outside the Territory. Notwithstanding the foregoing, if the Territory includes a country within the European Union, passive sales of Products or Services are also permitted in other European Union countries. Reseller shall not authorize others to resell, sublicense or market Products or Services, any such authorization or attempted authorization shall be void and without effect. Reseller shall not market or sell Products or Services to any office, department, agency, or defense installation of the United States Federal Government. Non-compliance with Sections 2.1 and 2.5 will be considered a material breach of this Agreement and will be grounds for termination.
- 2.6 **Benefits.** Benefits (such as access to marketing funds, promotions or additional technical or other support) may be made available at Avaya's discretion and in accordance with the Channel Policies for Reseller's use in promoting, marketing and expanding the selling/licensing of Products and Services. Benefits are released regularly to remain consistent with prevailing market conditions and may be offered, amended or discontinued from time to time at Avaya's discretion. Nothing in this Agreement creates a right to receive any particular benefits from Avaya or constitutes a guarantee by Avaya that any particular benefits will be made available at any particular time or for any particular duration.
- 2.7 **Relationship between Parties.** The relationship of the parties under this Agreement is and will at all times be one of independent contractors, and not that of franchisor and franchisee, joint venturers, or principal and agent, and no fiduciary relationship exists between the parties. Neither party has any authority to assume or create obligations on the other's behalf, and neither party shall take any action that has the effect of creating the appearance of having such authority.
- 2.8 **Publicity Releases.** Neither party shall publicize or release any information in connection with this Agreement (including Products or Services), or refer to the other party, in any offering, promotion, advertising, web site, presentation, press release/statement, publication or communication of similar nature, except with the prior express written authorization of the other party.

3. RESPONSIBILITIES OF RESELLER

- 3.1 **Compliance with Channel Policies.** Reseller shall comply with all Channel Policies applicable to Reseller as posted on the Avaya partner portal (<https://www.avaya.com/salesportal> or successor site). Avaya will post notice of any modification of the Channel Policies and the Channel Policies as modified, on the Avaya partner portal. Reseller shall periodically check the Avaya partner portal for changes to the Channel Policies. Nothing contained in the Channel Policies may be interpreted to void or conflict with an express term of this Agreement, and where there is such conflict the terms of this Agreement will govern.
- 3.2 **Marketing and Sale Efforts.** Reseller shall conduct business in a manner that reflects favorably on the Products and Services and the good name, goodwill and reputation of Avaya, and shall not employ deceptive, misleading or unethical practices. Reseller shall conduct business under its corporate name which Reseller shall display prominently in any communications or advertisements to End Users. Reseller shall use commercially reasonable efforts to promote, market and expand the sale of the Products or Services within the Territory.
- 3.3 **Adherence to Avaya's Specifications and Documentation.** Reseller shall follow (and cause its subcontractors to follow) Avaya's applicable installation, operation and maintenance specifications and/or documentation when installing or providing any type of services to the Products.
- 3.4 **Solution Authorization.** Reseller shall comply with the authorization requirements detailed in the Channel Policies and shall at all times maintain all of the accreditations as detailed in the Channel Policies to sell the Products and Services that the Reseller is authorized to resell or otherwise make available to End Users in accordance with this Agreement. The authorization requirements are subject to review and renewal, and may be withdrawn or terminated by Avaya at any time.
- 3.5 **Unauthorized Avaya Product.** Purchase or sale of Unauthorized Avaya Products will be considered a material breach of this Agreement and will entitle Avaya to recover from Reseller liquidated damages in an amount equal to 20% of the Avaya list prices of all Products or parts or components involved in the breach. Reseller acknowledges that this liquidated damages amount will be a reasonable approximation of the damages that Avaya is likely to suffer. As an exception to the above, Reseller is authorized to purchase used or refurbished products from End Users only for resale to Avaya, providing Avaya, at its sole discretion, agrees in advance to purchase such used or refurbished products.
- 3.6 **Sales Reporting.** Reseller shall submit sales reports to Distributor in a format and time frame as designated by Distributor.
- 3.7 **Integration into Network Environment.** Reseller is solely responsible for providing all facilities, equipment and services, as necessary to resell the Products or provide Managed Solutions to End Users. In addition, Reseller is responsible for the costs of operating and maintaining such facilities and equipment, including without limitation, rent, office costs, utilities fees, connectivity charges and all applicable taxes and duties with respect to the same. Except to the extent that Avaya is contracted to perform specific integration services, Reseller will be responsible for the integration of the Products into the Managed Solution or Reseller or End User's network environment and to any interoperating hardware, software or systems.
- 3.8 **End User Support.** Reseller shall provide support to End Users with regard to any warranty or nonconformance issues or questions, including, but not limited to, telephone support, troubleshooting, accepting the return of nonconforming Products and Services and obtaining replacement Products and filing warranty claims with the Distributor in accordance with any agreements between Reseller and Distributor.
- 3.9 **Special Discounts for Particular Deals.** Avaya may at its sole discretion approve a decrease of prices or increase of discounts for Reseller in relation to specific End Users in accordance with the Special Bids Process. Reseller agrees to comply with any specific terms and conditions which Avaya imposes on the approved special bid for a specific End User. Reseller warrants that the special bids sales support request "SSR" it submits will be genuine, complete and accurate. The approval of an SSR is granted to Reseller subject to the following conditions:
- (a) the products and/or services specified in the SSR "SSR Products" are resold by Reseller to the named End User, at the specific location, and at the same or lower price, as specified in the special bid approval notice (or the SSR if not included in the approval notice); and
 - (b) Reseller purchases the SSR Products within the later of ninety days from when the approval is granted or the approved deployment time documented in the special bid approval notice or SSR.

In the event the SSR Products are not re-sold in accordance with the conditions set out in this Section, Avaya shall have the right, in addition to all other remedies available to it, to claim damages from Reseller in the sum of the difference between the price at which the SSR Products are sold by Avaya as a result of the approved SSR, and the price Avaya would normally sell the SSR Products at for resale by Reseller, taking into account the Resellers medal status and other entitlements, together with Avaya's costs, plus contractual interest payable.

Reseller agrees that Avaya has the right to audit all documents related to the resale by Reseller of the SSR Products for validation that Reseller has complied with this Section. Reseller agrees to provide clear evidence that the SSR Products were re-sold by Reseller in accordance with this Section. Reseller shall cause End User to waive any and all confidentiality restrictions which would prevent Reseller from sharing with Avaya documents that Avaya requests as part of this audit.

4. COMPLIANCE WITH LAWS

4.1 **All Laws.** Reseller shall comply with all applicable laws and regulations.

4.2 **Anti-Bribery.** Reseller shall not directly or indirectly commit any act in furtherance of an offer, promise, payment or gift of money or any other thing of value to any employee or official, officer, director or contractor of a public or privately held or a government controlled entity, government, political party or public international organization or any candidate for office for purposes of obtaining or retaining business for Reseller or any other person. Reseller shall also not directly or indirectly commit any act in furtherance of an offer, promise, payment or gift of money or any other thing of value to any other person if there is any reason to believe that all or a portion thereof will be offered, promised, paid or given to any employee or official of a government, a government controlled entity, political party or public international organization or any candidate for office for purposes of obtaining or retaining business for Reseller or any other person.

4.3 **Export/Import Compliance.** 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. Reseller 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. Reseller further certifies that neither the U.S. Bureau of Industry and Security nor any other governmental agency has issued sanctions against Reseller or otherwise suspended, revoked or denied Reseller's import or export privileges. To obtain additional information relevant to Avaya's compliance with applicable export and import laws and regulations, Reseller may contact Avaya Global Trade Compliance at globaltrade@avaya.com. Products contain encryption algorithms, source code or technology that cannot be exported, re-exported or transferred to government or military end-users without first obtaining a special license or authorization from the United States Bureau of Industry and Security and/or other applicable governmental agency or authority. In addition, Products, Services and technologies provided under this Agreement may not be sold, leased, or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not limited to, activities related to the design, development and production or use of (a) nuclear weapons, materials or facilities, (b) missiles or support of missile projects, or (c) chemical or biological weapons. Reseller agrees to retain accurate and complete records of all of its import and export activities associated with this Agreement for not less than 5 years and agrees to allow Avaya or its designated agent or representative to inspect or review such records, upon request. Reseller agrees to indemnify and hold Avaya harmless from and against all losses or damages that Avaya incurs as a result of Reseller's breach of its obligations under this Section 4.3, including but not limited to any government assessed fees or penalties, attorneys' fees, added transportation costs, storage costs, and/or costs associated with the detention or confiscation of goods.

5. CONFIDENTIAL INFORMATION

5.1 **Definition.** "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 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 so marked and delivered to the receiving party within 30 days after disclosure, in which case Confidential Information contained in such summary (not information contained solely in 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.

5.2 **Exclusions.** 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 Confidential 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 court order or other lawful government action, may be disclosed as required to comply with such order or action, but only to the extent so ordered, provided that to the extent allowed by applicable law the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may take measures to prevent or restrict disclosure, including attempt, at its expense to obtain a protective order or other remedy. The receiving party will take reasonable steps to attempt to preserve the confidentiality of the disclosing party's Confidential Information and agrees to provide reasonable assistance to the disclosing party should the disclosing party attempt to prevent or restrict disclosure, including to obtain a protective order or other remedy.

5.3 **Confidentiality Obligation.** 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 receiving party's employees, agents, directors, officers, professional legal advisors, Affiliates or subcontractors with a need to know and who are bound by commercially reasonable confidentiality obligations with the receiving party ("**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. Neither party shall use or disclose the other party's Confidential Information except as permitted in this Agreement or for the purpose of performing obligations under this Agreement. The confidentiality obligations of each party will survive for 3 years following expiration or termination of this Agreement and any orders under it, 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 this Section 5.

5.4 **Return of Confidential Information.** Upon termination or expiration of this Agreement, written request of the disclosing party, or 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. Upon request, a party shall certify in writing its compliance with this Section.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Reseller Owns Reseller IP. Reseller reserves all Intellectual Property that Reseller owns and makes available to Avaya (collectively "**Reseller IP**") under this Agreement.

6.1.1 Avaya Owns Avaya IP. Avaya reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any Intellectual Property that Avaya owned prior to providing Services under this Agreement, any Intellectual Property that Avaya develops, creates, or otherwise acquires independently of the Services, and any Intellectual Property that Avaya develops, creates, or otherwise acquires (excluding Reseller IP) while performing Services under this Agreement.

7. SOFTWARE LICENSE

7.1 Internal Use. Upon the Delivery Date for Software, Avaya grants to Reseller a limited, personal, non-exclusive, non-sublicensable, and non-transferable right to use the Software in the country for which it was originally provided by Avaya through a Distributor and for which applicable fees have been paid (where applicable) at the indicated capacity and feature levels and within the scope of the applicable license types for Reseller's Internal Use of such Products or for purposes of testing, training, or demonstration of such Product. Except where contrary to Reseller's authorization in accordance with Section 2.1, Reseller shall at all times comply with the terms of the Avaya End User License and Reseller shall be considered the "End User".

7.2 Resale of Products. Avaya shall extend the then-current Avaya End User License to End Users purchasing/licensing Products from Reseller, providing Reseller shall: (i) communicate to each End User in writing the license types applicable to the Products ordered by such End User; (ii) obtain End User's agreement to the Avaya End User License prior to or upon Reseller's acceptance of the applicable order from End User, either by causing an authorized representative of the End User to (A) sign a paper copy of the then-current Avaya End User License or other agreement that includes verbatim, and not merely by reference, the terms of the then-current Avaya End User License, or (B) electronically or digitally sign or otherwise indicate End Users' assent (such as by "click wrap", "click-through", "click and accept" and "web-wrap" agreement) to the terms of the then-current Avaya End User License in a manner that is the legal equivalent of a signed paper copy that preserves and authenticates verbatim the terms of the Avaya End User License to which the End User agreed; (iii) not agree to any contractual limitation on the End User's liability for violations of Avaya's Intellectual Property, including through breaches of a software license or reverse engineering; and, (iv) maintain a copy of each End User's agreement to the Avaya End User License in a form that accurately records and preserves the language in the Avaya End User License to which each End User agreed and the name of the authorized representative of the End User who legally bound End User, and provide a copy of same to Avaya upon request. Avaya in its sole discretion may from time to time post at <http://support.avaya.com/LicenseInfo> or a successor site designated by Avaya a modified version of the Avaya End User License, which will then become the "then-current End User License" which Reseller must use to comply with the provision of this Section 7.2.

7.3 Use of Software for Managed Solutions and Services. If Reseller provides Services or Managed Solutions to an End User at an End User's location in the Territory:

7.3.1 Reseller shall comply with the terms of the Avaya End User License to the same extent as if Reseller were an "End User" under the Avaya End User License in effect at the later of (i) the time it enters into an agreement for a term to provide Services or Managed Solutions to the End User or (ii) the time that the term of an agreement for a term to provide Services or Managed Solutions to the End User renews or auto renews or (iii) the time that Reseller provides Services or Managed Solutions to the End User if no time and materials (T&M) agreement to provide Services or Managed Solutions to the End User is in effect, such as when Reseller provides Services or Managed Solutions on per incident basis. However, the terms of this Section 7 with regard to licenses granted to Reseller will supersede the terms of the Avaya End User License in the event of any conflict.

7.3.2 Avaya grants to Reseller a personal, nonexclusive, nontransferable, non-assignable, non-sub-licensable, limited license to use the Software within the Territory to provide Services or Managed Solutions to the End User for the End User's internal business use at the location where the Products were originally installed and not for resale, sublicensing, or other transfer of any rights to or in the Products. The license to use the Software granted by this Section 7.3.2 is limited to the features, functionality and capabilities that Avaya generally provides to Resellers who hold the same authorization(s) to resell Products and/or Services or to provide services as Reseller.

7.3.3 The license granted by Avaya under Section 7.3.2 expires as to each such location where the Products were originally installed upon the termination or expiration of this Agreement; however, if, as of the earlier of (i) the date of a notice of intent not to renew this Agreement or (ii) the date of a notice of termination of this Agreement, there is a pending, written agreement under which Reseller remains obligated to provide Services or Managed Solutions to the End User at the location, the license granted by Section 7.3.2 will expire as to that location on the earlier of (A) three (3) months after the termination or expiration of this Agreement or (B) upon the termination or expiration of the then-current term, without renewals, of the written agreement under which Reseller remains obligated to provide Services or Managed Solutions to the End User at the location

7.3.4 With respect to any Software that is installed at an End User's location or otherwise used or accessed by an End User, Avaya further grants to Reseller a personal, non-exclusive and non-transferable (except as provided in this Section 7.3.4) right to sublicense the Software right to use to End User during the term of this Agreement subject to the conditions set forth in Section 7.2.

7.3.5 Reseller may not change the End User beneficiary of a Managed Solution.

7.4 Outsourcing Services. Where Reseller agrees with an End User that it shall provide outsourcing services for the benefit of End User using the Products it sold/licensed to End User, then Reseller shall add the following provision in Section C (License Grant) of the Avaya End User License: "In addition to End User's right to use the Software and Documentation, Channel Partners acting as outsourcing providers to End User may access and use the Software, including Updates and Upgrades thereto, and Documentation, solely on behalf of and for the benefit of End User and to the same extent as End User as provided under this Agreement. Avaya shall not charge the Channel Partner acting as an outsourcing provider to End User for the foregoing rights. Channel Partners shall be obligated to comply with the terms and provisions of this Agreement. End User shall be responsible for such Channel Partners failure to comply and shall indemnify Avaya for any damages, loss, expenses or costs incurred by Avaya as a result of non-compliance with this section."

7.5 Audit Rights. Reseller: (i) undertakes that the Software, and all copies thereof, including translations, compilations, derivative works and partial copies, are and shall at all times remain the property of Avaya or its licensor; and (ii) shall obtain for Avaya the ability to electronically audit, at Avaya's discretion, each system configuration containing Products sold or otherwise provided by or to Reseller, to verify compliance with the license provisions of this Agreement, including (among other things) the terms of the Software license as it relates to the enablement of any separately licensed features or incremental units of capacity. Such an audit may be conducted upon 5 days advance notification. Reseller shall cooperate with Avaya in conducting such audits

7.6 Indemnification. Reseller shall indemnify Avaya for all claims, actions, costs, expenses and damages (including without limitation reasonable attorney's fees and costs) suffered by Avaya as a result of Reseller's failure to obtain an End User's written agreement to the Avaya End User License or Reseller's other failure to comply with the requirements in this Section.

7.7 Termination of License. Avaya may terminate the license granted under this Section 7 if, within 10 business days of Reseller's receipt of a reasonably detailed written request to cure, Reseller has not cured all breaches of license limitations or restrictions. Upon such termination,

Reseller shall immediately pay all outstanding license fees, cease use of all Software, return or delete, at Avaya's request, all copies of the Software in Reseller's and its End Users' possession, and certify compliance with all of the obligations in this Section 7.7 to Avaya in writing.

- 7.8 **Translation of Documentation.** Reseller shall not obliterate, obfuscate or conceal any Avaya copyright notices or other proprietary markings on the Documentation. Reseller may, at its own expense, reproduce and translate Documentation, provided that: (i) each copy or part thereof includes Avaya's copyright and other relevant notices; (ii) any translation is accurate and complete and reproduces the information in a manner consistent with the original literature; (iii) translation conforms to Avaya's then current documentation standards provided to Reseller by Avaya from time to time; and (iv) Reseller shall assign to Avaya, upon publication, all Intellectual Property Rights in any publication produced by Reseller related to any Product or Software and shall do anything necessary to ensure that Avaya obtains and retains such rights. If Avaya determines that any publication compiled by Reseller fails to comply with this Section 7.8, Reseller, on written request by Avaya and at Avaya's option, shall do any or all of the following: (i) cease distribution of such publications; (ii) reclaim as many copies as is reasonably practical; (iii) destroy all copies of such publications within Reseller's control; and (iv) amend the publication in accordance with Avaya's instructions. Reseller shall be liable to Avaya for any direct or indirect liabilities, damages, costs, and expenses arising from Reseller's production, distribution or use of reproduced, compiled or translated Documentation.

8. WARRANTY

- 8.1 If the Territory is the United States or Canada, Avaya shall extend its then applicable warranty terms to End Users (including purchases by Reseller for Internal Use), purchasing Products from Reseller in accordance with the warranty policy located at <http://support.avaya.com/LicenseInfo>. Reseller shall provide each End User with a copy of Avaya's then applicable warranty terms. Reseller shall follow Avaya's then current procedure for warranty claims and remedies.
- 8.2 If the Territory is not the United States or Canada, or any part thereof, Reseller shall be solely responsible for any warranty or other protection (including services coverage) provided to End User.
- 8.3 **Additional Reseller Warranty and Protection.** Reseller shall indemnify and hold Avaya harmless for any claims, damages, or expenses, including reasonable legal expenses, arising from any warranty commitments or representations that Reseller makes beyond those set forth in this Section 8.

9. INFRINGEMENT DEFENSE AND INDEMNIFICATION

- 9.1 **Defense and Indemnity.** Avaya will defend Reseller, at Avaya's expense, against any Claim, as defined below, and shall indemnify Reseller as provided in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim. Avaya's obligations under this Section are conditioned on the following: (i) Reseller promptly notifies Avaya of the Claim in writing upon Reseller being made aware of the Claim; (ii) Reseller gives Avaya sole authority and control of the defense and (if applicable) settlement of the Claim; and (iii) Reseller provides all information and assistance reasonably requested by Avaya to handle the defense or settlement of the Claim. For purposes of this Section, "Claim" means any cause of action in a third party action, suit or proceeding against Reseller alleging that a Product as of its delivery date under this Agreement infringes a patent, copyright or trademark.
- 9.2 **Remedial Measures.** If a Product becomes, or Avaya reasonably believes use of a Product may become, the subject of a Claim, Avaya may, at its own expense and option: (i) procure for Reseller or End User, as applicable, the right to continue use of the Product; (ii) replace or modify the Product; or (iii) refund to Reseller a pro-rated portion of the applicable fees for the Product based on a linear depreciation monthly over a 5 year useful life, in which case Reseller will cease all use of the Product or will require End User to cease all use of the Product and return it to Avaya.
- 9.3 **Exceptions.** Avaya will have no defense or indemnity obligation for any Claim based on: (i) a Product that has been modified by someone other than Avaya; (ii) a Product that has been modified by Avaya in accordance with Reseller or End User-provided specifications or instructions; (iii) use or combination of a Product with Third Party Products; (iv) Third Party Products, open source or freeware; (v) a Product that is used or located by Reseller or End User in a country other than the country for which it was supplied by Avaya or as permitted by the Avaya End User License; or (vi) possession or use of the Product after Avaya has informed Reseller or End User of modifications or changes in the Product required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Avaya's suggestions and to the extent Reseller or End User did not provide Avaya with a reasonable opportunity to implement Avaya's suggestions; or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. Reseller shall defend Avaya against any Claim, and shall indemnify Avaya for any judgments, settlements and reasonable attorney's fees resulting from a Claim to the extent the Claim is based on subsection (i) or (ii) above.
- 9.4 **Sole Remedy.** THE FOREGOING STATES AVAYA'S ENTIRE LIABILITY, AND RESELLER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PARTY. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT.

10. 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 DURING EACH CONTRACTUAL TWELVE (12) MONTHS PERIOD, SHALL NOT EXCEED THE GREATER OF: (A) US \$100,000; OR (B) THE TOTAL VALUE OF THE PRODUCTS AND SERVICES PURCHASED BY RESELLER UNDER THE AGREEMENT DIRECTLY FROM AVAYA IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIMS. THE LIMITATION OF AGGREGATE LIABILITY WILL NOT APPLY TO EITHER PARTY'S BREACH OF ITS PAYMENT OBLIGATIONS. THE DISCLAIMERS OF LIABILITY AND THE LIMITATION OF AGGREGATE LIABILITY IN THIS SECTION 10 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 WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, BREACHES OF EITHER PARTY'S CONFIDENTIAL INFORMATION, BREACHES OF AVAYA'S LICENSE RESTRICTIONS, RESELLER'S BREACH OF THE UNAUTHORIZED AVAYA PRODUCT SECTION 3.5, BREACH OF SPECIAL DISCOUNTS FOR PARTICULAR DEALS SECTION 3.9. THE LIMITATIONS OF AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS AGREEMENT.

11. GOVERNING LAW AND DISPUTE RESOLUTION

- 11.1 **Governing Law.** This Agreement and any dispute, claim or controversy arising out of or relating to this Agreement ("Dispute"), including without limitation the formation, interpretation, breach of termination of this Agreement, 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, the United Nations Convention on Contracts for the International Sale of Goods.
- 11.2 **Dispute Resolution.** Any Dispute will be resolved in accordance with the provisions of this Section 11. The disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of this Agreement. The parties will attempt in good faith to resolve each controversy or claim 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.

- 11.3 **Arbitration of Non-US Disputes.** If a Dispute that arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States cannot be settled under the procedures and within the timeframe set forth in Section 11.2, the Dispute will be conclusively determined upon request of either party by a final and binding arbitration proceeding to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time), except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed one million US Dollars at the time all claims, including cross claims and counterclaims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of Section 10, and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of this Agreement. The ruling by the arbitrator(s) will be final and binding on the parties and, if necessary to enforce the ruling, may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees, but Avaya and Reseller shall each bear its own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants, and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration will be as limited and narrowed as required to comply with the applicable law. By way of illustration, if applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed. The parties shall confer in good faith to avoid any court filing that reveals the existence, content, or result of the arbitration and shall make best efforts to ensure that any such filing is placed under seal.
- 11.4 **Monies Owed Under this Agreement.** Nothing in this Section 11 will preclude Avaya from seeking monetary damages and remedies from any court of competent jurisdiction for monies owed under this Agreement or any orders. If Avaya chooses to commence legal action in a court of competent jurisdiction for the aforesaid purposes, each party hereby irrevocably (i) waives any objection which it may have to the laying of venue of any legal action brought in such courts or that such legal action has been brought in an inconvenient forum, and (ii) further waives the right to object with respect to such legal action that any such court does not have jurisdiction over such party.
- 11.5 **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 pending arbitration at any time. The parties agree that the arbitration provision in Section 11.3 may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order.
- 11.6 **Choice of Forum for US Disputes or Claims.** If a Dispute by one party against the other that arose in the United States or is based upon an alleged breach committed in the United States cannot be settled under the procedures and within the timeframe set forth in Section 11.2, 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. Except as otherwise stated in Section 11.3 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.
- 11.7 **Time Limit.** Actions on Disputes between the parties must be brought in accordance with this Section within 2 years after the cause of action arises.
- 11.8 **Compliance.** Reseller and Avaya will cause their Affiliates to comply with the dispute resolution procedures described in this Section.

12. TERM AND TERMINATION

- 12.1 **Term and Renewals.** This Agreement commences on the Effective Date and continues in effect until the following September 30th (the "Renewal Date"), unless terminated earlier in accordance with this Agreement. Unless either party gives written notice to the other party of its intent not to renew this Agreement no later than 30 days in advance of the end of its term, this Agreement will automatically renew on the Renewal Date for subsequent 1 year terms.
- 12.2 **Termination for Convenience.** Either party may terminate this Agreement at any time without cause by giving the other party 30 days written notice.
- 12.3 **Termination for Breach.** Avaya may terminate this Agreement (or any orders) immediately upon 24 hours' notice in case of material breach of this Agreement by Reseller, including but not limited to, violation of the Unauthorized Avaya Product Section, failure to meet the obligations of the Special Discounts for Particular Deals Section, or the Software License Section, including any breach of the Avaya End User License terms.

13. EFFECTS OF TERMINATION

- 13.1 Upon the termination or expiration of this Agreement, Reseller shall: (i) discontinue all use of the Licensed Trademarks, except that Reseller may continue using such Licensed Trademarks as authorized in this Agreement for an additional period of 90 days exclusively in connection with Reseller's efforts to sell remaining inventory; (ii) unless otherwise agreed to by Avaya in writing and save for fulfillment of any orders that are not terminated, cease holding itself out in any manner as an authorized Reseller of Avaya and notify and arrange for all persons who may identify, list or publish Reseller's name as an Avaya authorized Reseller to discontinue such designation; (iii) return to Avaya all promotional materials supplied by Avaya; and (iv) in the case of Managed Solutions or Services provided in accordance with Section 7.3, discontinue the use of the Software to which Reseller was granted a license or other right to use in this Agreement, except as extended in Section 7.3.3. Except to the extent expressly set forth in Section 7.3.3, all license rights granted to Reseller in Section 7.3 shall terminate upon termination or expiration of the Agreement, and Reseller shall thereafter cease providing Managed Solutions or Services to all End Users. In addition, upon the earlier of a notice of termination, a notice of intent not to renew or the expiration of this Agreement, Avaya may inform End Users and Distributor that, upon the termination or expiration, Reseller will no longer be authorized to provide Products and Services to such End Users and Avaya may offer End Users with alternative options to enable End Users to transition to a new Channel Partner for the provision of Products and Services.
- 13.2 Except as set forth in Section 13.4 below, neither party will be liable to the other on account of a termination, cancellation, or expiration of this Agreement, or any order under it, either for compensation or for damages of any kind or character whatsoever, or on account of the loss of present or prospective profits on sales or anticipated sales, goodwill, reputation, or expenditures, investments or commitments made in contemplation or anticipation of this Agreement or any transaction contemplated under it.
- 13.3 Notwithstanding Sections 13.1 and 13.2, the termination, cancellation, or expiration of this Agreement or any order will not prejudice or otherwise affect the rights or liabilities of the parties with respect to Products or Services already sold under this Agreement, or any indebtedness then owing by either party to the other, except that the licenses and rights to use granted to Reseller under this Agreement will terminate as to all Products or Services as provided in Sections 7.3.
- 13.4 **Survival.** The respective terms and conditions under this Agreement that by their nature would continue beyond the termination or expiration of this Agreement, such as, by way of example only, the obligations pursuant to Section 4.3 (*Export/Import Compliance*), Section 7 (*Software License*), Section 8 (*Warranty*), Section 10 (*Limitation of Liability*), Section 11 (*Governing Law and Dispute Resolution*), 13 (*Effects of Termination*), Section 15 (*Indemnity*), Section 17 (*Miscellaneous*), will survive termination or expiration hereof. Unless expressly provided to

the contrary in this Agreement, the respective rights and obligations of Reseller and Avaya under this Agreement that by their nature would continue beyond the termination or expiration of this Agreement will survive termination or expiration hereof. These rights and obligations include, but are not limited to, those contained in the following Sections: Export/Import Compliance, Software License (except as expressly limited therein), Warranty, Sales Reporting, Limitation of Liability, Governing Law and Dispute Resolution, Effects of Termination and Infringement.

14. TRADEMARKS

- 14.1 **Trademark License.** Avaya hereby grants to Reseller a limited non-exclusive, non-sublicensable and non-transferable license to use the Licensed Trademarks in connection with the advertisement, promotion, sale or marketing of Products or Services in the Territory, subject to the terms and conditions of this Section 14. Such license does not extend to registering internet domain names containing any of the Licensed Trademarks and does not extend to any other Avaya trademarks. Reseller hereby grants Avaya the right to use Reseller's trademarks, name, or refer to the Reseller directly or indirectly, in any media release, public announcement or public disclosure relating to this Agreement or its subject matter, including in any promotional or marketing materials, customer lists, referral lists or business presentations, without the prior written consent from the Reseller for each such use. Any goodwill derived from the use by Avaya or its Affiliates of Reseller's trademarks shall inure to the benefit of Reseller.
- 14.2 **Restrictions. Goodwill.** Reseller shall not use the Licensed Trademarks in any way, intentionally or otherwise, to imply or from which others may infer: (i) Avaya's endorsement of products, services or materials other than Products or Services; or (ii) that Reseller is authorized to resell any Avaya products or services other than the Products or Services that Reseller is in fact authorized to resell. Reseller shall not alter or remove any of the Licensed Trademarks applied to a Product, without the prior written approval of Avaya. Reseller acknowledges that Avaya is the owner of the Licensed Trademarks and Avaya Intellectual Property. Any goodwill derived from the use by Reseller of the Licensed Trademarks shall inure to the benefit of Avaya and its licensors. If Reseller acquires any rights in the Licensed Trademarks, by operation of law, or otherwise, such rights shall be deemed and are hereby irrevocably assigned to Avaya without further action by any of the parties. Reseller agrees not to dispute or challenge or assist any person in disputing or challenging Avaya's rights in and to the Licensed Trademarks or the validity of the Trademarks.
- 14.3 **Compliance with Branding Guidelines.** Reseller shall only use and apply the Licensed Trademarks in accordance with Avaya's Branding Guidelines as set forth in the Channel Policies.
- 14.4 **Restrictions.** Reseller shall not register, in the Territory or any other country or jurisdiction, any name, logo, or mark identical to or confusingly similar to the Licensed Trademarks and will not register internet domain names that include any of the Licensed Trademarks in whole or in part. Reseller shall not, directly or indirectly, do, omit to do, or permit to be done, any act which will or may dilute the Licensed Trademarks or tarnish or bring into disrepute the reputation of or goodwill associated with the License Trademarks or Avaya or which will or may invalidate or jeopardize any registration of the Licensed Trademarks.

15. INDEMNITY

- 15.1 Reseller shall indemnify Avaya from and against losses, damages, claims, demands, suits and liabilities (including court costs and reasonable attorney's fees) that arise out of or result from injuries or death to persons or damage to tangible property caused by Reseller's acts or omissions, or those of persons furnished by Reseller including, but not limited to, Reseller's (or third parties working on behalf of Reseller) failure to follow Avaya's applicable installation, operation and maintenance specifications and/or documentation.
- 15.2 At Avaya's request, Reseller shall defend Avaya against any of the claims, demands or suits resulting from Section 15.1 at Resellers expense, but Avaya in such event has the right to be represented in such action at its expense with legal counsel of its choice. Avaya shall notify Reseller in writing within a reasonable time of any written claims or demands against Avaya for which Reseller is responsible under this Section 15 and shall cooperate with Reseller in all reasonable ways in connection with the defense of such action.

16. RECORD KEEPING AND AUDITS

- 16.1 Reseller shall offer its full cooperation to Avaya and provide all information requested for licensing, reporting, and recordkeeping requirements (including but not limited to End User and end-user information prior to the commencement of any resale) to allow Avaya to meet all trade compliance requirements. Reseller agrees to make all applicable export/import records available for audit by Avaya upon request and agrees to retain the aforementioned records for 5 years from the date of export/import.
- 16.2 Reseller shall keep full, true and accurate records and accounts, in accordance with generally accepted accounting principles, of each Product and Service purchased and resold, of all Software licensed and of all Products and Software used to provide Services and Managed Solutions, including records identifying all End Users that purchased a Product or Service or licensed Software and information regarding compliance with the terms of this Agreement, Avaya End User Licenses and the Channel Policies. At Avaya's request and upon reasonable notice, Reseller shall, cooperate and provide Avaya with access to audit those records. Reseller additionally acknowledges that from time to time Avaya or its independent auditors may conduct additional specific audits for the purpose of monitoring and ensuring compliance by Reseller with applicable laws, the Channel Policies, the requirements of this Agreement concerning Avaya End User Licenses and End User's compliance with licensing requirements and restrictions, or for other purposes. When requested, Reseller shall collaborate with Avaya's auditors and provide accurate and truthful information. Reseller acknowledges and accepts that Avaya may directly contact any End User at any time to verify and/or inform End Users about, Resellers' compliance or non-compliance with this Agreement, Avaya End User Licenses and the Channel Policies.

17. MISCELLANEOUS

- 17.1 **Interpretation.** The headings in this Agreement will not affect the interpretation of this Agreement.
- 17.2 **Assignment.** Avaya may assign this Agreement and any order under it to any of its Affiliate(s) or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets and 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 also may assign this Agreement or any order in whole or in part as it relates to a particular country to an authorized reseller or an authorized distributor in that country without the consent of Reseller. Avaya shall endeavor to provide prompt notice of any assignment to an authorized reseller or an authorized distributor. Notwithstanding the foregoing, Avaya may without prior written notification to Reseller pledge receivables under this Agreement to financiers (including their agents, trustees and representatives) providing credit to Avaya or Avaya Affiliates.
- 17.3 **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all other previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and cannot be contradicted or supplemented by any prior course of dealing between the parties.
- 17.4 **Modifications.** Any modifications or amendments to this Agreement must be in writing and physically or, if applicable, electronically signed by both parties. In no event will electronic mail constitute a modification or amendment to this Agreement.
- 17.5 **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by court decision or a decision of an arbitrator or other binding neutral, 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.
- 17.6 **Non-Waiver.** 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 **Voice Recording.** Reseller acknowledges and agrees that Avaya may record telephone calls made by Reseller to Avaya relating to Products or Services for the sole purpose of internal training or monitoring quality of service.
- 17.8 **Enforceability.**
- 17.8.1 If this Agreement is accepted electronically by an individual on behalf of Reseller, such individual represents that he or she has the authority to bind Reseller to the terms and conditions of this Agreement. If the individual does not have such authority or Reseller does not wish to be bound by the terms and conditions of this Agreement, do not click "Accept" at the end of this Agreement. Subject to local law requirements, the parties agree that this Agreement or subsequent amendments may be executed by electronic signature, which shall be binding between the parties as though handwritten and shall include either an electronic symbol adopted by a person with the intent to sign this Agreement or a photostatic copy of a handwritten signature.
- 17.8.2 Reseller agrees that the e-mail address it has provided to Avaya on the Avaya Partner Registration Form in order to verify Agreement acceptance corresponds to a person that has the capacity and authority to execute this Agreement on behalf of Reseller. Each party waives any defense to the validity or enforceability of this Agreement arising from the electronic submission and electronic acceptance of this Agreement by Reseller. If Reseller needs a physical document evidencing this Agreement, Reseller may (i) print the accepted Agreement or (ii) request from Avaya a signed version, in which case Reseller shall print and return to Avaya two (2) printed, executed originals of this Agreement. Such printed originals will not be deemed accepted by Avaya unless Avaya returns one (1) countersigned original to Reseller.
- 17.9 **Language.** If the Territory is or includes Canada, the parties hereto have requested that this Agreement and all documents relating thereto be drafted in English. Les parties aux présentes ont exigé que la présente entente ainsi que tout document s'y rapportant soient rédigés en anglais. Las partes han solicitado que este Contrato y cualquier documento relacionado con el mismo sean redactados en inglés.
- 17.10 **Notices.** All notices under this Agreement will be given in writing, in English, and to the following email addresses: (i) if to Reseller, to the email address it provided on the Avaya Partner Registration Form in order to verify Agreement acceptance or, if that email address is no longer valid, to the primary contact's email address as designated by Reseller in Reseller's record with Avaya; or (ii) if to Avaya, to legalnotices@avaya.com. Notices will be deemed to be given when actually received.