



PROFESSIONAL SERVICES TERMS (CANADA)

These Professional Services Terms (the “**Agreement**”) are between Customer and Avaya Canada Corp. with principal offices at 11 Allstate Parkway, Suite 300, Markham, ON, L3R 9T8 (“**Avaya**”) govern Customer’s purchase of Avaya Professional Services and are incorporated into an order document (“**Order**”) and/or a Service Description, as applicable, by reference. A copy of this Agreement also can be found at <https://support.avaya.com/TermsOfSale>.

1. SCOPE, ORDERS & DEFINITIONS

1.1 Scope. Avaya provides to Customer the Professional Services described in the Order and/or the respective Service Description (hereinafter “**Services**”). For the purpose of this Agreement “**Service Description**” means: (i) the applicable Avaya Service Description Document (“**SDD**”) then current as of the date of Avaya’s acceptance of an Order for Services and available to Customer upon request; and/or (ii) a Statement of Work (“**SOW**”) executed by the parties describing specific services to be provided by Avaya. The Services may include installation and configuration of hardware, licensed software, and associated documentation (“**Products**”), consulting and other Services where Avaya creates a Deliverable and/or completes other defined objectives or a project phase on a milestone basis, time and material services, or other basis. “**Deliverables**” mean customized software, documentation, or other work product created in the course of a Services engagement. Deliverables do not include generally available hardware and software.

1.2 Order Placement. Orders are subject to acceptance by Avaya and Avaya may accept an Order by commencing to perform Services. Accepted Orders will be governed by this Agreement. All other terms and conditions referenced in the Order and/or Service Description will have no effect, unless expressly accepted in writing by Avaya. Customer may submit Orders to Avaya by electronic mail, at the email address provided by Avaya to Customer, or other agreed means of electronic communication. Any electronic Order will be binding upon Customer’s electronic submission as if submitted in writing.

1.3 Definitions. “**Affiliate**” means, with respect to either party, any entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of this Agreement. For purposes of this definition, “**control**” means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

2. INVOICING AND PAYMENT

2.1 Services will be invoiced upon project completion, or as specified in the service description or SOW. Avaya will invoice and process payments via Avaya’s electronic bill application.

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

2.3 Taxes. Unless Customer provides Avaya with a current tax exemption certificate, Customer is solely responsible for paying all legally required taxes, including without limitation any sales, excise or other taxes and fees which may be levied upon the Services, except for any income tax assessed upon Avaya.

3. DELAYS

Any delays in the performance of Service caused by Customer may result in additional applicable charges for resource time. If such delay continues for more than 30 days, Avaya may terminate the Order and/or Service Description and Customer agrees to pay for all Services performed to date of termination.

4. WARRANTY

4.1 Avaya warrants that Services will be performed in a professional and workmanlike manner by qualified personnel, and that for a period of thirty (30) days from Avaya’s completion of the Services, the Services will conform in all material respects to the specifications contained in the Order and/or Service Description.

4.2 Remedy. If Services are not in conformance with the above warranty and Avaya receives Customer’s timely detailed request to cure a non-conformance, Avaya will re-perform those Services. THIS REMEDY WILL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF SERVICES.

4.3 Disclaimer. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION 4, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKE ANY REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SERVICES INCLUDING ANY SOFTWARE PROVIDED HEREUNDER OR OTHERWISE RELATED TO THIS AGREEMENT. AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES PROVIDED IN SECTION 4.2 ABOVE WILL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR BREACHES THEREOF.

5. IP OWNERSHIP

Avaya, its Affiliates, licensors and suppliers own all rights, title and interest in and to any intellectual property in the Services provided to Customer in connection with this Agreement as well as any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, “Avaya Intellectual Property”).

Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property, know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it.

6. TERM AND TERMINATION

6.1 Term. This Agreement will commence upon acceptance of the Order by Avaya (“the “Effective Date”) and continue to apply until completion of the Services or until terminated pursuant to this Section.

6.2 Order Termination. Either party may terminate Services that have not been accepted in accordance with the Order and/or Service Description, upon 45 days prior written notice. Customer will pay for Services performed to the date of termination and all non-refundable or non-terminable out-of-pocket expenses Avaya incurred.

6.3 Termination for Cause. Either party may terminate this Agreement by written notice to the other party in the event of a material breach of this Agreement that is not cured within 30 days of receipt of such notice. The provisions concerning confidentiality, all limitations of liability, disclaimers and restrictions of warranty, and any terms which, by their nature, are intended to survive termination or expiration of this Agreement will survive any termination or expiration of this Agreement and any Order.

7. CONFIDENTIAL INFORMATION

7.1 Confidential Information. “Confidential Information” means non-public confidential or proprietary information of the disclosing party that is (a) clearly marked confidential at the time of disclosure 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. Each party acknowledges that it may receive Confidential Information from the other party in connection with this Agreement, any Order, and during the course of the parties’ general business relationship. Unless stated otherwise in this Section 7 or agreed otherwise by the parties, the receiving party shall keep in trust and confidence all Confidential Information, and may use Confidential Information solely for the purpose of furtherance of the business relationship between the parties, or to exercise its rights and fulfil its obligations under this Agreement.

7.2 Authorized Disclosure. The receiving party will be authorized to disclose Confidential Information only to its employees, contractors, agents, directors, officers, professional legal advisers, Affiliates or subcontractors with a need to know (“Authorized Parties”) and who are bound by confidentiality obligations with the receiving party at least as protective as the terms stated in this Section 7. Each party will be responsible for any Authorized Party’s noncompliance with its confidentiality obligations and will only disclose Confidential Information to any third party other than an Authorized Party upon the prior written consent of the disclosing party. Notwithstanding the foregoing, the receiving party is authorized to disclose Confidential Information as required by applicable law in accordance with a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party, where allowed under applicable law, provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity for the other party to oppose such disclosure. The confidentiality obligations of each party will survive three (3) years following the expiration or termination of the Agreement or any Order, whichever occurs later. Upon such termination or expiration, each party, if so requested by the other party, will cease all use of or destroy the other party’s Confidential Information (including any copies thereof) in the receiving party’s possession, custody, or control, provided that the receiving party may keep archival copies due to mandatory retention laws, for regulatory purposes or to enforce its rights, subject to the confidentiality obligations as stated in this Section 7. Notwithstanding the foregoing, any trade secrets disclosed under this Agreement shall be held in confidence by the receiving party for: (i) as long as such Confidential Information remains the disclosing party’s trade secret under applicable law; or (ii) until such Confidential Information falls under one of the exceptions to the confidentiality obligations specified in this Section.

7.3 Exclusions. This Section 7 does not apply to information which: (i) has entered the public domain except where such entry is the result of the receiving party’s breach of this Agreement; (ii) was rightfully in the receiving party’s possession prior to disclosure under this Agreement; or (iii) was obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.

8. 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 UNDER AN ORDER OR A SERVICE DESCRIPTION WILL NOT EXCEED AN AMOUNT EQUAL TO THE GREATER OF (i) THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THE ORDER OR THE SERVICE DESCRIPTION IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM OR (ii) \$50,000. THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, BREACHES OF EITHER PARTY’S CONFIDENTIAL INFORMATION, OR BREACHES OF AVAYA’S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

9. GOVERNING LAW, DISPUTE RESOLUTION AND ORDER OF PRECEDENCE

9.1 Governing Law. This Agreement and any disputes arising out of or relating to this Agreement (“Disputes”) will be governed by Province of Ontario laws, without regard to choice of law principles that might require application of any other law and/or the United Nations Convention on Contracts for International Sale of Goods.

9.2 Dispute Resolution and Forum. Any Dispute shall be resolved in accordance with the provisions of this Section. The disputing party shall first give the other party written notice of the controversy or claim in accordance with the notice provision of this Agreement. The parties will attempt in good faith to resolve each controversy or claim within thirty (30) days (or other mutually agreed period), following the delivery of such notice, by negotiations between designated representatives of the parties who have dispute resolution authority. If the Dispute has not been resolved within the applicable time period, then either party may bring an action or proceeding solely in either the Superior Court of

Justice in Ontario, or the Federal Court of Canada. Each party to this Agreement consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings.

9.3 Injunctive Relief. Nothing in Section 9.2 will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights at any time.

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

9.5 Order of Precedence. In the event of conflict among this Agreement, the Order and/or Service Description, the order of precedence is: (i) this Agreement; (ii) Service Description; (iii) Order.

10. MISCELLANEOUS

10.1 Avaya will maintain all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services.

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

10.3 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, terroristic acts, hacking, malware, ransomware, business interruption or data loss caused by malicious or criminal act, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities.

10.4 Notices. Legal notices under this Agreement will be addressed to Avaya at lglnoticescomm@avaya.com and (in addition) to the official registered address in the respective country. Legal notices under this Agreement to Customer will be addressed to the Order and/or Service Description, or, if not specified, to the Customer's registered address.

10.5 Entire Agreement. This Agreement (and the applicable Service Description and/or the Order) constitute the entire understanding of the parties with respect to the subject matter of 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. Any modifications or amendments to this Agreement must be in writing physically or electronically and signed by both parties. If any provision of this Agreement is determined to be unenforceable or invalid by court decision, this Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under this Agreement including, but not limited to, the right to terminate this Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms. The parties hereto have agreed that this Agreement, Services and all documents relating thereto be in English. Les parties ci-joint ont convenu que cet accord, Services et tous les documents se reliant là-dessus soient en anglais.

END OF PROFESSIONAL SERVICES TERMS