



## PROFESSIONAL SERVICES AND EQUIPMENT TERMS

### (THE UNITED KINGDOM AND IRELAND)

These Professional Services and Equipment Terms (the “**Agreement**”) between Customer and Avaya govern Customer’s purchase of Avaya Professional Services and/or Equipment, 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 (i) phones or other hardware or Software (“**Equipment**”) described in the Order, and/or (ii) 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 Equipment, consulting and other requested 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. “**Deliverable**” means 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 and/or a Service Description by commencing to perform the Services. Accepted Orders and/or Service Descriptions 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 Equipment Changes.** Prior to delivery of Equipment, Avaya may make changes to the Equipment or provide a substitute of later design, provided that the changes do not have a materially adverse effect on the functioning of the Equipment.

**1.4 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. “**Avaya**” means Avaya UK (if Customer is incorporated in the UK) or Avaya International Sales Limited (if Customer is incorporated in Ireland), unless stipulated otherwise in the applicable Order or Service Description. “**Documentation**” means information published in varying media which may include product information, operating instructions and performance specifications that are generally made available to users of products. “**Software**” means computer programs in object code, provided by Avaya whether as stand-alone products or pre-installed on Equipment, and any upgrades, updates, patches, bugfixes, or modified versions thereto. “**Third Party Equipment**” means any products made by a party other than Avaya, and may include, without limitation, products ordered by Customer from third parties. However, components of Avaya-branded Equipment are not Third Party Equipment if they are both: (a) embedded in Equipment (i.e., not recognizable as standalone items); and (b) are not identified as separate items on Avaya’s price list, quotes, order specifications forms or Documentation.

#### 2. INVOICING AND PAYMENT

**2.1** Services will be invoiced upon completion, or as specified in the Order and/or Service Description. 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 interests for overdue payments in the amount of three times the statutory interest rate. 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. Upon presentation of a valid VAT invoice, Customer shall pay to Avaya an amount equal to the VAT at the prevailing rate in addition to the charges.

#### 3. DELIVERY AND INSTALLATION

**3.1** Unless Avaya provides Customer with written confirmation of a different delivery term, all deliveries of Equipment will be made CIP [Avaya - named shipping point] (INCOTERMS 2020). Avaya may charge Customer for shipping and handling charges, which may be reflected as a separate line item on Avaya’s invoice.

**3.2** The “**Delivery Date**” is the date Avaya delivers Equipment in accordance with Sub-Section 3.1, or, in the case of Software that can be enabled by Avaya remotely or delivered via electronic means, the date the Software is enabled or downloaded to the target processor.

**3.3** Customer agrees that for Software that may be a part of or embedded in the Equipment that Avaya and/or its Affiliates delivers electronically to its customers; the instructions posted on Avaya’s or its Affiliates website for downloading and installation of the Software may be provided in English only. Customer must install the Equipment in accordance with Avaya’s installation instructions available at <https://www.avaya.com/> (or such successor site). Avaya grants Customer a license to use Software and Documentation in accordance with the then-current terms and conditions set forth in the Avaya Global Software License Terms available at <http://support.avaya.com/LicenseInfo> (or a successor site). Avaya may release new versions of the Avaya Global Software License Terms, which will (automatically, without a need to enter into any amendment to this Agreement) replace the previously applicable version prospectively.

#### 4. RISK OF LOSS/TITLE

Risk of loss and title to the Equipment will pass to Customer on the Delivery Date. Title to Software provided under this Agreement will remain solely with Avaya and/or its Affiliates and licensors.

#### 5. 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.

#### 6. WARRANTY

##### 6.1 Warranty Period.

**6.1.1 Services:** 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.

**6.1.2 Equipment:** Avaya warrants to Customer that, during the warranty period, the Equipment will conform to and operate in accordance with the applicable Documentation in all material respects. Unless a different period is specified on the Order, the warranty periods for Equipment is as follows: (a) hardware: 12 months, beginning on the Delivery Date; and/or (b) Software and Software media: 90 days, beginning on the Delivery Date.

##### 6.2 Remedies.

**6.2.1 Services:** 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.

**6.2.2 Equipment:** If Equipment is not in conformance with the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Equipment failed to be in conformance, Avaya at its option will: (a) repair or replace the Equipment to achieve conformance and return the Equipment to Customer; or (b) refund to Customer the applicable fees upon return of the non-conforming Equipment to Avaya. For Software warranty claims, Avaya provides access to available Software corrective content and Equipment support knowledge base on a self-service basis. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Equipment are warranted as above for the remainder of the original applicable Equipment warranty period.

##### 6.3 Equipment Warranty Procedures.

**6.3.1.** Equipment subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions accompanied by evidence that the Equipment remain under warranty (i.e., a valid invoice, and in some cases, this may also require Equipment registration with Avaya). Customer shall place warranty requests by sending an email or calling the numbers detailed in the Service Description or Documentation.

**6.3.2** If Equipment is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Equipment. If Avaya determines that the Equipment was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current rates.

**6.4. Equipment Warranty Exclusions.** The above-referenced warranty does not extend to any damages, malfunctions, or non-conformities caused by: (a) Customer's use of Equipment in violation of this Agreement or in a manner inconsistent with the Documentation; (b) normal wear due to Equipment use, including but not limited to Equipment cosmetics and display scratches; (c) use of non-Avaya furnished equipment, software, or facilities with Equipment (except to the extent provided in the Documentation); (d) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (e) Customer's failure to permit Avaya timely access, remote or otherwise, to Equipment; or (f) failure to implement all new updates to Software provided under this Agreement. Warranties do not extend to Equipment that have been serviced or modified other than by Avaya or a third party specifically authorized by Avaya to provide the service or modification. In the event Customer purchases any Third-Party Equipment from Avaya, Avaya provides Third Party Equipment on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Avaya specifies otherwise. However, such Third Party Equipment may carry its own warranty and Avaya shall pass through to Customer any such warranty to the extent authorized. Exercise of such warranty shall be directly between Customer and the third-party provider.

**6.5 Disclaimer.** EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION 6, NEITHER AVAYA NOR ITS AFFILIATES, LICENSORS OR SUPPLIERS MAKE ANY REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SERVICES OR EQUIPMENT INCLUDING ANY SOFTWARE PROVIDED HEREUNDER OR OTHERWISE RELATED TO THIS AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF EQUIPMENT OR THAT THE EQUIPMENT WILL PREVENT TOLL FRAUD. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AVAYA AND ITS AFFILIATES DISCLAIM ALL IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS AND CONDITIONS RELATED TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AND CONDITIONS OF, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES PROVIDED IN SUB-SECTION 6.2 ABOVE WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACHES THEREOF.

#### 7. IP OWNERSHIP

**7.1** Avaya, its Affiliates, licensors and suppliers own all rights, title and interest in and to any intellectual property in the Equipment and 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.

**7.2 Marks.** Nothing in this Agreement grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, Services, or any Software.

## 8. TERM, CANCELLATION AND TERMINATION

**8.1 Term.** This Agreement will commence upon acceptance of the Order by Avaya ("the **Effective Date**") and continue in effect for the term of the Order unless terminated pursuant to this Section 8.

**8.2. Order Cancellation (Equipment).** Customer may cancel an Equipment Order prior to shipping by written notice to Avaya as follows:

**8.2.1** within 72 hours of Order placement: subject to a cancellation fee of 5% of the purchase price; or more than 72 hours after Order placement: subject to a cancellation fee of 10% of the purchase price.

**8.2.2.** Orders are not cancelable once the Equipment has been shipped or Software made available for download.

**8.3. Order Termination (Services).** 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.

**8.4 Termination for Cause.** Either party may terminate this Agreement and Order 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.

## 9. CONFIDENTIAL INFORMATION

**9.1 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 9 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.

**9.2 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 9. 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 9. 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 9.

**9.3 Exclusions.** This Section 9 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.

## 10. LIMITATION OF LIABILITY

**10.1** THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE AND WILL SURVIVE ANY TERMINATION OR EXPIRATION OF ANY ACCEPTED ORDER OR THIS AGREEMENT. THE LIMITATIONS OF LIABILITY WILL NOT APPLY, HOWEVER, IN CASES OF: (I) FRAUD; (II) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (III) CLAIMS BROUGHT UNDER SECTION 12 OF THE SALE OF GOODS ACT 1979; (IV) CLAIMS BROUGHT UNDER SECTION 2 OF THE SUPPLY OF GOODS AND SERVICES ACT 1982; OR (V) BREACHES OF AVAYA'S LICENSING RESTRICTIONS. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY: (I) INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES; (II) LOSS OF PROFITS OR REVENUES; (III) COSTS OF STANDSTILL AND DELAY; (IV) LOSS OF CONTRACTS; (V) LOSS OF, OR LOSS OF USE OR CORRUPTION OF ANY: (A) SOFTWARE; OR (B) DATA; OR (VI) LOSSES DUE TO TOLL FRAUD.

**10.2** AVAYA WILL INDEMNIFY CUSTOMER FOR LOSS OR DAMAGE TO CUSTOMER'S TANGIBLE PROPERTY, CAUSED EITHER BY THE NEGLIGENCE OF ITS EMPLOYEES, UP TO A MAXIMUM OF THE GREATER OF FIVE HUNDRED THOUSAND POUNDS STERLING (£500,000) OR THE FEES FOR THE SERVICES AND/OR EQUIPMENT, IF HIGHER, ACTUALLY PAID BY CUSTOMER TO AVAYA HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS, PER EVENT OR SERIES OF CONNECTED EVENTS.

**10.3 AGGREGATE LIABILITY.** SUBJECT TO SUB-SECTIONS 10.1 AND 10.2, THE LIABILITY OF EACH PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY SERVICES AND/OR EQUIPMENT PROVIDED UNDER THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO ONE HUNDRED AND TWENTY PERCENT (120%) OF THE FEES FOR THE SERVICES AND/OR EQUIPMENT PROVIDED HEREUNDER.

## 11. GOVERNING LAW, DISPUTE RESOLUTION AND ORDER OF PRECEDENCE

**11.1 Governing Law.** This Agreement and any disputes arising out of or relating to this Agreement ("**Disputes**") will be governed by and construed with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.

**11.2. 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 adjudication through the English courts.

**11.3 Time Limit.** Actions on Disputes between the parties must be brought in accordance with this Section 11 within two (2) years after the cause of action arises.

**11.4 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.

## **12. MISCELLANEOUS**

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

**12.2 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.

**12.3 Data Privacy.** To the extent Avaya Processes Personal Data on behalf of the Customer, the parties will comply with the Data Processing Addendum available at <https://support.avaya.com/TermsOfSale> and which is incorporated herein by reference.

**12.4 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.

**12.5 Notices.** Legal notices under this Agreement will be sent to Avaya at [lglnoticescomm@avaya.com](mailto: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 address in the Service Description and/or Order, or, if not specified, to the Customer's registered address.

**12.6 No Third Party Rights.** This Agreement is enforceable by the original parties to it and their successors in title and permitted assigns. Any right of any other person to enforce this Agreement (including under the Contracts (Rights of Third Parties) Act 1999) is expressly excluded.

**12.7 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.

**- END OF PROFESSIONAL SERVICES AND EQUIPMENT TERMS -**