



SUBSCRIPTION LICENSING TERMS

These subscription licensing terms ("Subscription Licensing Terms") are incorporated by reference in the Customer's Agreement with Avaya, and apply where Customer purchases software licenses on a subscription basis (under Avaya's "Subscription Licensing Program"). Capitalized Terms have the meaning given in this document or in Customer's Agreement.

1. MODES OF SUBSCRIPTION

Under these Subscription Licensing Terms, Avaya may license Software on a:

- 1.1. **"Fixed Term Software Subscription"** basis, which means a fixed quantity of Units (as defined below) of Software provided by Avaya under these Subscription Licensing Terms [for Customer's internal use (not for further resale, sublease, or sublicense)] on a time-bound subscription basis; and/or
- 1.2. **"Pay-per-Use Software Subscription"** basis, which means a variable quantity of Units (as defined below) of Software provided by Avaya under these Subscription Licensing Terms [for Customer's internal use (not for further resale, sublease, or sublicense)] on a pay per use basis.

2. OTHER DEFINITIONS

"Fixed Fee" means a recurring fixed subscription based fee payable by Customer to Avaya for the Fixed Term Software Subscription; **"License Term"** means the specific term for which subscription software licenses are granted; **"Minimum Fee"** means a minimum amount that Customer will pay for the Pay-per-Use Software Subscription and related services irrespective of the Customer's actual number of Units used; **"Subscription Licensing Supplement" or "SLS"** means the then-current Avaya offer description document for Fixed Term Software Subscription or Pay-per-Use Software Subscription as of the date of Avaya's acceptance of an order; **"Subscribed License(s)"** means the software licenses ordered by Customer which are subject to a Fixed Term Software Subscription and/or Pay-per-Use Software Subscription at any given time; **"Subscription Fees"** means any fees described in a Subscription License Supplement or an order for Subscription Licenses, including Usage Fees, Minimum Fee, and Fixed Fees; **"Subscription Term"** means the initial term of an order for Subscription Licenses, and any renewal terms thereof.; **"Unit"** is the specific metric as described in the SLS used by Avaya as the basis for pricing and invoicing of Subscription Licenses and related services. Unless otherwise specified in the Subscription Licensing Supplement, a single user license shall comprise a Unit; **"Usage Fee"** means a recurring pay-per-use based fee payable by Customer to Avaya for the Pay-per-Use Software Subscription, as described in the applicable Subscription Licensing Supplement.

3. FEES

- 3.1. **Initial Set Up.** Implementation and installation of the Subscription Licenses within the Customer environment are not included in the Subscription Fees. Avaya can provide those services as a separate engagement.
- 3.2. **General.** All fees are quoted without any taxes, which will be payable by Customer in addition to Subscription Fees. Subscription Fees paid or payable by Customer are non-cancellable and non-refundable.
- 3.3. **Orders.** Orders for Subscription Licenses must specify the license type and Subscription Term (e.g., Fixed Fee, Usage Fee, etc.). Accepted Orders for Subscription Licenses are not cancelable but may be terminated as specified in the SLS or below in Section 6.3.

4. SUBSCRIPTION SOFTWARE LICENSE TERMS

- 4.1. **Subscription Software License Terms.** Customer's right to use the Subscribed Licenses will be governed by the software license terms as set out in the General Terms of the Agreement and in Schedule A, the Avaya Global Software License Terms. Subscribed Licenses will be provided to Customer solely on a non-perpetual, subscription basis, and Customer's right to use such Subscribed Licenses will at all times be subject to Customer's timely payment of the Subscription Fees and compliance with the terms and conditions of these Subscription Licensing Terms and the Agreement.
- 4.2. **Services Terms.** Subscription Fees may include the provision of certain services attached to or provided together with the Subscribed Licenses. Any services attached to or provided together with the Subscribed Licenses shall be governed by Attachment 3 of the Agreement and the Services Description. Notwithstanding the above, when services are attached to or provided together with the Subscribed Licenses and are included in the Subscription Fees, and the provisions of the Service Description conflict with the provisions of the Subscription Licensing Supplement, the Subscription Licensing Supplement shall take precedence over the Services Description.

5. WARRANTY

The warranty provisions, as set out in the Agreement, will apply to the Subscribed Licenses, except that no warranty period will be longer than the License Term.

6. SUBSCRIPTION TERM, LICENSE TERM AND TERMINATION

- 6.1. **Subscription Term.** The Subscribed Licenses Subscription Term will start as specified in the Subscription License Supplement. Unless otherwise provided in the Subscription Licensing Supplement, the Subscription Term will continue for one (1) year from the start of the term and will be automatically

renewed each year at the Offer's then-current pricing, unless either party notifies the other party in writing of its intent not to renew no later than 30 days before the end of the then current Subscription Term.

- 6.2. **License Term.** For Fixed Term Software Subscription, the License Term shall be the same as the Subscription Term. For Pay-per-Use Software Subscription, the License Term for each license within the pool of available licenses shall be monthly and shall commence when Customer uses such license on any given calendar month and last until the last calendar day of such month.
- 6.3. **Termination.** Unless otherwise specified in the Subscription Licensing Supplement, the Customer may terminate a subscription upon thirty (30) days written notice subject to termination fees equal to the Minimum Fees for Pay-per-Use Software Subscription and the Fixed Fees for the Fixed Term Software Subscription for the remainder of the Subscription Term. In case that no Minimum Fees are applicable to the Pay-per-Use Software Subscription, then instead of using Minimum Fees to calculate the termination fee contemplated in this section, the parties will use the average Usage Fees over the past six months for Pay-per-Use Software Subscription.
- 6.4. **Consequences of Termination.** Upon termination or expiration of the Subscription Term, Customer's right to use the affected Subscribed Licenses, and to receive all associated services, will terminate immediately and Customer will: (a) cease all use of the affected Subscribed Licenses and related Documentation; (b) in accordance with Avaya's instructions, irretrievably delete, deactivate, return and/or destroy any Subscribed Licenses installed or downloaded at the Customer site or on any of its devices or otherwise made available or accessible by Customer, as well as any related Documentation, or allow Avaya to do the same; (c) upon request, promptly certify compliance with the foregoing requirements by an authorized representative of Customer; and (d) pay Avaya all Subscription Fees due up until the date of termination. Upon Avaya's request, Customer will promptly provide the certification set forth in (c) to Avaya and acknowledges and agrees that Avaya may share the certification with its applicable licensors.
- 6.5. **Re-initiation Fees.** Terminated or expired Subscription Licenses may be subject to re-initiation fees as set out in the Subscription Licensing Supplement.

7. CUSTOMER RESPONSIBILITIES

- 7.1. **Architectural and Infrastructure Requirements.** Customer is responsible for all architectural requirements to accommodate the number of Subscribed Licenses it orders at the desired capacity, and is responsible for the provision of all hardware, software, equipment and services for the deployment of such licenses.
- 7.2. **Compliance with regulations.** Customer shall comply with all applicable laws and regulations, including compliance with any laws, regulations, taxes, fees or other requirements related to its use of the Subscribed Licenses.

8. FIXED TERM SOFTWARE SUBSCRIPTION SPECIFIC TERMS

- 8.1. **License availability.** Avaya will make available to Customer the Fixed Term Software Subscription Licenses ordered by Customer. Fixed Term Software Subscription licenses will only be made available for Customer's use on servers managed by Customer.
- 8.2. **Fees.** Subscription Fees for Fixed Term Software Subscriptions consist of Fixed Fees. Unless otherwise provided in the Subscription Licensing Supplement or in the quote or order, fees will be calculated by Avaya and payable by Customer on a calendar month basis, based on the Unit rates set out in the order.
- 8.3. **Quantity increase.** Customer may request additional Fixed Term Software Subscription licenses, beyond the quantity set out in the initial order, by providing Avaya with a thirty (30) day advance written notice. Avaya may, at its sole discretion, make such additional Fixed Term Software Subscription licenses available for use by Customer. In case of increase of licenses, Avaya will increase the periodic billing in proportion to the number of additional software licenses requested by Customer and made available by Avaya.
- 8.4. **Invoicing.** Unless otherwise provided in the Subscription Licensing Supplement, Avaya will invoice Customer monthly in advance.

9. PAY-PER-USE SOFTWARE SUBSCRIPTION SPECIFIC TERMS

- 9.1. **License availability.** Avaya will make available to Customer a pool of Pay-per-Use Software Subscription licenses. Pay-per-Use Software Subscription will only be made available for Customer's use on servers managed by Customer.
- 9.2. **Fees.** Subscription Fees payable by Customer for Pay-Per-Use Software Subscriptions consist of Usage Fees and any Minimum Fees identified in the Subscription Licensing Supplement or quote. Unless otherwise provided in the Subscription Licensing Supplement, fees will be calculated by Avaya and payable by Customer on a calendar month basis, based on the Unit rates set out in the order and the usage data available from the usage monitoring tools as described below. Usage Fees will be calculated by multiplying the applicable Unit rate by the Units in use.
- 9.3. **Usage Monitoring.** Each month during the Subscription Term, Avaya will determine the usage of the Software based on the data and utilization reports available from Avaya usage monitoring tools. When measuring usage, Avaya will determine the total usage of each Pay-per-Use Software Subscription application. Notwithstanding the foregoing, usage monitoring and determination may be carried out based on usage monitoring tools, at intervals and frequency, tracking and calculation methodology, as may be deemed necessary by Avaya from time to time. Avaya will inform Customer of any changes to the usage monitoring tools. Customer will allow Avaya all reasonable access to the usage data and cooperate with Avaya in all reasonable ways during the installation, configuration and administration of any additional usage monitoring tools as may be requested by Avaya in accordance with Avaya's specifications, requirements or reasonable instructions.
- 9.4. **Minimum Fees.** Minimum Fees are detailed in the Subscription Licensing Supplement, quote or order.
- 9.5. **Invoicing.** Unless otherwise provided in the Subscription Licensing Supplement, Avaya will invoice Customer monthly in arrears.

10. ORDER OF PRECEDENCE

Unless otherwise provided for in these Subscription Licensing Terms, in the event of conflict among the country-specific terms in Schedule B, the General Terms, these Subscription Licensing Terms, the Subscription Licensing Supplement (as defined below), and any ancillary attachments to or documents referenced in the Subscription Licensing Supplement, the order of precedence is: (i) the country-specific terms in Schedule B; (ii) the Subscription Licensing Supplement; (iii) these Subscription Licensing Terms; (iv) the General Terms; and (v) ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.