

## **AVAYA SERVICE SCHEDULE**

This Representative Agreement ("Agreement") is made by and between you, an existing Buyer with a signed Credit Application with the Distributor (herein defined as "Representative") and **Westcon Group Germany GmbH**, a German Company, having an office at Hennes-Weisweiler-Allee 8 41179 Mönchengladbach, Germany ("Distributor").

This Agreement shall be deemed effective as at the date of electronic or written acceptance ("Effective Date").

The Distributor and Representative hereby agree as follows:

WHEREAS:

- A) A Representative Agreement (the "**Master Agreement**") has been entered into between the Distributor and the Representative. Representative wishes to adopt and incorporate by reference all of the terms and conditions of the Master Agreement in order to become an independent contractor for the purposes of marketing and soliciting orders for the products and services made commercially available by Distributor subject to the additional terms and conditions of this Schedule.
- B) Representative and Distributor desire to enter into this Schedule under the same terms and conditions as the Master Agreement except as otherwise provided herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

### **1. Definitions.**

Capitalized terms have the meanings set forth or referred to in this Section, or in the Section in which they are defined in this Agreement.

**"Customer"** means a purchaser, except for an Excluded Customer, that has contracted for a Service through the sales efforts of Master Agent under this Agreement.

**"Excluded Customer"** means a Customer who: (a) has submitted an order for any Avaya Service in the twelve (12) month period prior to the time the order is placed for which a Commission sought, other than orders which would otherwise be Qualified Sales; (b) located outside the Territory.

**"Net Proceeds"** shall mean the amount of subscription proceeds that Company actually receives from Customer for a Customer Agreement, less discounts, amounts relating to fraud, credit card fees, refunds, charge-backs, credits, taxes, tariffs, other governmental assessments or withholding.

**"Territory"** refers to Germany.

**"Avaya Terms of Service"** mean the online terms and conditions for the Avaya Services which are available at the following sites (or such successor sites as designated by Avaya): <https://www.zang.io/legal/>.

**"Qualified Sales"** to be eligible for a Commission as set forth in Section 7, all sales must comply with the following requirements:

- The Representative must be identified on the order by using the Sales Program Link explained below; and,
- Customer is not an Excluded Customer.

### **2. Participation in the Avaya Program**

- 2.1. **Appointment.** The Representative is not an „agent entrusted with a specific geographical area within the meaning of sec. 87 para. (2) HGB (German Commercial Code) and will therefore not receive commission for transactions not procured through this Agreement

- 2.2. Use of the Program Portal.** Any use of the Avaya agent online program interface (the "Program Portal") and all marketing and solicitation activities are subject to the terms of this Agreement, including those found at <https://www.avayacloud.de/datenschutz/privacy-statement> ("Privacy Statement") (or such successor sites as designated by Company).
- 2.3. Sales Program Link.** Upon Distributor's acceptance of Representative into the Program, Avaya will provide one or more unique codes in the form of an Internet link, URL or other format as determined by Avaya ("Sales Link") which the Representative may provide to prospective Customers to allow the identification of eligible sales ("Qualified Sales" as further defined below). Representative is solely responsible for ensuring that prospective Customers complete Qualified Sales by clicking on, entering or otherwise utilizing the proper Sales Link when placing an order for Avaya Services.
- 2.4. Excluded Customers.** Notwithstanding Section 2.1, Company does not appoint Master Agent as a sales agent for the Excluded Customers. Master Agent shall not solicit orders from Excluded Customers and shall promptly refer to Company any sales lead it receives or becomes aware of relating to an Excluded Customer. Master Agent acknowledges and agrees that it is not entitled to any Commission or other compensation for any sale made to an Excluded Customer.

### **3. Representative Undertakings; Sales Procedures**

- 3.1** The Representative shall use all reasonable efforts, to create, follow and develop sales leads for Avaya and otherwise develop the full sales potential of the Services in the Territory, including, but not limited to:
- 3.1.1 Promote and market the Avaya Services to prospective Customers;
  - 3.1.2 Direct Customers where and how to purchase Company Services;
  - 3.1.3 Solicit Customers to renew existing subscriptions for Qualified Sales of Company Services;
  - 3.1.4 Observe all directions and instructions given by Avaya or Distributor in relation to the promotion and marketing of Avaya Services;
  - 3.1.5 Comply with all Avaya's requirements regarding use of Avaya's trademarks and other intellectual property;
  - 3.1.6 Conduct its business in a manner that reflects favorably at all times on the Services and on the goodwill and reputation of Avaya
- 3.2** No Representative shall refer to itself either verbally or in any written form as an "agent," "authorized agent" or Business Partner of Avaya. The Representative is permitted to refer to themselves as "authorized sales agents of" Avaya. The Representative is not entitled to enter into any binding agreements in the name of Avaya or the Distributor or accept any legally relevant notices or declarations or grant or make any affirmations, representations, warranties or guaranties on behalf of Avaya or the Distributor.

### **4. Ownership and Licenses**

- 4.1** The Representative acknowledges that all title in and to the Services, documentation thereto, additions and modifications, updates, upgrades, new versions, improvements, and developments thereto, including but not limited to, all copyright, patent, trade secret rights, and any other intellectual property rights (the "**Intellectual Property Rights**") are and shall remain at all times the sole property of Avaya. The Representative is not granted any right in any such Intellectual Property Rights. The Representative shall promptly notify the Distributor and Avaya of any infringement or alleged infringement of any Intellectual Property Right by any third party of which it becomes aware and shall assist Avaya or Distributor in protecting its rights in connection therewith.
- 4.2** The Representative acknowledges and agree that no license is granted under this Agreement to use or access any of Avaya Services, any of Avaya's proprietary technologies embodied therein, or any data, information or other content provided thereby. Avaya retains all right, title and interest in and to the Program Portal, Referral Links, Avaya Services and all technology, data, information or other content embodied therein or provided thereby, as well as its Marks, patents, copyrights, proprietary technology, and other intellectual property rights or similar rights in connection therewith (collectively, "Intellectual Property"), Avaya does not grant any rights or licenses in or to its Intellectual Property.

## **5. Limitations of Activities.**

- 5.1** Representative shall not make any representations, warranties or other statements about Avaya or Avaya Services, prices or business practices, except in the same manner and to the same extent as Avaya does in the most up-to-date version of Avaya marketing materials and websites, as amended from time to time. Representative may forward to potential Customers (a) unmodified marketing materials provided by Avaya and (b) references to Company's standard conditions of sale, as published by Avaya on its website or otherwise. Representative is solely responsible for using the current version of Avaya marketing materials and standard conditions of sale, and for confirming the consistency of Representative's statements therewith.
- 5.2** Representative shall not use any trademarks, names or other identifiers owned or used by Avaya ("Marks"), except that Representative may refer to, without using Avaya trademarks, Avaya and Avaya Services in conversations and written correspondence with potential Customers in the same manner as Avaya does in its own marketing materials and website. Any other use of Marks (e.g., on Representative's website) has to be designed in compliance with Avaya trademark usage guidelines, including but not limited to Company's marketing guidelines (as it may be updated from time to time in Company's sole discretion) and be pre-approved by Avaya in writing.
- 5.3** For a period of 180 days following the termination of this Agreement, Representative will not intentionally solicit Customers to terminate Services or their relationship with Avaya. Notwithstanding the foregoing or anything in this Agreement to the contrary, if a Customer has the right to terminate its Service Agreement or is at the end of its term, and requests competitive bids in writing, Representative shall be allowed to provide quotes from other service providers without breaching the foregoing. Representative agrees, not to send unsolicited electronic messages to unrelated recipients (including spam e-mail, text messages, or phone calls) or otherwise to engage in any other form of mass electronic communications prohibited by Law in connection with Avaya or any activities contemplated under this Agreement.

## **6. Confidentiality**

- 6.1 Confidential Information.** During the Term of this Agreement and for three (3) years after the termination of this Agreement, each Party will protect the terms and conditions of this Agreement, all non-public information and material regarding the business of the other which information is either marked as confidential or could be construed to be confidential due to its nature (collectively, "Confidential Information") as strictly confidential, using the same level of care as it affords its own Confidential Information. Without the prior written consent of the disclosing Party, the receiving Party will not use or disclose to any other person or entity any Confidential Information, except as and only to the extent necessary to: (i) perform its duties under this Agreement; (ii) obtain any required governmental approvals; or (iii) comply with laws or as otherwise required by a court of competent jurisdiction, but only to the extent of such requirement, provided that before making such disclosure the receiving Party shall give the disclosing Party written notice of such disclosure and provide an adequate opportunity to interpose an objection or take action to ensure confidential handling of such information.
- 6.2 Confidential Information Exceptions.** Confidential Information will not include any information of the disclosing Party that: (i) is already known to the receiving Party free of any obligation of confidence when communicated; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is received from a third party free to disclose it to the receiving Party; (iv) is communicated to a third-party for general distribution with the prior written consent of the disclosing Party; or (v) is developed by employees of the receiving Party independently of and without reference to the Confidential Information.
- 6.3 Survival.** The obligations under this Section 6 shall survive the expiration or termination of this Agreement for any reason whatsoever.

## **7. Commissions and Payments**

### **7.1 Commission and Payments.** Distributor will pay Commissions for Qualified Sales as follows:

- 7.2.1 Subject to the qualifications in this Agreement and the following Subsections, Distributor will pay Representative a Commission in the amount of fifteen percent (15%) of the Monthly Recurring Revenue ("MRR") attributable to the Net Proceeds resulting from a Qualified Sale of the Services under an applicable agreement between Customer and Distributor ("Customer Agreement") resulting from the direct agency of Representative as per this agreement. The MRR will be calculated anew monthly and will be adjusted for the modification, addition, deletion or termination of Qualified Sales or portions thereof. Commissions will be paid solely on the recurring Services elements of a Qualified Sale. Order renewals are subject to payment of Commissions. Sales of one-time or third-party services or sales of hardware, handsets, or third-party software are not eligible for Commission payments.
- 7.2.2 Commissions become payable to Representative only at such times and only to the extent that Avaya actually receives unconditional payment from Customer under the corresponding Customer Agreement. If Customer makes payments to Avaya in increments or installments or withholds some or all of a payment, Distributor shall pay Representative a pro rata Commission corresponding to the incremental or installment payments of the Net Proceeds actually received by Company. Representative shall be entitled to Commission, however, if the Services are not or not fully performed or the contract between Avaya and Customer not implemented/carried out and payments are therefore not received by the Customer or not received in full due Avaya's fault (as set out in Section 87a para. 3 German Commercial Code).
- 7.2.3 Distributor will account for Commissions on a monthly basis and provide Representative with a commission statement until the 15th of the month following the respective calendar month. Commissions for the accounting period shall then become due and payable on the last day of the month following the respective calendar month.
- 7.2.4 If Distributor discovers that a Representative has been paid an incorrect Commission or if Distributor pays Commissions to Representative for Customer billings that are subsequently refunded or credited back to any Customer or are not paid by a Customer, both for reasons not attributable to Avaya (as set out in Section 7.2.2 above), Distributor reserves the right to debit the Representative and withhold the overpaid amount from other future Commissions upon written notification thereof.
- 7.2.5 Any Commission shall be paid to the Representative in Euros or wire transfer not later than sixty (60) days after the last day of the respective month in which the Net Proceeds are invoiced by Company.
- 7.2.6 Notwithstanding anything to the contrary contained herein, Representative shall examine the commission statement immediately upon receipt and notify Distributor in writing of any dispute or objection regarding any Commissions (along with a reasonably detailed description of the dispute) within thirty (30) business days from the date the commission statement is received. Distributor may ask Representative to expressly confirm or acknowledge the commission statements by way of countersignature.
- 7.2.7 For avoidance of doubt:
  - a. Representative will solely bear all of the costs and expenses incurred in connection with all obligations hereunder, and, except for Commissions, Representative shall not be entitled to any other payment, reimbursement, fee or commission.
  - b. Avaya may be involved in the presale process.
  - c. Representative shall not be entitled to any Commission or other compensation:
    - (i) corresponding to any fees paid under a Avaya Agreement that is not part of the Net Proceeds or is not collected by Avaya;
    - (ii) for any sale made to an Excluded Customer;
    - (iv) for any sale outside of the scope of the Services;
    - (v) for any sale which is not a Qualified Sale.

**7.2 Late Transactions.** Transactions (contracts for Services with Customers) that are entered into/concluded by Avaya after expiry or termination of this Agreement shall not entitle the Representative to claim Commissions.