

CONTACT CENTRE AS A SERVICE SCHEDULE

This Representative Agreement ("Agreement") is made by and between **Westcon Group European Operations Ltd**, having offices at Chandlers House, Wilkinson Road, Cirencester, Gloucestershire, GL7 1YT, England ("Distributor") and you, an existing Buyer (herein referred to as "Representative") having a signed Distributor's Credit Application.

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) Pursuant to a Master Agreement (the "**Master Agreement**") Distributor is authorised to engage the Representative to market and solicit certain orders for cloud-based communications services to business customers.
- B) Representative wishes to adopt and incorporate by reference all of the terms and conditions of the Master Agreement as set forth herein 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 Agreement.

AGREED TERMS:

1. **Definitions and interpretation of this Agreement**

Defined terms used in this Agreement are set out in appendix 1.

2. **Appointment as Representative**

Subject to the terms of this Agreement, Distributor appoints the Representative as its nonexclusive, independent agent in the Territory for the marketing and solicitation of orders from Customers in respect of Avaya OneCloud CCaaS Public ("Services") and the Representative hereby accepts such appointment and shall use its commercially reasonable efforts to carry out the Objective in a reasonable and diligent manner using due care and skill, in accordance with the provisions of this Agreement. As part of the Objective, Representative shall use its commercially reasonable efforts to contact prospective Customers and provide to them relevant information regarding the Services on the basis of the information and documents provided or approved by Distributor or Avaya; and, (ii) refer prospective Customers to the Distributor in order to execute sales agreements subject to approval by Avaya. Representative shall market the Services to prospective Customers accordance with this Agreement. All Customers shall enter into the Avaya Terms.

In performing the Objective under this Agreement, except with respect to its appointment as an agent hereunder, Representative shall operate as an independent contractor and shall not be or hold itself out as or act as an employee, partner, principal, or joint venture of

Avaya or Distributor, or collect or receive money from Customers on behalf Avaya. Except as specifically set forth herein, Representative shall in no way have the authority to bind or obligate Distributor or Avaya in any respect. Representative may not make additional representations and warranties on Distributor's or Avaya's behalf including with respect to the prices, rates, terms, availability and conditions of the Services. Nothing in this Agreement shall, or shall be deemed to, sell, transfer, license or assign any right, title or interest of any kind in or to the Services to Representative, which right, title and interest shall at all times be and remain owned solely by Avaya.

2.1 *No exclusive rights*

Representative acknowledges and agrees that its appointment hereunder is non-exclusive and that nothing in this Agreement shall be construed as conferring any exclusive rights to the Representative either in relation to the Territory or to any specific group of Customers.

2.2 *Changes to the Services*

Distributor may at any time in its commercially reasonable discretion with thirty (30) days' notice to Representative offer additional products and services or modify, limit the availability of, or cease offering any Services, provided, that Distributor may modify, limit the availability of, or cease offering Services with immediate effect if such is required by action of law or regulations applicable to the Services.

2.3 *Responsibility for Customers*

The Representative will be responsible for procuring compliance by its Customers with this Agreement. The Representative shall enter into a written agreement with each Customer under which the Customer agrees to obligations which are substantially similar in all material respects to the Representative's obligations under this Agreement in relation to the marketing of and solicitation of orders for the Services. Distributor may in its discretion and without giving a reason object to the appointment of any person as a Customer; Distributor will notify the Representative of any such objection. In that case, the Master Agent will not appoint the person concerned as a Customer or, if the person has already been appointed, will immediately terminate the appointment of the person concerned.

If Master Agent determines that any Customer has taken any action or omitted to take any action that would be a material breach of this Agreement or applicable Law (a "Subagent Breach"), then: (i) Master Agent shall promptly notify Distributor of the same; and (ii) Master Agent shall cease permitting such Subagent to market and solicit orders for the Services if the Subagent does not cure such Subagent Breach within thirty (30) days following Master Agent providing written notice of default to the Customer with respect thereto (which notice will be sent in accordance with Master Agent's ordinary business practices, or at the reasonable request of Distributor).

2.4 *Business Standards and Compliance*

Representative shall:

- (a) Not engage solicit any orders from Customers that it knows or has reasonable cause to believe has engaged in bribery, corrupt conduct, fraud, tax fraud, money laundering or trade violations;
- (b) Follow Avaya's applicable policies and procedures relating to the Services and this Agreement (collectively, the "Avaya Policies" which Representative confirms are understood and agreed) as they may be modified from time to time by Avaya.
- (c) Comply with all applicable laws relating to anti-bribery and corruption, including the US Foreign Corrupt Practices Act, Canada's Corruption of Foreign Public Officials Act and the UK Bribery Act, each as amended, regardless of whether the bribery or corrupt activities involve government officials or otherwise. Distributor and/or Avaya shall have the right to audit Representative's or its Customer's compliance with this section in connection with any credible allegation or governmental inquiry.
- (d) Conduct its business activities in a legal and ethical manner.
- (e) Submit complete and truthful information in connection with its application to become a Representative and in connection with and all sales and potential sales of the Services.
- (f) Is not, and will not become, a person (or owned or controlled by a person) with which Distributor is prohibited from doing business under:
 - (i) Any relevant country's applicable law (including sanctions law or regulation, whether imposed by a country or by an international organization); or
 - (ii) Any applicable import/export regulations controls;
- (g) Will comply with all applicable laws in connection with its performance of its obligations under this Agreement, including applicable law relating to: data protection; the prohibition or control of lobbying, the use of agents, or the payment of commissions in doing business with any governmental authority; anti-spam; advertising; intellectual property rights; sanctions and import/export control laws and regulations;
- (h) Will not refer Customers that might reasonably be suspected of engaging in reexports that would be illegal under any applicable law (including US) Law;
- (i) Will not disclose any technical information related to Avaya, Distributor or the Services to any prohibited person or destination in violation of any applicable law (including US law).

2.5 *Distributor will not be liable to Customer*

Distributor's liability to perform its obligations under this Agreement is owed solely to the Representative; notwithstanding any other term of this Agreement, Distributor shall have no obligation under or in relation to this Agreement to any Customer, including any obligation relating to payment of commission, termination charges or any other fees; no

Customer shall be treated as a third-party beneficiary under this Agreement or otherwise have any right to enforce any of the terms of this Agreement.

2.6 *Excluded Customers*

Representative shall not market to or solicit orders from Excluded Customers; the Representative shall refer to Distributor any sales leads that the Representative receives or becomes aware of relating to an Excluded Customer; the Representative acknowledges and agrees that it is not entitled to any commission or other compensation in relation to any sale made by Distributor to an Excluded Customer. An "**Excluded Customer**" means any Customer:

- (a) Who has, at any time in the period of twelve months immediately preceding the month in which the referral of the Customer was made by the Representative, ordered any services (not only the services defined as per section 2.1 (a) of this Agreement) or products from, or been supplied with services or products by, Distributor; unless that prior order or supply was itself a result of a referral by the Representative so as to make it a Qualified Sale under this Agreement; or
- (b) Which is not established within the Territory.

3. **Obligations of the Representative**

3.1 *Obligations of the Representative*

During the term of this Agreement, the Representative shall:

- (a) Promote sales of the Services within the Territory;
- (b) Act in good faith in its relations with Distributor;
- (c) Maintain, to the reasonable satisfaction of Distributor, sufficiently trained full-time personnel to enable the Representative (or the Customer, as the case may be) to perform its obligations under this Agreement;
- (d) Promptly submit to Distributor full written details of any complaints relating to the Services, together with all relevant information of which the Representative (or the Customer, as the case may be) is aware;
- (e) Follow all reasonable instructions given by Distributor or Avaya in relation to the promotion and marketing of the Services;
- (f) Comply with Avaya's requirements regarding use of Avaya's trademarks and other intellectual property;
- (g) Fulfil its obligations hereunder in a manner that reflects favourably on the Services and on the goodwill and reputation of Distributor and Avaya; and
- (h) Not, without the express prior agreement of Distributor or Avaya (and then only acting strictly on Avaya or Distributor's express instructions), take part on behalf of

Avaya or Distributor in any dispute or commence or defend any court or other dispute proceedings or settle or attempt to settle or make any admission concerning any such proceedings.

3.2 *Territorial restriction*

The Representative shall restrict its activities under this Agreement to the Territory.

3.3 *Description and authority of Representative and Customers*

The Representative shall not act nor describe itself as, nor hold itself out as being, an associate, subsidiary, franchisee or partner of Distributor or Avaya or otherwise associated with Distributor or Avaya except as Distributor's "Representative" or "sales and marketing sub-agent" or similar title approved by Distributor. The Representative shall not:

- (a) Make or give any representation, warranty, condition or guarantee for or on behalf of Distributor or Avaya;
- (b) Enter into any agreement or contract, incur any liability or do any other act in the name, or on behalf of, Distributor or Avaya; or
- (c) In any way pledge the credit of Avaya or Distributor;

The Representative shall not hold itself out or otherwise represent itself as entitled to do any of the foregoing. The Representative shall conduct all its business in its own name and in good faith and in compliance with all applicable law.

3.4 *Representative Warranties.*

The Representative shall not make any representations, warranties or other statements about Distributor or Avaya or the Avaya Services, except to the extent expressly authorised by Distributor or in Avaya's marketing materials and websites; the Representative may provide to potential Customers:

- (a) Unmodified Avaya marketing materials provided; and
- (b) Avaya's standard conditions of sale;

as published by Avaya on its website or otherwise provided to Representative. Representative is responsible for ensuring that it uses the current version of Avaya marketing materials and standard conditions of sale, and for ensuring the consistency of the Representative's statements with all such material and information.

3.5 *Independent contractors*

The Representative and Distributor are independent contractors, and nothing in this Agreement shall be construed as creating an employer-employee relationship or make the parties partners, parties to a joint venture, co-owners or otherwise as participants in a joint undertaking. The Representative shall not describe itself as a partner or vendor of

Distributor or Avaya or use words that would suggest such a relationship in any marketing, advertising, press release or other communication to any third

3.6 *The Representative is responsible for its own business and expenses*

All financial and other obligations associated with the Representative's business are solely the responsibility of the Representative. As an independent contractor, the mode, manner and method of business used by the Representative shall be under the Representative's sole control, and the Representative shall be solely responsible for risks incurred in the operation of Representative's business and the benefits of that business. The parties acknowledge and agree that the commission payable under this Agreement by Distributor shall be sufficient to compensate the Representative for any expenses incurred by it in performing its obligations under this Agreement, and the Representative shall bear all of its own expenses in connection with the performance of its obligations under this Agreement and, other than the payment of commission in accordance with this Agreement, Distributor will not be responsible for reimbursing the Representative for any such expenses.

3.7 *Post-termination restrictions on the Representative*

For a period of six months following the termination of this Agreement, the Representative shall not solicit or induce any Customer introduced by the Representative (or any other Customer) under this Agreement to terminate the provision of Services. Notwithstanding the foregoing or anything in this Agreement to the contrary, if a Customer has the right to terminate its Customer Agreement or is at the end of its term, and requests competitive bids in writing, the Representative may provide quotes from other service providers without breaching the foregoing.

3.8 *Appointment personal to the Representative*

The Representative may not assign or sub-contract to any person any of its rights or obligations under this Agreement. The Representative's appointment hereunder is personal and conditional upon the Representative's eligibility to participate in Avaya's agency programme.

4. Rights and obligations of Distributor

4.1 *Obligations of Distributor*

During the term of this Agreement, Distributor shall:

- (a) Act in good faith in its relations with the Representative;
- (b) Keep the Representative informed on a regular basis of any prospective change to the Services; and
- (c) Comply with all applicable laws in connection with its performance of its obligations under this Agreement including laws relating to anti-bribery and corruption, including the US Foreign Corrupt Practices Act, Canada's Corruption of Foreign Public Officials Act and the UK Bribery Act, each as amended, regardless of whether the bribery or corrupt activities involve government officials or otherwise.

4.2 *Avaya's discretion to enter into agreements with Customers*

Each contract with a Customer for the supply of Services shall be between Avaya and the Customer (each being referred to as a "**Customer Agreement**"). Avaya has the right, in its sole and absolute discretion to:

- (a) Decide whether and, if so, on what terms it will:
 - (i) Enter into a Customer Agreement; or
 - (ii) Confirm or decline any orders or prospective orders from a Customer for the Services;

Avaya reserves the right in sole discretion to refuse to enter into a Customer Agreement with a prospective Customer referred by the Representative. (b) Decide whether to terminate any Customer Agreement that it has entered; and/or (c) Decide the prices for the Services.

The Representative acknowledges and agrees that prices for the Services will be set solely by Avaya and that, when performing its obligations under this Agreement, Representative shall reference only the then current prices for the relevant Services (as notified to the Representative by Distributor) and shall not discuss with any Customer or prospective Customer any pricing discounts unless Avaya or Distributor has previously approved such discounts in relation to the particular Customers concerned, in advance and in writing.

5. **Avaya intellectual property rights**

5.1 *Intellectual property rights in relation to the Services*

The Representative acknowledges and agrees that all intellectual property rights in and relating to the Services are and shall remain at all times the sole property of Avaya or its licensors; except to the extent expressly provided otherwise by this Agreement, the Representative is not granted any right or licence in relation to any such intellectual property rights; the Representative shall promptly notify Distributor of any infringement or alleged infringement of any such intellectual property rights of which it becomes aware.

5.2 *Use of Avaya branding*

Representative may during the term of this Agreement and on a non-exclusive basis, use Avaya's trade name and such of its trademarks or logos as Avaya may, from time to time, expressly designate in writing (collectively, "**Brands**") in relation to the advertising and marketing of the Services, subject to the terms set out in this Agreement.

5.3 *Restrictions on use of the Brands*

The Representative agrees only to use the Brands in an unaltered form and in strict accordance with Avaya's branding policy and guidelines (see below), and solely for the

purposes of identifying Avaya as the source of the Services and/or advertising, marketing and promoting the Services, and not for any other use whatsoever. The Representative shall not, and shall not permit any third party to:

- (a) Use or seek to register as a trade mark or as a corporate or business name or a domain name, any name or mark which is the same as or which may be confused with any Brand or any other name or mark owned or used by Avaya;
- (b) Seek to register itself as a licensee of any trademark owned or used by Distributor or Avaya;
- (c) Use any Brand in any way which might prejudice its distinctiveness or validity or the associated goodwill of Avaya or any of its associates;
- (d) Use any Brand on or in relation to any product which has not been originated by or on behalf of Avaya.

5.4 *Acknowledgements in relation to Brands*

The Representative acknowledges and agrees that:

- (a) Ownership of the Brands, and of the goodwill connected with and symbolised by the Brands, is and will remain the property of Avaya or its third party licensors, and use of the Brands by the Representative is use on behalf of and under licence (or sub-licence) from Avaya;
- (b) The goodwill in the Brands which the Representative derives by use of the Brands, or by being connected with the Brands in the course of trade (whether arising at common law or otherwise), shall accrue to Avaya, together with all rights of action, and the Representative hereby assigns the same to Avaya without payment or consideration. The Representative will, at Avaya's request and expense (as to out-of-pocket expenses only), promptly take all steps and do all acts and things and execute all documents and deeds as reasonably requested by Avaya for giving full effect to the terms of this clause 5.4.

5.5 *Infringement*

The Representative shall promptly notify Distributor or Avaya of any third party infringement (including where there are reasonable grounds to suspect an infringement), misuse of, application to register, or registration of any of the Brands (or of the use or registration of, or any attempt to register, any word, logo, mark or sign similar to any of the Brands) which come to its knowledge but shall not (unless it agrees otherwise in writing) be obliged or entitled to write to the infringer, or raise any claim or bring any proceedings in respect of such infringement, misuse, application to register or registration.

5.6 *Proceedings*

Avaya shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to any of the Brands if it decides not to do so and neither the

Representative nor any Customer shall be entitled to bring or defend such proceedings; the provisions of section 30 of the Trade Marks Act 1994 are expressly excluded.

6. Commission

6.1 Consideration

In consideration of the due performance of its obligations under this Agreement, the Representative shall be entitled to commission as set out in this clause 6 and in appendix 2.

6.2 Qualified Sales

For a sale of the Services by Representative to qualify as one in respect of which commission is payable under this Agreement:

- (a) The Customer to which the sale is made must have been referred to Distributor by the Representative;
- (b) The relevant Customer must not be an Excluded Customer; and
- (c) The Customer must have entered into a Customer Agreement with Avaya on terms acceptable to Avaya.

Sales of Services that fulfil these conditions are referred to as "**Qualified Sales**". A Qualified Sale will be treated as having been made for the purposes of this Agreement on the date on which the relevant Customer Agreement is entered into; any right of the Representative to commission on the Qualified Sale will not arise until the Qualified Sale is made; where the relevant Customer Agreement is entered into by Avaya not more than twelve months after the date of termination of this Agreement but arises due to a referral of the Customer to Distributor made by the Representative before the date of termination of this Agreement then, provided the entry by Avaya into the Customer Agreement would otherwise qualify as a Qualified sale, it will remain a Qualified Sale notwithstanding having been entered after termination of this Agreement, and commission will be due and payable to the Representative on any such Qualified Sale in accordance with clause 9.1(c).

6.3 Commission

Distributor will pay the Representative commission in respect of Qualified Sales in accordance with the following terms:

- (a) No right to commission will arise until the relevant Qualified Sale is made in accordance with clause 6.2;
- (b) The rate of commission in respect of any given Services that are the subject of the relevant Qualified Sales will be as set out in appendix 2 (as amended from time to time in accordance with this Agreement);
- (c) The commission will only be due in respect of the "**Net Proceeds**" of any relevant recurring Services under the relevant Customer Agreement; accordingly the net amount of recurring monthly charges for Services provided under the Customer

Agreement which are actually paid to Distributor by the Customer in cleared funds, less:

- (i) Credit card or other payment provider fees;
 - (ii) Refunds;
 - (iii) Charge backs;
 - (iv) Credits;
 - (v) VAT or other taxes on sales;
 - (vi) Customs duties or tariffs; or
 - (vii) Withholding tax.
- (d) The commission will be calculated by reference to the monthly recurring revenue (“**MRR**”) forming part of the Net Proceeds under the applicable Customer Agreement; the MRR will be calculated in respect of each month and will be adjusted for the modification, addition, deletion or termination of the Services forming the subject of the Qualified Sales;
- (e) Commission will be due solely in respect of monthly recurring charges forming part of the Net Proceeds of Services under the relevant Customer Agreement; sales of one-time or third-party services or sales of hardware, handsets, or third-party software are not eligible for payment of Commission;
- (f) Subject to the above and to the other terms of this clause 6, order renewals are subject to payment of commission under this Agreement;
- (g) Commission becomes due to the Representative only at such times and only to the extent that Distributor has received unconditional payment in cleared funds from the Customer under the relevant Customer Agreement; if the Customer makes payments to Distributor in increments or instalments or withholds some or all of a payment, subject to the other conditions for payment of commission being fulfilled, the Representative will be entitled only to pro rata commission corresponding to the incremental or instalment payments actually received by Distributor;
- (h) If Distributor discovers that the Representative has been paid an incorrect commission or if Distributor pays commission to the Representative in respect of Net Proceeds that are subsequently refunded or credited back to the Customer for any reason or which are not paid by the customer, Distributor may debit the Representative for the overpaid amount and withhold the overpaid amount from other future commission due to the Representative;
- (i) Distributor shall account to the Representative on a monthly basis (as soon as reasonably possible following the end of each relevant month) for commission due to the Representative under this Agreement; the account shall be in form agreed between the parties or otherwise in a reasonable form determined by Distributor; the account will itemise all relevant Customers, Customer Agreements, Service and

Net Proceeds paid to Distributor in respect of which commission is due, and will set out the amount of commission due in respect of the relevant month;

- (j) Following receipt of the monthly account as set out in clause (i) above, the Representative will invoice Distributor for the relevant amount of commission (together with any VAT, if applicable); and
- (k) Commission will be paid by bank transfer to the Representative in the local currency of the country in which the Representative is established, as set out in this Agreement. The commission shall be paid no later than:
 - (i) forty-five (45) days (for the first payment in respect of a given Qualified Sale) and
 - (ii) thirty (30) days (for subsequent payments in respect of the same Qualified Sale);

from the last day of the month in which Distributor receives the first or subsequent monthly or annual payments (as the case may be) in respect of the relevant Qualified Sale.

- 6.4 Representative 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 Commissions, the sale, license, installation or use of the Services ("Tax" or "Taxes"), VAT and other taxes on sales

6.5 *Withholding taxes*

It is agreed that Distributor will not make any payment to the Representative until the applicable Statements from the Income Tax Withholding Requirements Attachment are fully completed and returned to Distributor (including the provision of the relevant original tax certificate where reduced Double Taxation Treaty rates of withholding may be applied). If, based on information provided by Representative, Distributor is required by law to withhold taxes from any payment to the Representative, then the amount of the payment in that case due from Distributor to the Representative shall be equal to the payment which would have been due if no withholding tax was required less the required withholding taxes.

Distributor will not be required to make any increased payment to the Representative due to any withholding tax.

6.6 *Withholding tax on amounts already paid to the Representative*

If it is subsequently determined that any portion of any amount paid to the Representative by Distributor is subject to withholding taxes, Distributor will remit such withholding taxes and any applicable interest, late payment charges or penalties to the appropriate tax or government authority and the Representative will promptly reimburse Distributor for:

- (a) The amount of such withholding tax;

- (b) Any interest, late payment charges or penalties, if the failure or delay in withholding tax remittance was due, in whole or in part, to the Representative's or its representative's act or omission.

6.7 *Changes to rates of Commission*

Distributor may, by giving the Representative not less than three months' notice, change the commission percentage rates for any given Services in respect of Customers first introduced to Distributor after the date on which the change of commission rate becomes effective; such change may involve increasing or decreasing the rate of commission. The rate of commission may also be changed on a case-by-case basis by agreement between the parties, for example if special pricing is requested by the Representative, approved by Distributor and provided to the relevant Customer.

6.8 *Disputes regarding Commission*

The Representative shall notify Distributor as soon as possible (and in any case within ninety days from the date the commission that is the subject of the dispute is paid or charged back to the Representative) of any dispute regarding any commission, together with a reasonably detailed description of the reasons for the dispute.

6.9 *Exceptions*

The parties acknowledge and agree that:

- (a) The Representative will bear its costs and expenses incurred in connection with the performance of its obligations under this Agreement and, except for commission or as otherwise expressly provided by this Agreement, the Representative shall not be entitled to any other payment, reimbursement, fee or commission;
- (b) The Representative shall not be responsible for collecting payment from the Customers in respect of any Customer Agreements;
- (c) Avaya will contract with, and supply the Services to Customers and not to the Representative;
- (d) Avaya may be involved in the presale process in relation to a given Customer referred by the Representative; in any such case, the Representative will still be entitled to Commission as long as the role of the Representative is known and noted on the relevant order;

7. Data protection and Confidentiality

7.1 *Data Protection*

Each party shall, in the performance of its obligations under this Agreement, comply with the Data Protection Regulations. In relation to the processing of personal data by each party in relation to the exercise of any rights or the performance of any obligations under this

Agreement, the parties shall each comply with the obligations relevant to them (depending on their role) under the Data Protection Regulations.

7.2 Confidentiality

(a) 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 nonpublic information and material regarding the business of the other which information is either marked as confidential or could be construed to be confidential (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 (and will use its best efforts to cause its employees, , and representatives not to 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.

(b) 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, contractors or agents of the receiving Party independently of and without reference to the Confidential Information. These obligations shall survive the expiration or termination of this Agreement however so arising.

8. Term and termination

8.1 Initial term

This agreement will become effective on the Effective Date and remain in effect until terminated by either party.

8.2 Termination for convenience

Either party may terminate this Agreement by giving not less than three months' notice to the other, provided that such notice must be given so as to expire at the end of a month. 8.3

Termination for cause

Either party may terminate this Agreement immediately by notice to the other if:

- (a) The other party commits a material breach of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within thirty days of receipt of a written request to do so from the party not in breach; or
- (b) The other party is subject to an Insolvency Event.

9. Consequences of Termination

9.1 *Consequences of termination*

On termination of this Agreement for any reason:

- (a) The Representative's appointment shall terminate;
- (b) All licences granted hereunder shall terminate;
- (c) To the extent that the Representative's right to commission has arisen on Qualified Sales made as a result of referrals made by the Representative before the date of termination, the Representative shall continue to be entitled to commission on each such Qualified Sale in accordance with the relevant terms of this Agreement for the longer of:
 - (i) The period of three years starting the day after the date of termination;
 - (ii) The remaining term of the relevant Service order under the Customer Agreement (not including renewals of the Service order), up to a maximum of five years from the start of the term of the Service order concerned, and provided that the term of the Service order started before the date of termination of this Agreement;

and Distributor shall continue to account to the Representative accordingly in respect of the relevant commission in accordance with the relevant terms of this Agreement, provided that:

- (iii) The Representative's continued right to commission under this clause (c) shall not apply in respect of any Qualified Sales where the termination of this Agreement is under clause 8.3(a) as a consequence of a material breach on the part of the agent; and
 - (iv) The Representative's continued right to commission shall come to an end in respect of any Customer Agreement in relation to which the Customer engages another agent of Distributor to process a renewal of any of the Services supplied under that Customer Agreement; in that case, the Representative's right to commission in respect of the relevant Customer Agreement shall come to an end on the date immediately prior to the date on which the relevant renewal takes effect;
- (d) The Representative shall (and shall procure that each of its Customers shall) stop representing itself as Distributor's authorised sales agent with respect to Services and shall otherwise stop conduct or representations that might reasonably be expected to lead the public to believe that the Representative (or relevant Customer) is authorised by Distributor to market, promote or solicit sales of the Services in any capacity;

- (e) Each party shall immediately return to the other party or destroy all Confidential Information and any other data or information it shall have received from the other party during or in connection with this Agreement, and shall make no further use of it; and
- (f) Termination will not affect any rights of either party under or in relation to this Agreement that have accrued prior to the termination.
- (g) Except as expressly provided herein, Representative acknowledges that, given its status under applicable law, it is not entitled to any statutory compensation or any indemnity (*e.g.*, for loss of clientele) upon termination of this Agreement however so arising.

10. Limitations of liability

10.1 *Liability not excluded*

Neither party excludes or limits its liability under or in relation to this Agreement in relation to:

- (a) Death or personal injury caused by the relevant party's negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) Any other matter liability for which may not, by law, be excluded or limited.

10.2 *Excluded liability*

Subject to clause 10.1, neither party shall be liable under or in relation to this Agreement (whether the liability concerned arises as a result of breach of contract, negligence, misrepresentation or for any other reason) for any:

- (a) Loss of profits; or
- (b) Indirect, consequential or special loss or damage.

10.3 *Limits on liability*

Subject to clauses 10.1 and 10.2, the liability of each party under or in relation to this Agreement (whether the liability concerned arises as a result of breach of contract, negligence, misrepresentation or for any other reason) shall be limited as follows:

- (a) In respect of any given claim, to the greater of:
 - (i) An amount equal to the total amount of commission arising due to the Representative under this Agreement during the period of 12 months immediately preceding the month in which the relevant claim arose; or
 - (ii) GBP 250,000; and

- (b) In of all claims in the aggregate under or in relation to this Agreement, to the sum of GBP 1,500,000.

11. Insurance

Throughout the term of this Agreement and for a period of not less than three years following termination of this Agreement, the Representative shall maintain at its own expense all insurance required by any applicable law including, but not limited to, worker's compensation insurance, employer's liability insurance with a limit of no less than 1,000,000 GBP per accident, commercial general liability insurance with a limit of no less than 1,000,000 GBP each occurrence and 2,000,000 GBP in the aggregate, and cyber insurance in amounts of no less than 5,000,000 GBP per each occurrence. The Representative will on request from Distributor provide Distributor with appropriate written evidence (for example, from the Representative's insurance broker) that all the relevant insurance has been taken out and is in force. Any failure by the Representative to comply with any of the obligations in this clause will be regarded for the purpose of this Agreement as a material breach by the Representative that is incapable of remedy.

12. Force majeure

Neither party will be liable to the other for any failure or delay in performing its obligations under this Agreement which arises because of any circumstances which it cannot reasonably be expected to control (including any fire, flood, earthquake, elements of nature or acts of God, acts of war (whether or not war is declared), terrorism, riots, civil disorders, rebellions or revolutions, strikes, lock outs or other form of industrial action (other than strikes, lockouts or other form of industrial action of the relevant party's personnel) all occurring in the place from where the obligations of the party whose performance is affected are performed, but excluding non-performance by any sub-contractor of the Representative, including Customers), provided that it:

- (a) Notifies the other in writing as soon as reasonably practicable about the nature and extent of the circumstances and likely effects;
- (b) Uses all reasonable efforts to mitigate the effects of the circumstances to minimise or avoid any adverse impact on the other;
- (c) Uses all reasonable efforts to resume performance as soon as reasonably practicable; and
- (d) Could not have avoided the effects of the circumstances by taking steps that it ought reasonably to have taken in the light of the matters known to it before the circumstances arose.

13. Dispute resolution

13.1 Disputes

Subject to clause 13.3, any dispute or difference between the parties arising out of or in connection with this Agreement, its interpretation or subject-matter ("**Dispute**") shall be referred to the Chief Operating Officer (or equivalent officer) of each party and then, if still not resolved, to the Chief Executive Officer (or equivalent officer) of each party. If any such Dispute remains unresolved for a period in excess of 14 days from the date it was referred to the latter representatives (or such other period as the parties may agree), it will be resolved in accordance with clauses 13.2 and 13.3.

13.2 *Mediation*

Subject to clause 13.3, any Dispute which remains unresolved following the exhaustion of the procedure set out in clause 13.1 may be referred to mediation in accordance with the Centre for Dispute Resolution ("**CEDR**") Model Mediation Procedure ("**Model Procedure**"). To initiate mediation, a party must give written notice ("**Mediation Notice**") to the other party requesting a mediation in accordance with this clause 13.2. A copy of the request should also be sent to CEDR. The Model Procedure will be amended to take account of any other agreement which the parties may enter in relation to the conduct of the mediation. If there is any point on the conduct of the mediation (including the nomination of the mediator) upon which the parties cannot agree within 14 days from the date of the Mediation Notice, CEDR will, at the request of either party, decide that point for the parties, having consulted with them. The mediation will start not later than 21 days after the date of the Mediation Notice. Neither party may terminate mediation until each party has made its opening presentation and the mediator has met each party separately. Thereafter, paragraph 14 of the Model Procedure will apply. The mediation will take place in London, England and the language of the mediation will be English.

13.3 *Other relief*

Nothing in this Agreement shall prevent any party, in cases in which interim, injunctive or declaratory relief is required, or where the right to issue proceedings would be prejudiced by the impending expiration of any applicable limitation period, from commencing proceedings and pursuing claims before a court of competent jurisdiction.

14. **General**

14.1 *Sub-contracting and assignment*

The Representative may not sub-license or assign, sub-contract or delegate any of its rights or obligations under this Agreement without the prior written consent of the Distributor.

14.2 *Liability of Representative*

The Representative and its employees, agents and sub-contractors shall comply with all relevant provisions of this Agreement.

14.3 *Notices and consents*

All notices and consents relating to this Agreement must be in writing. Notices must be sent to the address of the recipient set out in this Agreement or otherwise notified by the relevant party in accordance with this Agreement. Notices shall be sent by hand or by first

class recorded delivery or registered post or other form of certified or registered mail (and sent by air mail if posted to or from a place outside the United Kingdom) and shall be treated as having been delivered:

- (a) If sent by hand, when delivered; and
- (b) If sent by registered mail, two days after the date of posting (or, if sent by air mail, seven days after the date of posting).

14.4 *Waiver or delay etc.*

Unless the parties expressly agree otherwise in writing:

- (a) If a party:
 - (i) Fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
 - (ii) Agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy; and

- (b) No right, power or remedy under this Agreement or otherwise available to a party is exclusive of any other right, power or remedy under this Agreement or otherwise available to that party.

14.5 *Invalid or unenforceable terms*

If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

14.6 *Variations*

Except to the extent expressly provided otherwise by this Agreement, all variations to this Agreement must be agreed, set out in writing and signed on behalf of both parties before they take effect.

14.7 *Partnership or joint venture*

Except to the extent that this Agreement expressly provides otherwise, nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it has or represent (expressly or by implying it) that it has, any such authority.

14.8 *Rights of third parties*

A person who is not a party to this Agreement (including each Customer) shall not have any rights under or in connection with it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.9 *No other terms*

This Agreement sets out all the terms that have been agreed between the parties in relation to the subjects covered by it and supersedes all previous agreements between the parties relating to such subjects. Provided always that nothing in this clause will operate to limit or exclude any liability for fraud or fraudulent misrepresentation, no other representations or terms shall apply or form part of this Agreement. Each party acknowledges that it has not been influenced to enter this Agreement by, and shall have no right or remedy (other than for breach of contract) in respect of, anything the other party has said or done or committed to do, except as expressly recorded in this Agreement.

14.10 *Further assurance*

Each party shall carry out, or procure the carrying out of, whatever further actions the other party reasonably requires from time to time (including execution of further documents) for the purpose of giving that party the full benefit of the provisions of this Agreement.

14.11 *Law and jurisdiction*

This Agreement is governed by English law. Subject to clause 13, the parties submit to the exclusive jurisdiction of the English courts in relation to any dispute or difference between the parties arising out of or in connection with this Agreement, its interpretation or subjectmatter.

APPENDIX 1

DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 *Defined terms*

In this Agreement, the following terms are defined as set out below:

Avaya Terms	Avaya's terms in connection with the Services
Brands	Defined in clause 5.2;
CEDR	Defined in clause 13.2;
Customer	business customers;
Data Protection Regulations	All applicable legislation for the time being in force pertaining to data protection, data privacy, data retention and/or data security (including the General Data Protection Regulation (Regulation 2016/679) ("GDPR")) and the Privacy and Electronic Communication Directive (Directive 2002/58/EC) and national legislation implementing or supplementing such legislation in the United Kingdom and any applicable member state of the European Union) and all associated codes of practice and other guidance issued by any applicable data protection authority;
Dispute	Defined in clause 13.1;
Excluded Customer	Defined in clause 2.6;
Mediation Notice	Defined in clause 13.2;
Model Procedure	Defined in clause 13.2;
MRR	Defined in clause 6.3(d);
Net Proceeds	Defined in clause 6.3(c);
Objective	The general framework of obligations undertaken by Representative under this Agreement
Services	Defined in clause 2;

1.2 *Insolvency event*

In this Agreement, the term "**insolvency event**" means, in relation to a person (which includes an individual and a legal person, such as a limited company), any of the following events:

- (a) a meeting of creditors of that person being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that person;
- (b) a charge-holder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that person;
- (c) that person ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 (except that, for the purposes of this Agreement, the reference to £750 in section 123(1) of that Act shall be construed as a reference to £10,000);
- (d) that person or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator;
- (e) a petition being advertised or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person; or
- (f) the happening in relation to that person of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

1.3 *Affiliate*

An "**affiliate**" of a party is a person who controls, is controlled by, or is in common control with, the party concerned; control for these purposes has the meaning in section 1124 Corporation Tax Act 2010.

1.4 *Applicable Law*

The term "**applicable law**" means all United Kingdom legislation, regulation and codes of practice relating to the performance of each party's obligations under this Agreement, to the extent that compliance with it is mandatory.

1.5 *Good industry practice*

The term "**good industry practice**" means all relevant practices and professional standards that would be expected of a well-managed expert service provider providing services similar to the Services, taking into account factors such as the period over which they are to be provided and the charges.

1.6 *Intellectual property rights*

The term "**intellectual property rights**" means all copyright, patent rights, trade or service marks, design right, rights in or relating to databases, rights in or relating to confidential information, and any other intellectual property rights (registered or unregistered) throughout the world including all rights of reversion and rights to any applications and pending registrations and the right to sue for and recover damages for past infringements.

1.7 *Claim and default*

A "**claim**" means the formal assertion of a cause of action by one person (the claimant) against another (the defendant). For the purposes of this Agreement, if the same default or series of connected defaults gives rise to more than one cause of action, then all such causes of action will be treated as giving rise to a single claim, even if there is more than one assertion of a cause of action in relation to the defaults concerned. For example, if a given default gives rise to a separate cause of action in breach of contract and in negligence, then both such causes of action will be treated in aggregate as a single claim, even if they are asserted separately. A "**default**" is an act or omission giving rise to one or more causes of action (whether for breach of contract or otherwise).

1.8 *Terms from the Data Protection Regulations*

The terms Data Protection Regulations and GDPR are defined above. When used in this Agreement, the following terms shall have the same meaning as in the data protection regulations:

- **personal data;**
- **controller;**
- **processor;**
- **processing;** and
- **supervisory authority.**

2. **Interpretation**

In this Agreement (including the introduction and schedules) unless the context otherwise requires:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;

- (b) reference to this Agreement includes the schedules and appendices and other documents attached to it or incorporated by reference into it (all as amended, added to or replaced from time to time);
- (c) references to clauses or schedules shall be to those in or to this Agreement and references to paragraphs shall be to paragraphs of the schedules or annexes to the schedules (as the case may be);
- (d) clause headings are for convenience only and shall not affect the construction of this Agreement;
- (e) reference to "**including**" or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; and
- (f) reference to any legislation shall be to that legislation as amended, extended or reenacted from time to time and to any subordinate provision made under that legislation.

APPENDIX 2

COMMISSION

Service	Commission Rate
OneCloud CCaaS Public	The Commission rate as agreed between the parties.