



Brunel Way, Stonehouse
Gloucestershire, GL10 3SX
T: 01453 829200 F:01453 829201
E: sales@lister-communications.co.uk

Avaya Telephone Systems & Services - Standard Terms & Conditions

Version 1

1. Interpretation: In these Terms and Conditions (Terms), the following words and phrases shall have the following meanings: "the Buyer" means the person, firm or company who purchases the Goods from the Company; "the Company" means Lister Communications Ltd; "Contract" means the contract between the Company and the Buyer which shall be deemed to incorporate these Terms; "Goods" means any goods agreed in the Contract to be supplied by the Company to the Buyer; "Place of Delivery" means the place to which the Goods are to be delivered. In these Terms, reference to any statute or statutory provision shall be construed as a reference to such statute or statutory provision as amended, modified, re-enacted or replaced from time-to-time.

2. The Contract: The Contract shall be on these Terms to the exclusion of all other terms and conditions, including any such terms and conditions that are purported to be included or applied by the Buyer. No terms and conditions contained in the confirmation of order, purchase order or other document of the Buyer will form part of the Contract.

3. Quotations: All quotations, whether oral or in writing, are subject to the Company's written confirmation and acceptance of any order. No clerical errors or omissions in the quotations or Confirmation of Orders shall annul the sale but shall be subsequently corrected by the Company and no compensation will be allowed to the purchaser in respect thereof. It is the purchaser's responsibility to check all quantities with specification requirements. When the quotation includes terms for a lease of the lease such terms are included for information only and do not constitute an offer by the Company. Unless otherwise stated, our quotation is valid for 30 days and shall lapse unless reviewed and confirmed by the Company in writing.

4. Delivery: The time given for delivery is an estimate only. It is given in good faith but not guaranteed and is not binding on the Company. The Company reserves the right to part deliver as it considers necessary. Unless otherwise agreed in writing, the Place of Delivery shall be the Company's premises and the Buyer shall take delivery within 7 days of the Company notifying the Buyer that the Goods are ready for delivery. Subject to the other provisions of these Terms, the Company shall not be liable for any loss, whether direct or consequential, economic or loss of profits or otherwise, arising directly or indirectly out of any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract unless the delay exceeds 90 days.

5. Risk in and Ownership of the Goods: Risk in the Goods shall pass to the Buyer on delivery. Ownership in the Goods shall not pass to the Buyer until the Company has received in full in cleared funds all sums due to the Company in respect of the Goods and all other sums which are or may become due to the Company from the Buyer on any account. Until ownership of the Goods has passed to the Buyer, the Buyer shall: hold the Goods on a fiduciary basis as the Company's bailee; store the Goods separately from all other goods of the Buyer or any third party in such a way that they remain identifiable as the Company's property; not destroy or deface any identifying mark on the Goods or their packaging; maintain the Goods in satisfactory condition insured with the Company's interest noted on the policy and hold any proceeds of such insurance on trust for the Company and not mix them with any other money.

6. Installation: When the order includes installation or commissioning of the goods the price includes the delivery to site within the Company's normal working hours unless otherwise stated but does not include the provision of any special equipment on site including but not limited to cranes, hoists, scaffolding and lifts. The installation price excludes the work of other trades including but not limited to cutting away and making good wall surfaces, ceiling tiles and decoration, conduit, ducting, trunking, ground work and builders' work. Where cables are to be surface clipped

Lister Communications Order Form for:

[Registered Office: Brunel Way, Stonehouse, Gloucestershire, GL10 3SX. Registered in England, Co. Number 4114767](#)
Tel: 01453 829200 Fax: 01453 829201 Email: sales@lister-communications.co.uk www.lister-communications.co.uk

they will be installed neatly and where possible concealed. Unless otherwise stated, trunking and conduit is not included. Where cables are to be installed in conduit, trunking or ducting provided by others, strong draw wires must be installed for our use. Our quotation is based on uninterrupted access to all relevant sites and unless otherwise stated a 14 day notice is required before our engineers can attend site. Where applicable, our quotations allow for two visits to site in order to first and second fix. The second fix should be within 14 days of the first fix completion visit. After this period, further moves, additions and changes to the installation and associated programming are liable to charges at our standard rates. Any delays which occur as a result of inclement weather, non-completion of third party work or non-availability of third party supplies, any act or omission on the part of the customer or any cause beyond the Company's control will give rise to an additional charge. The customer will be responsible for provision of suitable mains electricity supply to the satisfactory operation of the equipment.

7. Licenses: All licenses, way leaves, public telephone lines, inspection and acceptance and approval charges must be secured and paid for by the customer.

8. Illustrations: Illustrations, leaflets, advertisements, specifications, drawings, demonstrations or other matter issued by the Company are believed to be correct but are not guaranteed and shall not be binding on the Company. Since the Company has a policy of continuous improvement in its product range, all such matters are subject to alteration and the customer shall purchase upon the understanding that alterations may be made if the Company deems such alteration necessary.

9. Price: The price for the Goods shall, unless otherwise agreed, be the price set out on the date of delivery in the Company's price list. The price for the Goods shall be exclusive of all costs of carriage and insurance and applicable VAT which the Buyer shall pay in addition. The Buyer shall pay such deposit as the Company shall direct.

10. Payment: Subject to paragraph 9, payment of the price of the Goods shall be due 30 days from the date of the Company's invoice for the Goods. Payment shall not be deemed to have taken place until the receipt by the Company of cleared funds.

11. Warranties: In most cases the Company will arrange maintenance for all the equipment supplied and all warranty claims would be met under the Maintenance Contract. Equipment covered under a maintenance contract with a third party shall be the responsibility of that maintainer. Where there is not a maintenance contract, the Company warrants that the Goods are of satisfactory quality. If the Buyer wishes to make a claim under this warranty, the Buyer shall give written notice to the Company within 30 days of the discovery of the defect and give the Company a reasonable opportunity to inspect the Goods in question. The Company shall not be liable for any breach of warranty if the Buyer makes any further use of the Goods after giving such notice or alters or repairs the Goods without the agreement of the Company. The Company's liability under the warranty shall be limited to repairing or replacing the Goods in question or refunding the price of such Goods.

12. Limitation of Liability: Subject to the following sections of this clause, the Company shall indemnify the customer in respect of all damage or injury (including death) to any property or person against all actions, claims, demands costs, charges and expenses in connection therewith occasioned by the negligence of the Company. The company shall not be liable to the customer for any loss, damage or injury to the extent that it is caused or arises from the acts or omissions of the customer or of others. The Company shall not be liable in contract, tort or otherwise for any loss, damage or expense arising from any loss of use, failure or deterioration of the equipment or of any loss (whether direct or indirect) of profits, business, Contracts or anticipated savings or for any consequential, indirect or economic loss or damages whatsoever.

13. Cancellation: Cancellation may be made with our written consent only and on the terms which will indemnify the Company against losses. The minimum charge will be the secured deposit or 10% of the total order value whichever is the greater.

14. Force Majeure: If either party is subject to an event of Force Majeure, that is circumstances outside its reasonable control, including but not limited to war, fire, industrial disputes or civil commotion, it shall notify the other and the first party's obligations under these Terms shall be suspended until it notifies the other party of the end of such event of Force Majeure.

15. General: If any part of these Terms is found to be void or unenforceable by any Court of competent jurisdiction, such part shall be severed from these Terms which will otherwise remain in full force and effect. These Terms shall be governed by and interpreted according to English Law and the parties submit to the exclusive jurisdiction of the English Courts.

16. Specific to installations that include Avaya Software: The following Avaya Global Software License terms will also apply, as specified below:

AVAYA GLOBAL SOFTWARE LICENSE TERMS

THIS END USER LICENSE AGREEMENT ("SOFTWARE LICENSE TERMS") GOVERNS THE USE OF AVAYA'S PROPRIETARY SOFTWARE AND THIRD-PARTY PROPRIETARY SOFTWARE. READ THESE SOFTWARE LICENSE TERMS CAREFULLY, IN THEIR ENTIRETY, BEFORE INSTALLING, DOWNLOADING OR USING THE AVAYA SOFTWARE (AS DEFINED BELOW). BY INSTALLING, DOWNLOADING OR USING THE AVAYA SOFTWARE, OR AUTHORIZING OTHERS TO DO SO, YOU, ON BEHALF OF YOURSELF AND THE ENTITY FROM WHOM YOU ARE INSTALLING, DOWNLOADING OR USING THE SOFTWARE (HEREINAFTER REFERRED TO INTERCHANGEABLY AS "YOU" AND "END USER"), AGREE TO THESE TERMS AND CONDITIONS AND CREATE A BINDING CONTRACT BETWEEN YOU AND AVAYA INC. OR THE APPLICABLE AVAYA AFFILIATE ("AVAYA"). IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE SOFTWARE LICENSE TERMS. ANY USE OF THE SOFTWARE WILL CONSTITUTE YOUR ASSENT TO THESE SOFTWARE LICENSE TERMS (OR RATIFICATION OF PREVIOUS CONSENT). IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO BE BOUND BY THESE SOFTWARE LICENSE TERMS, YOU MUST RETURN OR DELETE THE SOFTWARE WITHIN TEN (10) DAYS OF DELIVERY FOR A REFUND OF THE FEE, IF ANY, YOU PAID FOR THE LICENSE OR IF SOFTWARE IS ACCESSED ELECTRONICALLY, SELECT THE "DECLINE" BUTTON AT THE END OF THESE SOFTWARE LICENSE TERMS.

A. Scope. These Software License Terms are applicable to anyone who downloads and/or installs Avaya Software, purchased from Avaya Inc., any Avaya Affiliate, or an authorized Avaya reseller (as applicable) under a commercial agreement with Avaya or an authorized Avaya reseller ("Agreement").

Unless otherwise agreed to by Avaya in writing, Avaya does not extend this license if the Software was obtained from anyone other than Avaya, an Avaya Affiliate or an Avaya authorized reseller, and Avaya reserves the right to take legal action against you and anyone else using or selling the Software without a license. To the extent there is a conflict between these Software License Terms and another Agreement, the order of precedence shall be: (i) your Agreement with Avaya if you purchased from Avaya Inc. or an Avaya Affiliate, or (ii) these Software License Terms if you purchased from an authorized Avaya reseller, except with respect to third party elements subject to a Shrinkwrap License or other Third Party Terms, in which case the Shrinkwrap License or other Third Party Terms will prevail. "Avaya Affiliate" means any entity that is directly or indirectly controlling, controlled by, or under common control with Avaya Inc. 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.

B. License Grant. Avaya grants you a personal, non-sublicensable, non-exclusive, non-transferable license to use Software and Documentation obtained from Avaya or an Avaya authorized reseller and for which applicable fees have been paid for your internal business purposes at the indicated capacity and features and within the scope of the applicable license types described below and at locations where the Software is initially installed. "Documentation" means Avaya information and manuals containing operating instructions and performance specifications that Avaya generally makes available to users of its products and delivers with the Software. Documentation does not include marketing materials.

(i) Right to Move License Entitlements. Notwithstanding the foregoing, You may move right to use license entitlements (RTU's) from one location to another within the country where the Software was originally purchased or anywhere within the European Union (EU) if purchased within the EU in accordance with Avaya's then-current software license move policy for that Software which is available upon request subject to the following conditions:

a. You shall provide prompt written notice to Avaya or an Authorized Provider of any RTU moves including but not limited to, the number and type of licenses moved, the location of the original Server and the location of the new Server, the date of such RTU moves and any other information that Avaya may reasonably request;

b. You may only move RTU's to and from Designated Processors or Servers supporting the same Software application;

Lister Communications Order Form for:

[Registered Office: Brunel Way, Stonehouse, Gloucestershire, GL10 3SX. Registered in England, Co. Number 4114767](#)

Tel: 01453 829200 Fax: 01453 829201 Email: sales@lister-communications.co.uk www.lister-communications.co.uk

Page 3 of 8

Date Created: 2/23/2018 10:59 AM

- c. You acknowledge that maintenance services do not cover system errors caused by moves not performed by Avaya, and if any such transfer results in a requirement for Avaya system engineering or requires the use of on-site Avaya personnel, you will be charged the Time & Materials fees for such activity; and
- d. If your maintenance coverage differs on licenses on the same product instance at the location of the new Server, Service updates, recasts and/or fees may apply.

(ii) Non-Production License Grant. With respect to Software distributed by Avaya to you for non-production purposes, Avaya grants to you, subject to the terms and conditions contained herein, a personal, nonexclusive, nontransferable and non-sublicensable right to use the Software in a non-production environment solely for testing, development or other non-commercial purposes on a single computer("Non-Production License").

C. All Rights Reserved. Except for the limited license rights expressly granted in these Software License Terms, Avaya reserves all rights in and to the Software and Documentation and any modifications thereto. You will own only the hardware or physical media on which the Software is stored, if any.

D. General License Restrictions. To the extent permissible under applicable law, you agree not to: (i) decompile, disassemble, or reverse engineer the Software; (ii) alter, modify or create any derivative works based on the Software or Documentation; (iii) merge the Software with any other Software other than as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorized by the Agreement with a Avaya; (v) distribute, disclose or allow use of the Software or Documentation, in any format, through any timesharing service, service bureau, network or by any other means; (vi) allow any service provider or other third party, with the exception of Avaya's authorized resellers and their designated employees ("Authorized Providers") who are acting solely on behalf of and for the benefit of End User, to use or execute any software commands that cause the Software to perform functions that facilitate the maintenance or repair of any product except that a service provider or other third party may execute those software commands that, as designed by Avaya, would operate if a user is logged into a product using a customer level login and Maintenance Software Permissions ("MSPs") were not enabled or activated; (vii) gain access to or the use of any Software or part thereof without authorization from Avaya; (viii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Avaya or Authorized Providers; or (ix) permit or encourage any third party to do so. Authorized Providers shall be obligated to comply with the terms and provisions of these Software License Terms. End User shall advise any third party, including any Authorized Provider, who accesses or uses any Software of the terms and provisions of these Software License Terms. End User shall be responsible for such third party's failure to comply and shall indemnify Avaya for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Avaya as a result of non-compliance with this section. Notwithstanding the foregoing, if the Software is rightfully located in a member state of the European Union and End User needs information about the Software in order to achieve interoperability of an independently created software program with the Software, End User will first request such information from Avaya. Avaya may charge End User a reasonable fee for the provision of such information. If Avaya refuses to make such information available, then End User may take steps, such as reverse assembly or reverse compilation, to the extent necessary solely in order to achieve interoperability of the Software with an independently created software program. To the extent that the End User is expressly permitted by applicable mandatory law to undertake any of the activities listed in this section End User will not exercise those rights until End User has given Avaya twenty (20) days written notice of its intent to exercise any such rights.

E. Backup Copies. End User may create a reasonable number of archival and backup copies of the Software and the Documentation, provided all proprietary rights notices, names and logos of Avaya and its suppliers are duplicated on each copy.

F. Warranty. Avaya provides a limited warranty on its Software and Hardware. Avaya's standard warranty language as well as information regarding support while under warranty, is available through the following website: <http://support.avaya.com>. Please note that if you are acquiring the Software or Hardware from an authorized Avaya reseller outside of the United States and Canada, the warranty is provided to you by said Avaya reseller and not by Avaya. EXCEPT AS REFERENCED HEREIN, THE SOFTWARE IS PROVIDED "AS IS" AND NEITHER AVAYA NOR ITS SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES OR OTHERWISE RELATED TO THE AGREEMENT OR SOFTWARE LICENSE TERMS. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL WARRANTIES IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

G. Compliance. At Avaya's request and upon reasonable prior written notice, Avaya will have the right to inspect End User's compliance with these Software License Terms.

Lister Communications Order Form for:

[Registered Office: Brunel Way, Stonehouse, Gloucestershire, GL10 3SX. Registered in England, Co. Number 4114767](#)
Tel: 01453 829200 Fax: 01453 829201 Email: sales@lister-communications.co.uk www.lister-communications.co.uk

H. Termination of License. If you breach the license limitations or restrictions in these Software License Terms and if within ten (10) business days of your receipt of a reasonably detailed written request to cure, you have not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the Software licenses granted in these Software License Terms without prejudice to any available rights and remedies in contract and for infringement. Upon termination or expiration of the license for any reason, you shall immediately return the Software and any copies to Avaya, or, at Avaya's discretion and written notice to you, you shall permanently destroy all copies of the Software and any related materials in your possession or control. The provisions concerning confidentiality, indemnity, license restrictions, export control, and all limitations of liability and disclaimers and restrictions of warranty (as well as any other terms which, by their nature, are intended to survive termination) will survive any termination or expiration of the Software License Terms.

I. License Types. Avaya grants you a license within the scope of the license types described below. Where the order documentation does not expressly identify a license type, the applicable license will be a Designated System License. The applicable number of licenses and units of capacity for which the license is granted will be one (1), unless a different number of licenses or units of capacity is specified in the documentation or other materials available to you. "Designated Processor" means a single stand-alone computing device. "Server" means a Designated Processor that hosts a software application to be accessed by multiple users. "Software" means the computer programs in object code, originally licensed by Avaya and ultimately utilized by you, whether as standalone products or pre-installed on Hardware. "Hardware" means the standard hardware products, originally sold by Avaya and ultimately utilized by you.

Designated System(s) License (DS). End User may install and use each copy of the Software only on a number of Designated Processors up to the number indicated in the order. Avaya may require the Designated Processor(s) to be identified in the order by type, serial number, feature key, location or other specific designation, or to be provided by End User to Avaya through electronic means established by Avaya specifically for this purpose.

Concurrent User License (CU). End User may install and use the Software on multiple Designated Processors or one or more Servers, so long as only the licensed number of Units are accessing and using the Software at any given time. A "Unit" means the unit on which Avaya, at its sole discretion, bases the pricing of its licenses and can be, without limitation, an agent, port or user, an e-mail or voice mail account in the name of a person or corporate function (e.g., webmaster or helpdesk), or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software. Units may be linked to a specific, identified Server.

Database License (DL). End User may install and use each copy of the Software on one Server or on multiple Servers provided that each of the Servers on which the Software is installed communicates with no more than a single instance of the same database.

CPU License (CP). End User may install and use each copy of the Software on a number of Servers up to the number indicated in the order provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the Software. End User may not re-install or operate the Software on Server(s) with a larger performance capacity without Avaya's prior consent and payment of an upgrade fee.

Named User License (NU). You may: (i) install and use the Software on a single Designated Processor or Server per authorized Named User (defined below); or (ii) install and use the Software on a Server so long as only authorized Named Users access and use the Software. "Named User," means a user or device that has been expressly authorized by Avaya to access and use the Software. At Avaya's sole discretion, a "Named User" may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software.

Shrinkwrap License (SR). You may install and use the Software in accordance with the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "clickthrough" license accompanying or applicable to the Software ("Shrinkwrap License").

J. Third-party Components. Certain software programs or portions thereof included in the Software may contain software (including open source software) distributed under third party agreements ("Third Party Components"), which may contain terms that expand or limit rights to use certain portions of the Software ("Third Party Terms"). Information identifying the copyright holders of the Third Party Components and the Third Party Terms that apply is available on Avaya's website at: <http://support.avaya.com/Copyright>.

K. Limitation of Liability. EXCEPT FOR PERSONAL INJURY CLAIMS, WILLFUL MISCONDUCT AND END USER'S VIOLATION OF AVAYA'S OR ITS SUPPLIERS INTELLECTUAL PROPERTY RIGHTS, INCLUDING THROUGH A BREACH OF THE SOFTWARE LICENSE TERMS AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER AVAYA OR ITS SUPPLIERS NOR END USER SHALL BE LIABLE FOR (i) ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, OR (ii) FOR ANY LOSS OF PROFITS, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER AND (iii) DIRECT DAMAGES ARISING

Lister Communications Order Form for:

[Registered Office: Brunel Way, Stonehouse, Gloucestershire, GL10 3SX. Registered in England, Co. Number 4114767](#)

Tel: 01453 829200 Fax: 01453 829201 Email: sales@lister-communications.co.uk www.lister-communications.co.uk

UNDER THESE SOFTWARE LICENSE TERMS IN EXCESS OF THE PURCHASE PRICE AND FEES PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM.

L. Protection of Confidential Software and Documentation. End User acknowledges that the Software and Documentation are regarded as confidential by Avaya and its suppliers ("Confidential Information") and End User agrees at all times to protect and preserve in strict confidence the Software and Documentation.

M. Protection of Personal Data. The use of the Software may require the processing of personal data pertaining to you or to your personnel. Personal data required to use the Software will need to be submitted to Avaya. Failing the submission of such data, the use of the Software will not be possible. You or your personnel have a right to access and correct erroneous personal data pertaining to you or your personnel and to object for legitimate reasons to the processing and transfer of these data. You can exercise this right by contacting in writing the Data Privacy Officer of the applicable Avaya Affiliate.

N. High Risk Activities. The Software is not fault tolerant and are not designed, manufactured or intended for any use requiring fail-safe performance in which the failure of the Software could lead to death, serious personal injury, severe physical or environmental damage ("High Risk Activities"). This includes the operation of aircraft or nuclear facilities. You agree not to use, or license the use of, the Software in connection with any High Risk Activities.

O. Export Control. You are advised that the Software is of U.S. origin and subject to the U.S. Export Administration Regulations (EAR); diversion contrary to U.S. law and regulation is prohibited. You agree not to directly or indirectly export, re-export, import, download, or transmit the Software to any country, end user or for any use that is prohibited by applicable U.S. regulation or statute (including but not limited to those countries embargoed by the U.S. government). You represent that neither the U.S. Bureau of Industry and Security (BIS) nor any other governmental agency has issued sanctions against End User or otherwise suspended, revoked or denied End User's export privileges. You agree not to use or transfer the Software for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. Government by regulation or specific written license. Additionally, you are advised that the Software may contain encryption algorithm or source code that may be limited for export to government or military end users without a license issued by the U.S. BIS and any other country's governmental agencies, where applicable. Lastly, you agree not to directly or indirectly export, re-export, import, or transmit the Software contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission, or use.

P. U.S Government End Users. The Software shall be classified as "commercial computer software" and the Documentation is classified as "commercial computer software documentation" or "commercial items," pursuant to FAR 12.212 or DFAR 227.7202, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the Government of the United States shall be governed solely by the terms of these Software License Terms and shall be prohibited except to the extent expressly permitted by the terms of these Software License Terms.

Q. Acknowledgement. End User acknowledges that certain Software may contain programming that: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the End User making payment for licenses to such features, functionality or capacity; or (ii) periodically deletes or archives data generated by use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time.

R. Miscellaneous. These Software License Terms will be governed by New York State laws, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods. If a dispute cannot be settled by good faith negotiation between the parties within a reasonable period of time, and to the extent authorized by applicable law, it must be finally settled upon request of either party by arbitration to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time). The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator. The arbitrator will have authority only to award compensatory damages and will not award punitive or exemplary damages. The arbitrator will not have the authority to limit, expand or otherwise modify the Software License Terms. The ruling by the arbitrator will be final and binding on the parties and may be entered in any court having jurisdiction. Avaya and you will each bear its own attorneys' fees associated with the arbitration. Notwithstanding the foregoing, Avaya shall be entitled to take immediate legal action where required to protect its confidential or proprietary information, or to obtain any interim injunction. If any provision of these Software License Terms is determined to be unenforceable or invalid, these Software License Terms 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 to assert any rights under the Software License Terms, including, but not limited to, the right to terminate in the event of breach or default, will not be deemed to constitute a waiver of the right to enforce each and every provision of the Software License Terms in

Lister Communications Order Form for:

[Registered Office: Brunel Way, Stonehouse, Gloucestershire, GL10 3SX. Registered in England, Co. Number 4114767](#)

Tel: 01453 829200 Fax: 01453 829201 Email: sales@lister-communications.co.uk www.lister-communications.co.uk

Page 6 of 8

Date Created: 2/23/2018 10:59 AM

accordance with their terms. If you move any Software, and as a result of such move, a jurisdiction imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Software), then you are solely liable for, and agree to pay, any such duty, taxes, levy or other fees.

Agreement in English. The parties confirm that it is their wish that these Software License Terms, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

Las partes ratifican que es su voluntad que este Contrato, así como cualquier otro documento relacionado con el mismo, incluyendo todo tipo de notificaciones, han sido redactados y deberán continuar siendo redactados únicamente en el idioma inglés.



Onsite Telecoms
Mobile Workforce
Cloud Solutions
Data & Networks

