UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: March 30, 2017 at 10:00 a.m.
Objection Date: March 27, 2017 at 4:00 p.m.[1]

In re	:	Chapter 11
AVAYA, INC., et al.	:	Case No. 17-10089 (SMB)
Debtors.	:	Jointly Administered

OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING 2Q 2017 KEY EMPLOYEE INCENTIVE PROGRAM

TO: THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

William K. Harrington, the United States Trustee for Region 2, in furtherance of the duties and responsibilities set forth in 28 U.S.C. §§ 586(a)(3) and (5), hereby files his objection (the "Objection") to the Debtors' Motion (the "Bonus Motion") for an Order Approving the Debtors' 2Q 2017 Key Employee Incentive Program (the "Bonus Plan"). ECF Doc. No. 192.

I. PRELIMINARY STATEMENT

The Debtors seek the Court's approval to pay up to $3.7 million in bonuses to the 11 members of their Executive Committee (the "Participants").[2] Pursuant to Section 503(c)(1) of the Bankruptcy Code, bonus payments to insiders of the type sought in the Bonus Plan are subject to a strict standard if they are for the purpose of inducing those insiders to remain with the Debtors' business. Here, the bonuses appear to be primarily retentive because the threshold target merely requires the Debtors to outperform, by only $4 million, the budgeted adjusted EBITDA of $166 million developed in connection with their DIP financing, making it likely that

[1] The Debtors consented to extend the United States Trustee's time to object to the Motion.
[2] The United States Trustee has been advised that the Debtors and various parties in interest are negotiating, and may be revising, some of the terms of the proposed Bonus Plan, although the Plan metrics will remain the same.

each of the Participants will receive a substantial bonus. Indeed, should the threshold target be achieved, the Participants will receive $3 million, or 75%, of that $4 million. Moreover, since the bonuses relate to the Participants' performance for the Debtors' second fiscal quarter which ends March 31, 2017, the Debtors likely know, but have not disclosed, whether the metrics have already been met or are on target to be met. Thus the benchmarks described as incentivizing may have already been achieved or may be achieved imminently.

The retentive aspect of the Bonus Plan is also underscored by the Debtors' assertion that the Participants should receive a bonus for their increasing workloads and their developing the Debtors' ultimate road map for emergence from bankruptcy. The Participants have existing obligations to perform the services for which they are already being paid.

Finally, while the Debtors tout that the proposed bonus pool reflects a 35% voluntary reduction of the bonus awards utilized by the Debtors prepetition, the Debtors fail to disclose that four of the Participants (the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and General Counsel) received special retention bonuses totaling $11.7 million in May 2016, seven months before the bankruptcy filing. These one-time bonuses required the executives to stay with Avaya for 18 months after the date of the award (at least until November 2017), or be subject to claw-back.

Because the Bonus Plan appears to be a key employee retention plan, the Debtors must satisfy the requirements of Section 503(c)(1) of the Bankruptcy Code. However, should the Court determine that the Bonus Plan is not primarily retentive, however, approval of the Bonus Motion should still be denied. Congress' intention in promulgating Section 503(c) was to curtail payments to insiders. Here, the proposal to pay cash awards to the members of the Executive Committee for merely performing the fiduciary duties they were hired to perform is not a basis to

pay bonuses to these 11 insiders. As outlined below, the Debtors have not met their burden and the Bonus Motion should be denied.

II. BACKGROUND

A. General

1. On January 19, 2017 (the "Petition Date"), Avaya, Inc. and certain of its affiliates ("Avaya" or the "Debtors") commenced voluntary cases under Chapter 11 of the Bankruptcy Code. ECF Doc. No. 1. By order entered on January 20, 2017, the Court authorized joint administration of the cases for procedural purposes. ECF Doc. No. 46. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee or examiner has been appointed in these chapter 11 cases.

2. On January 31, 2017, the United States Trustee appointed the Official Committee of Unsecured Creditors. ECF Doc. No. 100.

B. The Bonus Plan

3. On March 1, 2017, the Debtors filed the Bonus Motion. The Bonus Motion seeks authority to implement the Bonus Plan which the Debtors describe as an incentive plan for the 11 members of the Debtors' Executive Committee for second fiscal quarter ending March 31, 2017. Bonus Motion at ¶¶ 17, 20.

4. The Bonus Plan provides a threshold award opportunity of approximately $3.0 million in the aggregate upon the achievement of an Adjusted EBITDA of $170 million and a maximum award opportunity of approximately $3.7 million in the aggregate if the Debtors' achieve an Adjusted EBITDA target of $205 million during the second fiscal quarter. Id. at ¶¶ 6, 22.

5. The threshold targeted Adjusted EBITDA of $170 million requires the Debtors to outperform, by $4 million, against the budgeted Adjusted EBITDA of $166 million developed in connection with their DIP Financing. Id. at ¶¶ 17, 26.[3]

6. Under the Bonus Plan, the Participants will be eligible to receive bonuses of between 16.1% to 124.8% of their annual salary, depending on their position in Avaya's management and which targets have been achieved. Id. at ¶ 20. By way of example, and as more fully set forth in the Bonus Motion, the President/Chief Executive Officer, whose annual salary is $1.25 million, would receive $1,248,000 or 99.8% of his annual salary if the threshold target is achieved and $1,560,000, or 124.8% of his annual salary, if the maximum target is achieved. The Senior Vice President/Quality Program Office, whose annual salary is $1.25 million, would receive $68,250 or 16.1% of his annual salary if the threshold target is achieved and $85,313, or 20.1% of his annual salary, if the maximum target is achieved. Id.

7. The Debtors state that the "achievement of the Adjusted Targeted EBITDA requires them to effectively manage through the overhang of these chapter 11 cases – and their competitors very public (and private) efforts to stymie this restructuring – as though these cases had never been filed." Id. at ¶¶ 8, 26.

8. In addition to their day-today responsibilities, the Debtors state that the Participants' workloads have increased as a result of the transition into chapter 11 and that they have had to take a more pro-active approach in engaging with customers, distributors and channel partners to ensure that all parties understand that it is "business as usual." Id. at ¶ ¶ 17,

[3] Pursuant to Section 6.01(c) of the Credit Agreement among the Debtors and their Lenders, as soon as available, but within 30 days after the end of each fiscal month, the Debtors are required to provide the Lenders (and the Creditors Committee) a consolidated balance sheet and related statements of consolidated income, operations and cash flow. ECF Doc. Nos. 13, 249. Presumably, the CRO and his staff from Zolfo Cooper receive more frequent reports.

24; Declaration of Eric Koza, Chief Restructuring Officer (the "CRO") in Support of the Bonus Motion, attached as Exhibit C to the Bonus Motion ("Koza Decl.") at ¶¶ 5, 9. In addition, the Debtors state that the "Executive Committee's responsibilities include the development of the Debtors ultimate road map for emergence from bankruptcy." Koza Decl. at ¶ 5.

9. The Bonus Plan was developed by the Debtors' Board of Directors and the CRO with the assistance of the Debtors' retained professionals, including an independent analysis by Willis Towers Watson. Id. at ¶ 19; Declaration of Douglas J. Friske in Support of the Bonus Motion (the "Friske Decl."), attached as Exhibit B to the Bonus Motion.

The May 2016 Bonus Plan Revisions and Payment of One-Time Retention Bonuses

10. Prepetition, the Debtors provided the Participants with several compensation opportunities, which included a base salary, short-term incentive-based compensation, long-term incentive and cash compensation and long-term incentive equity based compensation. Friske Decl. at ¶ 9.

11. In May 2016, seven months before the Petition Date, the Debtors revised their various bonus plans by eliminating the equity component, combining the Executive Committee Discretionary Incentive Plan and the Long Term Incentive Plan, and adopting the instant Bonus Plan. Id., see also Avaya, Inc. Form 8-K at 5.02 (May 13, 2016), attached hereto as Exhibit 1.

12. In May 2016, the Debtors' Compensation Committee also approved one-time retention bonuses to Avaya's Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and General Counsel, which were paid in the third quarter of Avaya's 2016 fiscal year. Form 8-K at 5.02. The bonuses are subject to claw-back on a pro rata basis if the executive is terminated for cause or resigns without "good reason" within eighteen (18) months after the date

of the retention bonus.[4] The May 2016 retention bonuses totaled $11,700,000 and were payable as follows: (i) CEO Kevin J Kennedy $6,900,000, (ii) COO James Chirico $2,000,000, (iii) General Counsel Amy Fliegelman Olli $1,250,000 and (iv) CFO David Vellequette $1,550,000. Id.at 5.02, Exhibit 10.5 (Kennedy Agreement); Exhibit 10.6 (Chirico Agreement).

III. DISCUSSION

A. The Legal Framework: Section 503 of the Bankruptcy Code

Section 503(c) of the Bankruptcy Code provides in relevant part:

> Notwithstanding subsection (b), there shall neither be allowed, nor paid –
>
> (1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtors' business, absent a finding by the court based on evidence in the record that
>
> (A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;
>
> (B) the services provided by the person are essential to the survival of the business; and
>
> (C) either –
>
> (i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or
>
> (ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;
>
> (2) a severance payment to an insider of the debtor, unless -

[4] Assuming the bonuses were paid in May 2016, the four executives must continue to work for the Debtors until November 2017, or be subject to a claw-back of a portion of the bonus received.

> (A) the payment is part of a program that is generally applicable to all full-time employees; and
>
> (B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to non-management employees during the calendar year in which the payment is made; or

(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c).

Congress added Section 503(c) in 2005 to curtail payments of retention incentives to insiders to eradicate the notion that executives were entitled to bonuses simply for staying with the Company through the bankruptcy process. In re Residential Capital LLC, 478 B.R. 154, 169 (Bankr. S.D.N.Y. 2012) ("Rescap") (quoting In re Global Home Prods.,, 369 B.R. 778, 784 (Bankr. D. Del. 2007)); accord In re Hawker Beechcraft., 479 B.R. 308, 312-13 (Bankr. S.D.N.Y. 2012); In re Velo Holdings, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012). Congress intended to put into place a set of challenging standards for debtors to overcome before retention bonuses could be paid. In re Global Home Prods., 369 B.R. at 784. The proponent of a bonus plan has the burden of showing that the plan is not a retention plan governed by Section 503(c)(1). In re Hawker Beechcraft, 479 B.R. at 313; Rescap, 478 B.R. at 170.

Where Section 503(c)(1) applies, the transfer cannot be justified solely on the debtor's business judgment. See In re Borders Grp., Inc., 453 B.R. 459, 470-71 (Bankr. S.D.N.Y. 2011). If a proposed transfer falls within Section 503(c)(1), then the business judgment rule does not apply, regardless of whether a sound business purpose may actually exist. In re Dana Corp., 351 B.R. 96, 101 (Bankr. S.D.N.Y. 2006) ("Dana I").

Further, a debtor's label of a plan as incentivizing to avoid the strictures of Section 503(c)(1) must be viewed with skepticism; rather, the circumstances under which the proposal is made and the structure of the compensation package control. In re Velo Holdings, 472 B.R. at 209 ("Attempts to characterize what are essentially prohibited retention programs as incentive programs in order to bypass the requirements of section 503(c)(1) are looked upon with disfavor, as the courts consider the circumstances under which particular proposals are made, along with the structure of the compensation packages"); see also In re Hawker Beechcraft, 479 B.R. at 313 ("The concern ... is that the debtor has dressed up a KERP to look like a KEIP in the hope that it will pass muster under the less demanding facts and circumstances standard in ... 503(c)(3)."); Dana I, 351 B.R. at 102 n.3 ("If it walks like a duck (KERP) and quacks like a duck (KERP), it's a duck (KERP).").

Finally, not only must bonus plans comply with Section 503(c), but as administrative expenses they must also be "actual, necessary costs and expenses of preserving the estate," as required by Section 503(b).

B. The Bonus Motion Must Be Denied Because It Is Primarily Retentive and Fails to Meet the Requirements of Section 503(c)(1)

As a threshold matter, the Participants are all officers or "persons in control" of the Debtors, and thus qualify as insiders within the meaning of 11 U.S.C. § 101(31). Whether the Bonus Plan is subject to the standards of Section 503(c)(1) or Section 503(c)(3), therefore, hinges upon whether it is primarily retentive. Rescap, 2012 WL 3670700, at *11 ("[i]n order to show that the more permissive section 503(c)(3) applies, the Debtors must establish by a preponderance of the evidence that the KEIP is primarily incentivizing and not primarily retentive.).

Because all of the Participants are insiders, to show that the more permissive Section 503(c)(3) applies, the Debtors must establish by a preponderance of the evidence that the Bonus Plan is primarily incentivizing and not primarily retentive. Rescap, 478 B.R. at 170; In re Hawker Beechcraft, 479 B.R. at 313. The Debtors must demonstrate that the Bonus Plan presents challenging standards and significant hurdles which are difficult to achieve. See In re Hawker Beechcraft, 479 B.R. at 313; In re Velo Holdings, 472 B.R. at 209; In re Global Home, 369 B.R. at 784; see also In re Dana Corp., 358 B.R. 567, 583 (Bankr. S.D.N.Y.) ("Dana II") (benchmarks for the debtors' long-term KEIP "are difficult targets to reach and are clearly not lay-ups").

Here the Debtors have failed to satisfy their evidentiary burden that this is not simply a KERP with KEIP window dressing. As shown below, the Bonus Plan is primarily retentive and, therefore, can only be approved if the Debtors satisfy the standards of Section 503(c)(1).

1. The Bonus Plan's Primary Purpose Is to Retain Key Employees

While stating that the purpose of the Bonus Plan is to "incentivize" the Participants, the Debtors have not met their burden to demonstrate that the retentive effect of the Bonus Plan is not its primary purpose. The Debtors' desire to retain key management is not merely an incidental result of an intention to provide incentives for employees to work harder, since the metrics required for the bonuses to be paid are not sufficiently challenging. In re Mesa Air Group, No . 10-10018 (MG), 2010 WL 3810899, at *4 (Bankr. S.D.N.Y. Sept. 24, 2010) (incentive plans are designed to motivate employees to achieve performance goals).

First, the threshold metric is achieved upon an Adjusted EBITDA of $170 million during the Debtors' second fiscal quarter. This metric requires the Debtors to outperform against the budgeted Adjusted EBITDA in connection with the DIP Financing by only $4 million, thus

making it likely that each of the Participants will receive a substantial bonus. Infra, ¶ ¶ 4, 5. When a KEIP sets the bar so low that the lowest targets are well within reach, it is not a true incentive plan; it is a retention plan. In re Hawker Beechcraft, 479 B. R. at 313, fn.7 (noting that while targets were not "lay-ups", "they are more like free throws than half court flings at the buzzer"). Moreover, by definition, an incentive plan should encourage future performance. Here, the Debtors seek to award bonuses for second-quarter performance. The Motion was filed approximately one (1) month before the second quarter of 2017 ends. Thus the benchmarks described as incentivizing may have already been achieved or may be achieved imminently. The Debtors, however, have provided no information as to what portion of the metrics have been met for the second quarter, information which should be readily available.

Second, the Debtors assert that the Participants have agreed to a 35% reduction in their bonus awards as compared to their prepetition bonus plans. This "reduction" is misleading. What the Debtors fail to disclose is that seven months before the Petition Date, the Debtors revised their prepetition bonus plans to reduce the equity components, and more importantly, awarded the four most senior executives "one-time" retention bonuses of over $11 million.[5]

Third, the Debtors fail to identify any new duties that each of the Participants will undertake. Rather, the Debtors assert that the Participants' workloads have increased, they are having more meetings with customers and vendors and they are developing the Debtors' roadmap for emergence from bankruptcy, thus implying that the Participants would not perform the necessary work adequately without the proposed bonuses. Insiders should not be paid bonuses to "incentivize" them to live up to their fiduciary duties to the estate. See Dana I, 351 B.R. at 102 (citing Clarkson Co., Ltd. v. Shaheen, 660 F.2d 506, 512 (2d Cir. 1981)). They have

[5] While these large "one-time" retention bonuses are arguably subject to a claw-back action under Section 548 of the Bankruptcy Code, it seems unlikely that such action would be initiated by the Debtors.

existing obligations to perform the services for which they are already being paid. In any event, there is no evidence that the Participants would not perform the work necessary to propose and confirm a plan or to close any asset sales irrespective of the proposed bonuses.

It appears from the Bonus Motion and the Friske and Koza Declarations that the principal purpose of the Bonus Plan is simply to ensure that the Debtors' insiders fulfill the very fiduciary duties that they are already required to fulfill under the Bankruptcy Code. See 11 U.S.C. § 1106(a)(5) (requiring trustees or debtors-in-possession to file a plan of reorganization or seek a conversion or dismissal of the case "as soon as practicable").

Retention plans usually are intended "to encourage certain crucial employees to remain with the company through a critical, transitional time period when the exact future of the company is unclear and when those employees would be most likely to search for other employment." In re Brooklyn Hosp. Ctr., 341 B.R. 405, 413 (Bankr. E.D.NY. 2006) quoting In re Georgetown Steel Co., 306 B.R. 549, 556 (Bankr. D. S.C. 2004). Based on the information provided by the Debtors, the Bonus Plan is being proposed to encourage the Participants to remain with the Debtors through their tenure in Chapter 11.

2. The Bonus Plan Does Not Satisfy Section 503(c)(1)

Because the Bonus Plan is primarily a retention plan for insiders, it is governed by Section 503(c)(1), not Section 503(c)(3) and 363 as the Debtors contend. Section 503(c)(1) establishes specific and challenging standards a debtor must satisfy before a bankruptcy court may authorize bonus payments to an insider to induce the insider to remain with a debtor's business. Dana I, 351 B.R. at 100; 11 U.S.C. § 503(c)(1). The Debtors have the burden to prove these facts and must show that the proposed bonus payments comply with Section 503(c)(1). See Dana I, 351 B.R. at 100; In re Mesa Air Group, 2010 WL 3810899, at *2.

Section 503(c)(1) requires that the insider have a bona fide job offer at the same or greater compensation, the services provided by the insider are essential to the survival of the business, and the proposed retention payments are either less than ten times the mean of similar payments made to non-management employees during the calendar year or less than 25 percent of the amount of any similar payments made in the prior year. 11 U.S.C. § 503(c)(1). The Debtors have made not made this showing for any of the Participants.

C. Even If the Bonus Plan Was Governed by Under Section 503(c)(3) and Section 363, It Is Still Deficient

If the Court finds that Section 503(c)(1) does not apply, the Court may also consider whether the payments are permissible under section 503(c)(3). Dana II, 358 B.R. at 576. Section 503(c)(3) authorizes judicial discretion with respect to bonus plans motivated primarily by reasons other than retention. Id. Should the Court find that Section 503(c)(1) does not apply, the Court must then find that the Bonus Plan passes the test of Section 503(c)(3) – that it is necessary to preserve the value of the Debtor's estate, and is "justified by the facts and circumstances of the case." 11 U.S.C. § 503(c)(3).

To evaluate whether a proposed bonus plan passes muster under Section 503(c)(3), courts generally consider the following factors outlined in Dana II:

a. Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?

b. Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?

c. Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?

d. Is the plan or proposal consistent with industry standards?

e. What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?

f. Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

Dana II, 358 B.R. at 576-77.

Here, the Debtors have failed to satisfy two of the six factors.

1. The Bonus Plan Does Not Establish a Relationship Between Effort and Outcome

It is not evident that any of the award levels are challenging to meet. Even under the less rigorous standards of Sections 503(c)(3) and 363, the benchmarks for the payment of bonuses must be "difficult targets to reach." Dana II, 358 B.R. at 583. Here the Debtors set the threshold payment at only $4 million above the Adjusted EBITDA of the DIP Financing budget, making it likely that the Participants will receive a substantial bonus. Should the Debtors meet that target, the Participants will receive 75% of that $4 million. In addition, while the Participants may have increased workloads during the post-petition period, there is no evidence that the services they are performing are anything other than fulfilling their already existing obligations and fiduciary duties.

2. The Bonus Plan Does Not Appear to be Fair and Reasonable and Discriminates Against Non-Insider Employees

The Debtors have failed to establish that the Bonus Plan is fair and reasonable and does not discriminate against non-insider employees. As noted above, the proposed Plan does not meet the requirements of Section 503(c)(1). However, even if the Section 503(c)(1)(A) requirement of competing job offers were met, there is no evidence that the requirement set forth in Section 503(c)(1)(C) has been satisfied. Moreover, the Bonus Plan is not reasonable. Seven months before the Petition Date, the Debtors' top four executives were awarded bonuses of over $11 million. The CEO alone received a one-time bonus of $6.9 million before the Petition Date

and may now receive additional $1,250,000 - $1,560,000 simply for performing his fiduciary duties to the Debtors. Presumably, these retention bonuses were granted at that time to ensure that these executives remain with the Avaya during its financial restructuring, whether that be in or out of bankruptcy. The Debtors now seek to pay the same four executives minimum aggregate bonuses up to $2,656,875. Bonus Motion at ¶ 20.

IV. CONCLUSION

The Debtors have failed to show that the Bonus Plan does not contemplate impermissible retention payments to the Debtors' insiders. The Debtors have also failed to show that the Bonus Plan sets sufficiently stringent goals for insiders to meet to obtain the proposed bonuses. The Bonus Motion, therefore, should be denied.

WHEREFORE, the United States Trustee respectfully requests that the Court sustain the foregoing Objection, deny the Bonus Motion, and grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 24, 2017

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: */s/ Susan D. Golden*
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EXHIBIT 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **May 13, 2016**

AVAYA INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-15951**	**22-3713430**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

4655 Great America Parkway **Santa Clara, California**	**95054**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(908) 953-6000**
N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Adoption of Change in Control Agreements

On May 13, 2016, the Compensation Committee (the "Committee") of the Board of Directors of Avaya Holdings Corp., the parent company of Avaya Inc. (the " Company "), approved a form of Avaya Inc. Executive Change in Control Agreement (the " CIC Agreement "), which will be entered into with key executives of the Company to facilitate such executives' continued dedication to the Company notwithstanding the occurrence of a change in control of the Company and to encourage such executives' full attention and dedication to the Company and its affiliated companies currently and in the event of a change in control. The Committee also approved a form of Avaya Inc. Executive Change in Control Agreement (the " CEO CIC Agreement ") to be entered into with Kevin J. Kennedy, the Company's Chief Executive Officer (the " CEO ").

The CIC Agreement and the CEO CIC Agreement each provide that if the executive's employment is terminated by the Company without cause (other than due to the executive's death or disability) or by the executive for good reason, in each case, during the six months preceding a change in control of the Company or within the two years following a change in control of the Company, the executive will be entitled to receive certain payments and benefits. Upon such a qualifying termination, the CEO will be entitled to receive two and a half times the sum of his annual base salary and target annual bonus, while the Company's other current Named Executive Officers (the " NEOs "), who were identified in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2015 (the " 2015 Form 10-K ") filed with the Securities and Exchange Commission (the " SEC ") on November 23, 2015, will be entitled to receive two times the sum of their respective annual base salaries and target annual bonuses, each in addition to other benefits described in the CEO CIC Agreement and the CIC Agreement, respectively.

The foregoing description of the CIC Agreement and the CEO CIC Agreement does not purport to be comprehensive and is qualified in its entirety by reference to the full text of the CIC Agreement and the CEO CIC Agreement, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Revisions to Fiscal 2016 Compensation

On May 13, 2016, the Committee approved changes to the Company's executive compensation program, which included revisions to the Avaya Holdings Corp. Executive Committee Discretionary Annual Incentive Plan (the " EC DAIP ") and the long-term incentive awards granted to NEOs in November 2015. While no changes were made to the NEOs' base salaries reported in the 2015 Form 10-K, aggregate NEO compensation for fiscal year 2016 was revised. The EC DAIP, which was previously filed with the SEC as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 21, 2013, as amended by Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2016, provides executive officers with a semi-annual discretionary incentive opportunity intended to reward both Company and individual performance. The long-term incentive awards granted to NEOs in November 2015 consisted of cash awards, restricted stock units and stock options (collectively, the " FY2016 Long-Term Awards "), as detailed in the 2015 Form 10-K.

The Committee approved the following changes to the Company's executive compensation program:

- Key Employee Incentive Plan: The EC DAIP and the Company's long-term incentive plan were combined into the Avaya Inc. 2016 Key Employee Incentive Plan, which is a single market-based performance incentive program tied to Avaya's Adjusted EBITDA metric (the " Key Employee Incentive Plan "). Payments under the Key Employee Incentive Plan will be earned each fiscal quarter, subject to achievement of applicable results and the executive's continued employment through the end of the applicable fiscal quarter, and earned payments will be distributed to the executives during the next fiscal quarter. NEOs will earn compensation under the Key Employee Incentive Plan beginning in the fourth

quarter of the Company's 2016 fiscal year and continuing through the third quarter of the Company's 2017 fiscal year. The FY2016 Long-Term Awards awarded to NEOs on November 17, 2015 will be cancelled, and such awards, as well as EC DAIP awards for the second half of fiscal year 2016, will be replaced by the payments and awards under the Key Employee Incentive Plan, as a condition of participation therein. On May 19, 2016, the Committee determined EC DAIP awards for the NEOs for the first half of fiscal year 2016, which awards will be paid as soon as practicable. The total amounts that would be payable to the NEOs under the Key Employee Incentive Plan for four full quarters of participation and assuming that all performance-based metrics are achieved each quarter are as follows: Kevin J. Kennedy $9,600,000; James Chirico $2,750,000; Amy Fliegelman Olli $1,650,000; and David Vellequette $2,350,000.

•Retention Awards: Each NEO will receive a one-time retention award which will be paid in the third quarter of the Company's 2016 fiscal year, which award remains subject to clawback (generally on a pro rata basis) if the NEO is terminated by the Company for cause or resigns without good reason, in each case, within eighteen (18) months after the date of such retention award. In connection with the retention award granted to James Chirico, the cash retention award previously granted to James Chirico in November 2015, which was described in the 2015 Form 10-K, pursuant to which he was to receive $500,000 at the end of fiscal years 2016 and 2017, was modified to (i) accelerate the first payment of $500,000 so that such payment will be paid in the third quarter of the Company's 2016 fiscal year, provided that this payment will be subject to pro-rata clawback if Mr. Chirico does not remain employed by the Company through September 30, 2016, and (ii) cancel the second $500,000 payment which was to be paid at the end of fiscal year 2017. The retention awards payable to the NEOs are as follows: Kevin J. Kennedy $6,900,000; James Chirico $2,000,000; Amy Fliegelman Olli $1,250,000; and David Vellequette $1,550,000.

The foregoing description of the Key Employee Incentive Plan and the retention awards does not purport to be comprehensive and is qualified in its entirety by reference to the full text of the Key Employee Incentive Plan, the form of Key Employee Incentive Plan Participation Agreement, the form of Retention Bonus Agreement and Mr. Chirico's Retention Bonus Agreement, which are filed as Exhibits 10.3, 10.4, 10.5 and 10.6, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Adoption of Long-Term Cash Incentive Plan

On May 19, 2016, the Committee approved the Avaya Holdings Corp. Cash Long-Term Incentive Plan (the "Cash Incentive Plan ") pursuant to which select employees of Avaya Holdings Corp. and its subsidiaries will receive cash incentives to reward them on their performance and that of the Company. The Committee did not approve any Cash Incentive Plan awards to NEOs, but it approved an initial form of Avaya Holdings Corp. Long-Term Cash Award Agreement to be used for certain future awards.

The foregoing description of the Cash Incentive Plan does not purport to be comprehensive and is qualified in its entirety by reference to the full text of the Cash Incentive Plan and the form of Avaya Holdings Corp. Long-Term Cash Award Agreement, which are filed as Exhibits 10.7 and 10.8, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Exhibit 10.3

AVAYA INC. 2016 KEY EMPLOYEE INCENTIVE PLAN

1. Purpose. This Avaya Inc. (the "Company") 2016 Key Employee Incentive Plan (the "Plan") is designed to align the interests of the Company and eligible key employees of the Company and its subsidiaries.

2. Adoption of the Plan. The Company, intending to be legally bound, hereby adopts the Plan effective as of April 1, 2016 (the "Effective Date"). The Plan shall be in effect from the Effective Date and shall continue until terminated by the Company (the "Term"). The expiration of the Term shall not in any event reduce or adversely affect any amounts due to any Participant hereunder.

3. General. The compensation provided under the Plan is intended to be in addition to all other compensation payable to Participants under any employment agreement or incentive plan or program in effect with the Company or its direct or indirect subsidiaries.

4. Definitions. For purposes of this Plan:

(a) "Board" means the Board of Directors of the Company or the Board of Directors of Avaya Holdings Corp., as applicable.

(b) "Committee" means the Compensation Committee of the Board. If no Compensation Committee exists, the term "Committee" shall be deemed to refer to the Board for all purposes of the Plan.

(c) "Company Group" means the Company and its affiliates.

(d) "Participant" shall have the meaning ascribed thereto in Section 5 hereof.

(e) "Participation Agreement" means the written agreement between the Company and a Participant setting forth the terms of such Participant's participation in the Plan.

(f) "Performance Goals" means the performance goals established by the Committee with respect to a Quarter (as defined below).

(g) "Quarter" means each fiscal quarter commencing during the Term.

(h) "Quarterly Performance Incentive" shall mean, in the case of any Participant, the amount of the Quarterly Performance Incentive opportunity for such Participant as set forth in such Participant's Plan Participation Agreement.

5. Eligible Participants. Each person designated by the Board or the Committee pursuant to a Participation Agreement shall be a Participant under the Plan and eligible to receive a Quarterly Performance Incentive with respect to each Quarter in which such Participant participates in the Plan (each such Quarter, an "Eligible Quarter").

6. Term of Participation. Subject to the provisions of this Plan, each Participant shall earn a Quarterly Performance Incentive as of the end of each Eligible Quarter, if (i) such Participant remains employed by the Company Group through the last date of the applicable Quarter and (ii) to the extent the Performance Goals established for such Quarter have been achieved; provided that if the Term ends after the commencement, and before the end, of an Eligible Quarter, each Participant who is then employed by the Company shall earn a prorated amount of the Quarterly Performance Incentive for the Quarter in which the Term ends (based on the portion of the Quarter that has elapsed as of the last day of the Term), and the Participant shall not be eligible to earn a Quarterly Performance Incentive following the Term.

Any Quarterly Performance Incentive required to be made under this Plan shall be paid by the Company as soon as practicable after the date the Participant earned the right to such payment; for the avoidance of doubt, no Participant shall earn the right to a Quarterly Performance Incentive until the Committee certifies the degree to which the Performance Goals for the applicable Quarter have been achieved. A Participant whose employment with the Company Group terminates (for any reason) before the end of the Eligible Quarter shall forfeit the right to any Quarterly Performance Incentive that has not been earned as of the end of such Eligible Quarter.

7. Performance Goals. Before the commencement of each Quarter, the Committee shall establish one or more Performance Goals that must be achieved to earn a Quarterly Performance Incentive for that Quarter. The Committee may, but shall not be required to, establish minimum, target and maximum targets with respect to selected Performance Goals that provide for the payment of a fraction or multiple of a Participant's Quarterly Performance Incentive. Promptly after the end of each Quarter, the Committee shall certify the degree to which the applicable Performance Goals have been achieved and the amount payable to each Participant hereunder, if any.

8. Plan Administration.

(a) This Plan shall be administered by the Committee. The Committee is given full authority and discretion within the limits of this Plan to establish such administrative measures as may be necessary to administer and attain the objectives of this Plan and may delegate the authority to administer the Plan to an officer of the Company. The Committee (or its delegate, as applicable) shall have full power and authority to construe and interpret this Plan and any interpretation by the Committee shall be binding on all Participants and shall be accorded the maximum deference permitted by law.

(b) All rights and interests of Participants under this Plan shall be non-assignable and nontransferable, and otherwise not subject to pledge or encumbrance, whether voluntary or involuntary, other than by will or by the laws of descent and distribution. In the event of any sale, transfer or other disposition of all or substantially all of the Company's assets or business, whether by merger, stock sale, consolidation or otherwise, the Company may assign this Plan.

(c) Any payment to a Participant in accordance with the provisions of this Plan shall, to the extent thereof, be in full satisfaction of all claims against the Company Group, and the Company may require a Participant, as a condition precedent to such payment, to execute a receipt and release to such effect.

(d) Payment of amounts due under the Plan shall be provided to Participant in the same manner as Participant receives his or her regular paycheck or by mail at the last known address of Participant in the possession of the Company, at the discretion of Committee. The Company will deduct all applicable taxes and any other withholdings required to be withheld with respect to the payment of any award pursuant to this Plan.

(e) The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to ensure the payment of any award provided for hereunder. Quarterly Performance Incentive payments shall not be considered as extraordinary, special incentive compensation, and it will not be included as "earnings," "wages," "salary," or "compensation" in any pension, welfare, life insurance, or other employee benefit plan or arrangement of the Company Group.

(f) The Company, in its sole discretion, shall have the right to modify, supplement, suspend or terminate this Plan at any time; provided that if the Company terminates the Plan after the commencement of a Quarter, a Participant who is then employed by the Company and for whom such Quarter is an Eligible Quarter shall earn and be paid a prorated Quarterly Performance Incentive (based

on the portion of the Quarter that has elapsed as of the Plan termination date) as soon as practicable after the date on which the Committee certifies the degree to which the Performance Goals for such Quarter have been achieved. Subject to the foregoing, the Plan shall terminate upon the satisfaction of all obligations of the Company or its successor entities hereunder.

(g) Nothing contained in this Plan shall in any way affect the right and power of the Company to discharge any Participant or otherwise terminate his or her employment at any time or for any reason or to change the terms of his or her employment in any manner.

(h) Except as otherwise provided under this Plan, any expense incurred in administering this Plan shall be borne by the Company.

(i) Captions preceding the sections hereof are inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provision hereof.

(j) The administration of the Plan shall be governed by the laws of the State of Delaware, without regard to the conflict of law principles of any state. Any persons or corporations who now are or shall subsequently become parties to the Plan shall be deemed to consent to this provision.

(k) The Plan is intended to either comply with, or be exempt from, the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code Section 409A"). To the extent that the Plan is not exempt from the requirements of Code Section 409A, the Plan is intended to comply with the requirements of Code Section 409A and shall be limited, construed and interpreted in accordance with such intent. Notwithstanding the foregoing, in no event whatsoever shall the Company be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on a Participant by Code Section 409A or for damages for failing to comply with Code Section 409A.

[End of Plan]

Exhibit 10.4

Personal and Confidential

May 13, 2016

(Name)

Re: Quarterly Performance Incentive Opportunity

Dear (Name):

On behalf of Avaya Inc. (the "Company"), I am pleased to offer you the opportunity to participate in the 2016 Key Employee Incentive Plan (the "Plan"). Capitalized terms in this letter (this "Participation Agreement") not herein defined shall have the meaning set forth in the Plan.

General Description. The Plan is a quarterly performance incentive plan that permits you and other eligible participants to earn and be paid a cash incentive (the "Quarterly Performance Incentive"). The term of the Plan begins April 1, 2016 and ends when terminated by the Company, subject to the additional terms set forth in the Plan. Your participation in the Plan is limited to a maximum of four fiscal quarters, and you will be eligible to participate in the Plan in the following fiscal quarters (each, an "Eligible Quarter"):

Eligible Quarter:	4Q2016	1Q2017	2Q2017	3Q2017
Time of Payment:	1Q2017	2Q2017	3Q2017	4Q2017

Quarterly Performance Incentive. Your Quarterly Performance Incentive is $[●]. You will earn a Quarterly Performance Incentive if and to the extent that (i) you are employed by the Company or its subsidiaries on the last day of the applicable Quarter and (ii) the applicable Performance Goals established by the Committee for the applicable Quarter are achieved (which Performance Goals will be communicated to you promptly after they are established). In the event that your employment with the Company Group is terminated (for any reason) prior to the end of the applicable Quarter, you will forfeit your right to receive any portion of your Quarterly Performance Incentive for such Quarter.

Waiver of Fiscal Year 2016 Long-Term Incentive Awards. By executing this Participation Agreement, you waive your right to any and all long-term incentive awards, whether consisting of cash or equity, previously awarded to you in November 2015 with respect to fiscal year 2016 (collectively, the "FY 2016 Awards"), and the FY 2016 Awards are hereby cancelled without any further action on behalf of you or the Company.

Waiver of Second Half Fiscal Year 2016 ("2H FY 2016") Executive Committee Discretionary Annual Incentive Plan ("EC DAIP") Awards. By executing this Participation

Agreement, you acknowledge that the Company does not intend to grant any awards under the EC DAIP for 2H FY 2016, and you waive any rights you may have had to receive such EC DAIP awards.

Administration. The Plan and this Participation Agreement shall be administered by the Committee, as such term is defined in the Plan. All calculations and determinations made by the Committee with respect to this Participation Agreement and your Quarterly Performance Incentive opportunity will be final and binding on you and the Company. In the event of a conflict between the terms of this Participation Agreement and the Plan, the Plan shall control in all respects.

We are pleased to be able to offer this Quarterly Performance Incentive opportunity to you and truly appreciate your dedication and commitment to the Company and its affiliates. If you have further questions about this plan please contact your HR leadership. We are excited about the future and look forward to our success together.

Very truly yours,

AVAYA INC.

Name: Dave Vellequette
Title: Senior Vice President
& Chief Financial Officer

ACCEPTED BY:

_____

(Name)

Exhibit 10.5

Personal and Confidential

May 13, 2016

[Name]

Re: Retention Bonus

Dear [First Name]:

On behalf of Avaya Inc. (the "Company"), I am pleased to offer you the opportunity to receive a retention bonus, if you agree to the terms and conditions contained in this letter agreement (this "Retention Bonus Agreement"), which shall be effective as of the date set forth below in Section 7 (such date, the "Effective Date").

1. **Retention Bonus.** Subject to the terms and conditions set forth herein, you will receive a payment in the amount of $[●] (the "Retention Bonus"), subject to the Company's receipt of your countersignature on this Retention Bonus Agreement.

Notwithstanding the foregoing, in the event you terminate your employment with the Company without Good Reason (as defined below) or the Company terminates your employment for Cause (as defined below), in each case, before the eighteen (18)-month anniversary of the Effective Date (with such anniversary date, the "Retention Date"), you will be required to repay to the Company, within ten (10) days of such termination, a pro-rated portion of the Retention Bonus (net of taxes withheld from the Retention Bonus; provided, that if repayment is required after calendar year 2016, you must pay the Company a pro-rated portion of the gross amount of the Retention Bonus) that was paid to you, based on the length of your continued employment with the Company from the Effective Date through the termination date. This pro-rated portion will be calculated as per the following formula: (x)(i) the total amount of this Retention Bonus, net of taxes withheld, if repayment is during calendar year 2016 or (ii) the total gross amount of this Retention Bonus if repayment is after calendar year 2016, *times* (y) a ratio, the numerator of which is the total number of months of your continued employment (for which one day or more of service shall count as a full month of employment) from and including the Effective Date to and including the termination date, and the denominator of which is eighteen (18), rounded to the nearest cent. For example, if your termination date occurs nine (9) months after the Effective Date, you will be required to repay to the Company 50% of the gross Retention Bonus.

For purposes of this Retention Bonus Agreement, "Cause," means your (i) material breach of your duties and responsibilities, which is not remedied promptly after the Company gives you written notice specifying such breach, (ii) commission of a felony, (iii) commission of theft, fraud, a material breach of trust or any material act of dishonesty involving the Company or its subsidiaries, or (iv) significant violation of the code of conduct of the Company or its subsidiaries or of any statutory or common law duty of loyalty to the Company or its subsidiaries. "Good Reason" means any of the following, in each case, without your consent: (i) a change in your title or any material diminution of your responsibilities or authority or the assignment of any duties inconsistent with your position, in each case, compared to what was in effect as of the Effective Date; (ii) a material reduction of your annual base salary and/or target annual bonus as in effect on the Effective Date or as the same may be increased from time to time; (iii) the Company's failure to continue to provide you with benefits substantially similar to those enjoyed by you under any of the Company's benefit plans as of the Effective Date; (iv) a relocation

of your principal office location more than fifty (50) miles from the Company's offices at which you are based as of the Effective Date (except for required travel on the Company's business to an extent substantially consistent with your business travel obligations as of the Effective Date); (v) any material breach by the Company or its affiliates of any other written agreement with you that remains uncured for ten (10) days after you give written notice of such breach to the Company; or (vi) the failure of the Company to obtain the assumption in writing of its obligations under this Retention Bonus Agreement by any successor to all or substantially all of the assets of the Company. Your right to terminate your employment for Good Reason will not be affected by your incapacity due to physical or mental illness. Your continued employment will not constitute consent to, or a waiver of rights with respect to, any act or failure to act that constitutes Good Reason. Notwithstanding the foregoing, the occurrence of an event that would otherwise constitute Good Reason will cease to be an event constituting Good Reason, if you do not timely provide notice to the Company within ninety (90) days of the date on which you first become aware of the occurrence of that event. The Company shall have fifteen (15) days following receipt of your written notice in which to correct in all material respects the circumstances constituting Good Reason, and you must terminate employment within sixty (60) days following expiration of the Company's fifteen (15)-day cure period. Otherwise, any claim of such circumstances constituting "Good Reason" shall be deemed irrevocably waived by you. For purposes of this Retention Bonus Agreement, your good faith determination of "Good Reason" shall be conclusive.

2. **Withholding Taxes.** The Company may withhold from any and all amounts payable to you hereunder such federal, state and local taxes as the Company determines in its sole discretion may be required to be withheld pursuant to any applicable law or regulation.

3. **No Right to Continued Employment.** Nothing in this Retention Bonus Agreement will confer upon you any right to continued employment with the Company (or its subsidiaries or their respective successors) or to interfere in any way with the right of the Company (or its subsidiaries or their respective successors) to terminate your employment at any time.

4. **Other Benefits.** The Retention Bonus is a special incentive payment to you and will not be taken into account in computing the amount of salary or compensation for purposes of determining any bonus, incentive, pension, retirement, death or other benefit under any other bonus, incentive, pension, retirement, insurance or other employee benefit plan of the Company, unless such plan or agreement expressly provides otherwise.

5. **No Assignments; Successors.** This Retention Bonus Agreement is personal to each of the parties hereto. Except as provided in this paragraph, no party may assign or delegate any right or obligation hereunder without first obtaining the written consent of the other party hereto. The Company may assign this Retention Bonus Agreement to any successor to all or substantially all of the business and/or assets of the Company; provided that the Company will require such successor to expressly assume and agree to perform this Retention Bonus Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

6. **Non-Competition and Non-Solicitation**. In consideration of, among other things, your initial and/or ongoing relationship with the Company, this Retention Bonus, you being granted access to trade secrets and other confidential information of the Company and for other good and valuable consideration, the receipt and sufficiency of which you acknowledge, you undertake the obligations in **Appendix I** attached to this Retention Bonus Agreement.

7. **Effectiveness.** This Retention Bonus Agreement shall be effective May 1, 2016.

8. **Governing Law.** This Retention Bonus Agreement will be governed by, and construed under and in accordance with, the internal laws of the State of Delaware, without reference to rules relating to conflicts of laws.

9. **Counterparts.** This Retention Bonus Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

10. **Entire Agreement; Amendment.** This Retention Bonus Agreement constitutes the entire agreement between you and the Company with respect to the Retention Bonus and supersedes any and all prior agreements or understandings between you and the Company with respect to the Retention Bonus, whether written or oral. This Retention Bonus Agreement may be amended or modified only by a written instrument executed by you and the Company.

11. **Section 409A Compliance.** Although the Company does not guarantee the tax treatment of the Retention Bonus, the intent of the parties is that the Retention Bonus be exempt from the requirements of Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder, and accordingly, to the maximum extent permitted, this Retention Bonus Agreement shall be interpreted in a manner consistent therewith.

[no more text on this page]

This Retention Bonus Agreement is intended to be a binding obligation on you and the Company. If this Retention Bonus Agreement accurately reflects your understanding as to the terms and conditions of the Retention Bonus, please sign and date one copy of this Retention Bonus Agreement no later than May 20, 2016 and return the same to me for the Company's records. You should make a copy of the executed Retention Bonus Agreement for your records.

Very truly yours,

AVAYA INC.

Kevin J. Kennedy, CEO

The above terms and conditions accurately reflect our understanding regarding the terms and conditions of the Retention Bonus, and I hereby confirm my agreement to the same.

Dated:_____

_____
[Name]

Appendix I

NON-COMPETITION AND NON-SOLICITATION

By executing the Retention Bonus Agreement, you acknowledge the importance to Avaya Inc. and its affiliates existing now or in the future (hereinafter referred to collectively as the "Company"), of protecting its legitimate business interests. You further acknowledge that the Company is engaged in a highly competitive business, that its success in the marketplace depends upon the preservation of its confidential information and industry reputation, and that obtaining agreements such as this one from its employees is reasonable and necessary. You undertake the obligations in this **Appendix I** in consideration of your initial and/or ongoing relationship with the Company, this Retention Bonus, you being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which you acknowledge. As used in this **Appendix I**, "relationship" refers to your employment or association as an advisor, consultant or contractor, with the Company, as applicable.

1. **Non-Competition.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, directly or indirectly, whether paid or not (a) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for, (b) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (c) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate him or herself with, any business whose business, product(s) or operations are in any respect competitive with or otherwise similar to the Company's business. The foregoing covenant shall cover your activities in every part of the Territory.

"Territory" shall mean (a) all states of the United States of America from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of your relationship with the Company; and (b) all other countries from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of your relationship with the Company. The foregoing shall not prevent: (a) passive ownership by you of no more than two percent (2%) of the equity securities of any publicly traded company; or (b) you providing services to a division or subsidiary of a multi-division entity or holding company, so long as (i) no division or subsidiary to which you provide services is in any way competitive with or similar to the business of the Company, and (ii) you are not involved in, and do not otherwise engage in competition on behalf of, the multi-division entity or any competing division or subsidiary thereof.

2. **Non-Solicitation of Customers.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, directly or indirectly, contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any customer of the Company for the purposes of conducting business that is competitive with or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way; provided that this restriction applies (i) only with respect to those customers who are or have been a customer of the Company at any time within the immediately preceding one-year period or whose business has been solicited on behalf of the Company by any of its officers, employees or agents within said one-year period, other than by form letter, blanket mailing or published advertisement, and (ii) only if you have performed work for such customer during your relationship with the Company, have been introduced to, or otherwise have contact with, such customer as a result of your relationship with the Company, or have had access to Confidential Information which would assist in the solicitation of such customer. The foregoing restrictions shall not apply to general solicitation or advertising, including through media and trade publications.

"Confidential Information" means any and all information of the Company, whether or not in writing, that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, which, if disclosed, would assist in competition against the Company, including but not limited to (a) all proprietary information of the Company, including but not limited to the products and services, technical data, methods, processes, know-how, developments, inventions, and formulae of the Company, (b) the development, research, testing, marketing and financial activities and strategic plans of the Company, (c) the manner in which the Company operates, (d) its costs and sources of supply, (e) the identity and special needs of the customers, prospective customers and subcontractors of the Company, and (f) the people and organizations with whom the Company has business relationships and the substance of those relationships. Without limiting the generality of the foregoing, Confidential Information shall specifically include: (i) any and all product testing methodologies, product test results, research and development plans and initiatives, marketing research, plans and analyses, strategic business plans and budgets, and technology grids; (ii) any and all vendor, supplier and purchase records, including without limitation the identity of contacts at any vendor, any list of vendors or suppliers, any lists of purchase transactions and/or prices paid; and (iii) any and all customer lists and customer and sales records, including without limitation the identity of contacts at purchasers, any list of purchasers, and any list of sales transactions and/or prices charged by the Company. Confidential Information also includes any information that the Company may receive or has received from customers, subcontractors, suppliers or others, with any understanding, express or implied, that the information would not be disclosed. Notwithstanding the foregoing, Confidential Information does not include information that (A) is known or becomes known to the public in general (other than as a result of a breach by you), (B) is or has been independently developed or conceived by you without use of the Company's Confidential Information or (C) is or has been made known or disclosed to you by a third party without a breach of any obligation of confidentiality such third party may have to the Company of which you are aware.

3. **Non-Solicitation/Non-Hiring of Employees and Independent Contractors.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, and will not assist anyone else to, (a) hire or solicit for hiring any employee of the Company or seek to persuade or induce any employee of the Company to discontinue employment with the Company, or (b) hire or engage any independent contractor providing services to the Company, or solicit, encourage or induce any independent contractor providing services to the Company to terminate or diminish in any substantial respect its relationship with the Company. For the purposes of this **Appendix I**, an "employee" or "independent contractor" of the Company is any person who is or was such at any time within the preceding six-month period. The foregoing restrictions shall not apply to general solicitation or advertising, including through media, trade publications and general job postings.

4. **Non-Solicitation of Others.** You agree that for a period of twelve (12) months immediately following the termination of your relationship with the Company, for any reason, whether voluntary or involuntary, you will not solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two year period preceding the termination of your relationship with the Company, to terminate or adversely modify any business relationship with the Company, or not to proceed with, or enter into, any business relationship with the Company, nor shall you otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

5. **Notice of New Address and Employment.** During the 12-month period immediately following the termination of your relationship with the Company, for any reason, whether voluntary or involuntary, you will promptly provide the Company with pertinent information concerning each new job or other business activity in which you engage or plan to engage during such 12-month period as the Company may reasonably request in order to determine your continued compliance with your obligations under this **Appendix I**. You shall notify your new employer(s) of your obligations under this **Appendix I**,

and hereby consent to notification by the Company to such employer(s) concerning your obligations under this **Appendix I**. The Company shall treat any such notice and information as confidential, and will not use or disclose the information contained therein except to enforce its rights hereunder. Any breach of this Section 5 shall constitute a material breach of this agreement.

6. **Acknowledgement of Reasonableness; Remedies**. In signing or electronically accepting the Retention Bonus Agreement, you give the Company assurance that you have carefully read and considered all the terms and conditions hereof. You acknowledge without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the good will, Confidential Information and other legitimate business interests of the Company, that each and every one of those restraints is reasonable in respect to subject matter, length of time, and geographic area; and that these restraints will not prevent you from obtaining other suitable employment during the period in which you are bound by them. You will never assert, or permit to be asserted on your behalf, in any forum, any position contrary to the foregoing. Were you to breach any of the provisions of this **Appendix I**, the harm to the Company would be irreparable. Therefore, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and you agree that injunctive relief is an appropriate remedy to address any such breach. Without limiting the generality of the foregoing, or other forms of relief available to the Company, in the event of your breach of any of the provisions of this **Appendix I**, you will forfeit any award or payment made pursuant to any applicable severance or other incentive plan or program, or if a payment has already been made, you will be obligated to return the proceeds to the Company.

7. **Unenforceability**. In the event that any provision of this **Appendix I** shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The 12-month period of restriction set forth in Sections 1, 2, 3 and 4 hereof and the 12-month period of obligation set forth in Section 5 hereof shall be tolled, and shall not run, during any period of time in which you are in violation of the terms thereof, in order that the Company shall have the agreed-upon temporal protection recited herein.

8. **Governing Law and Consent to Jurisdiction**. The terms of this **Appendix I** shall be governed by and interpreted in accordance with the laws of the State of Delaware, as if performed wholly within the state and without giving effect to the principles of conflicts of law. In the event of any alleged breach of this **Appendix I**, you consent and submit to the exclusive jurisdiction of the federal and state courts in and of the State of Delaware. You will accept service of process by registered or certified mail or the equivalent directed to your last known address on the books of the Company, or by whatever other means are permitted by such court.

9. **Attorneys' Fees and Costs**. Except as prohibited by law, you shall indemnify the Company from any and all costs and fees, including attorneys' fees, incurred by the Company in successfully enforcing the terms of this Retention Bonus Agreement against you (including, but not limited to, a court partially or fully granting any application, motion, or petition by the Company for a temporary restraining order, preliminary injunction, or permanent injunction), as a result of your breach or threatened breach of any provision contained herein. The Company shall be entitled to recover from you its costs and fees incurred to date at any time during the course of a dispute (i.e., final resolution of such dispute is not a prerequisite) upon written demand to you.

10. **Enforcement**. The Company agrees that it will not enforce Sections 1, 2, 4 or the portion of Section 3 that prohibits you from hiring Company employees and independent contractors to restrict your employment in any jurisdiction in which such enforcement is contrary to law or regulation to the extent that you are a resident of such jurisdiction at the time your relationship with the Company terminates and does not otherwise change residency during the restriction period.

Exhibit 10.6

Personal and Confidential

May 13, 2016

Mr. James M. Chirico, Jr.

Re: Retention Bonus

Dear Jim:

On behalf of Avaya Inc. (the "Company"), I am pleased to offer you the opportunity to receive a retention bonus, if you agree to the terms and conditions contained in this letter agreement (this "Retention Bonus Agreement"), which shall be effective as of the date set forth below in Section 8 (such date, the "Effective Date").

1. **Retention Bonus.** Subject to the terms and conditions set forth herein, you will receive a payment in the amount of $2,000,000 (the "Retention Bonus"), subject to the Company's receipt of your countersignature on this Retention Bonus Agreement.

Notwithstanding the foregoing, in the event you terminate your employment with the Company without Good Reason (as defined below) or the Company terminates your employment for Cause (as defined below), in each case, before the eighteen (18)-month anniversary of the Effective Date (with such anniversary date, the "Retention Date"), you will be required to repay to the Company, within ten (10) days of such termination, a pro-rated portion of the Retention Bonus (net of taxes withheld from the Retention Bonus; provided, that if repayment is required after calendar year 2016, you must pay the Company a pro-rated portion of the gross amount of the Retention Bonus) that was paid to you, based on the length of your continued employment with the Company from the Effective Date through the termination date. This pro-rated portion will be calculated as per the following formula: (x)(i) the total amount of this Retention Bonus, net of taxes withheld, if repayment is during calendar year 2016 or (ii) the total gross amount of this Retention Bonus if repayment is after calendar year 2016, *times* (y) a ratio, the numerator of which is the total number of months of your continued employment (for which one day or more of service shall count as a full month of employment) from and including the Effective Date to and including the termination date, and the denominator of which is eighteen (18), rounded to the nearest cent. For example, if your termination date occurs nine (9) months after the Effective Date, you will be required to repay to the Company 50% of the gross Retention Bonus.

For purposes of this Retention Bonus Agreement, "Cause," means your (i) material breach of your duties and responsibilities, which is not remedied promptly after the Company gives you written notice specifying such breach, (ii) commission of a felony, (iii) commission of theft, fraud, a material breach of trust or any material act of dishonesty involving the Company or its subsidiaries, or (iv) significant violation of the code of conduct of the Company or its subsidiaries or of any statutory or common law duty of loyalty to the Company or its subsidiaries. "Good Reason" means any of the following, in each case, without your consent: (i) a change in your title or any material diminution of your responsibilities or authority or the assignment of any duties inconsistent with your position, in each case, compared to what was in effect as of the Effective Date; (ii) a material reduction of your annual base salary and/or target annual bonus as in effect on the Effective Date or as the same may be increased from time to time; (iii) the Company's failure to continue to provide you with benefits substantially similar to those enjoyed by you under any of the Company's benefit plans as of the Effective Date; (iv) a relocation of your principal office location more than fifty (50) miles from the Company's offices at which you are

based as of the Effective Date (except for required travel on the Company's business to an extent substantially consistent with your business travel obligations as of the Effective Date); (v) any material breach by the Company or its affiliates of any other written agreement with you that remains uncured for ten (10) days after you give written notice of such breach to the Company; or (vi) the failure of the Company to obtain the assumption in writing of its obligations under this Retention Bonus Agreement by any successor to all or substantially all of the assets of the Company. Your right to terminate your employment for Good Reason will not be affected by your incapacity due to physical or mental illness. Your continued employment will not constitute consent to, or a waiver of rights with respect to, any act or failure to act that constitutes Good Reason. Notwithstanding the foregoing, the occurrence of an event that would otherwise constitute Good Reason will cease to be an event constituting Good Reason, if you do not timely provide notice to the Company within ninety (90) days of the date on which you first become aware of the occurrence of that event. The Company shall have fifteen (15) days following receipt of your written notice in which to correct in all material respects the circumstances constituting Good Reason, and you must terminate employment within sixty (60) days following expiration of the Company's fifteen (15)-day cure period. Otherwise, any claim of such circumstances constituting "Good Reason" shall be deemed irrevocably waived by you. For purposes of this Retention Bonus Agreement, your good faith determination of "Good Reason" shall be conclusive.

2. **Withholding Taxes.** The Company may withhold from any and all amounts payable to you hereunder such federal, state and local taxes as the Company determines in its sole discretion may be required to be withheld pursuant to any applicable law or regulation.

3. **Modification to November 2015 Retention Award.** The retention bonus in the amount of $1,000,000 which the Company granted you on November 20, 2015, $500,000 of which was to be paid at the end of fiscal year 2016 (the "First Original Retention Payment") and $500,000 of which was to be paid at the end of fiscal year 2017 (the "Second Original Retention Payment"), *provided* you were actively employed by the Company through the end of fiscal year 2016 and 2017, respectively, will be modified as follows:

(a) Payment of the First Original Retention Payment will be accelerated so that you will receive the First Original Retention Payment when the Retention Bonus is paid to you;

(b) In the event you terminate your employment with the Company without Good Reason (as defined above) or the Company terminates your employment for Cause (as defined above), in each case, before September 30, 2016, you will be required to repay to the Company, within ten (10) days of such termination, a pro-rated portion of the First Original Retention Payment (net of taxes withheld from the First Original Retention Payment; provided, that if repayment is required after calendar year 2016, you must pay the Company a pro-rated portion of the gross amount of the First Original Retention Payment) that was paid to you, based on the length of your continued employment with the Company from November 20, 2015 through the termination date;

(c) This pro-rated portion will be calculated as per the following formula: (x)(i) the total amount of the First Original Retention Payment, net of taxes withheld, if repayment is during calendar year 2016 or (ii) the total gross amount of the First Original Retention Payment if repayment is after calendar year 2016, *times* (y) a ratio, the numerator of which is the total number of months of your continued employment (for which one day or more of service shall count as a full month of employment) from and including November 20, 2015 to and including the termination date, and the denominator of which is eleven (11), rounded to the nearest cent; and

(d) The Second Original Retention Payment will be cancelled and by executing this Retention Bonus Agreement you acknowledge that the Company does not intend to pay the Second Original Retention Payment and you waive any rights you may have to receive such Second Original Retention Payment.

4. **No Right to Continued Employment.** Nothing in this Retention Bonus Agreement will confer upon you any right to continued employment with the Company (or its subsidiaries or their respective successors) or to interfere in any way with the right of the Company (or its subsidiaries or their respective successors) to terminate your employment at any time.

5. **Other Benefits.** The Retention Bonus is a special incentive payment to you and will not be taken into account in computing the amount of salary or compensation for purposes of determining any bonus, incentive, pension, retirement, death or other benefit under any other bonus, incentive, pension, retirement, insurance or other employee benefit plan of the Company, unless such plan or agreement expressly provides otherwise.

6. **No Assignments; Successors.** This Retention Bonus Agreement is personal to each of the parties hereto. Except as provided in this paragraph, no party may assign or delegate any right or obligation hereunder without first obtaining the written consent of the other party hereto. The Company may assign this Retention Bonus Agreement to any successor to all or substantially all of the business and/or assets of the Company; provided that the Company will require such successor to expressly assume and agree to perform this Retention Bonus Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

7. **Non-Competition and Non-Solicitation**. In consideration of, among other things, your initial and/or ongoing relationship with the Company, this Retention Bonus and the First Original Retention Payment, you being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which you acknowledge, you undertake the obligations in **Appendix I** attached to this Retention Bonus Agreement.

8. **Effectiveness.** This Retention Bonus Agreement shall be effective May 1, 2016.

9. **Governing Law.** This Retention Bonus Agreement will be governed by, and construed under and in accordance with, the internal laws of the State of Delaware, without reference to rules relating to conflicts of laws.

10. **Counterparts.** This Retention Bonus Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

11. **Entire Agreement; Amendment.** This Retention Bonus Agreement constitutes the entire agreement between you and the Company with respect to the Retention Bonus and supersedes any and all prior agreements or understandings between you and the Company with respect to the Retention Bonus, whether written or oral. This Retention Bonus Agreement may be amended or modified only by a written instrument executed by you and the Company.

12. **Section 409A Compliance.** Although the Company does not guarantee the tax treatment of the Retention Bonus, the intent of the parties is that the Retention Bonus be exempt from the requirements of Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder, and accordingly, to the maximum extent permitted, this Retention Bonus Agreement shall be interpreted in a manner consistent therewith.

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This Retention Bonus Agreement is intended to be a binding obligation on you and the Company. If this Retention Bonus Agreement accurately reflects your understanding as to the terms and conditions of the Retention Bonus, please sign and date one copy of this Retention Bonus Agreement no later than May 20, 2016 and return the same to me for the Company's records. You should make a copy of the executed Retention Bonus Agreement for your records.

Very truly yours,

AVAYA INC.

Kevin J. Kennedy, CEO

The above terms and conditions accurately reflect our understanding regarding the terms and conditions of the Retention Bonus, and I hereby confirm my agreement to the same.

Dated: May 16, 2016

/s/ James M. Chirico, Jr.
James M. Chirico, Jr.

Appendix I

NON-COMPETITION AND NON-SOLICITATION

By executing the Retention Bonus Agreement, you acknowledge the importance to Avaya Inc. and its affiliates existing now or in the future (hereinafter referred to collectively as the "Company"), of protecting its legitimate business interests. You further acknowledge that the Company is engaged in a highly competitive business, that its success in the marketplace depends upon the preservation of its confidential information and industry reputation, and that obtaining agreements such as this one from its employees is reasonable and necessary. You undertake the obligations in this **Appendix I** in consideration of your initial and/or ongoing relationship with the Company, this Retention Bonus, you being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which you acknowledge. As used in this **Appendix I**, "relationship" refers to your employment or association as an advisor, consultant or contractor, with the Company, as applicable.

1. **Non-Competition.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, directly or indirectly, whether paid or not (a) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for, (b) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (c) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate him or herself with, any business whose business, product(s) or operations are in any respect competitive with or otherwise similar to the Company's business. The foregoing covenant shall cover your activities in every part of the Territory.

"Territory" shall mean (a) all states of the United States of America from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of your relationship with the Company; and (b) all other countries from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of your relationship with the Company. The foregoing shall not prevent: (a) passive ownership by you of no more than two percent (2%) of the equity securities of any publicly traded company; or (b) you providing services to a division or subsidiary of a multi-division entity or holding company, so long as (i) no division or subsidiary to which you provide services is in any way competitive with or similar to the business of the Company, and (ii) you are not involved in, and do not otherwise engage in competition on behalf of, the multi-division entity or any competing division or subsidiary thereof.

2. **Non-Solicitation of Customers.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, directly or indirectly, contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any customer of the Company for the purposes of conducting business that is competitive with or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way; provided that this restriction applies (i) only with respect to those customers who are or have been a customer of the Company at any time within the immediately preceding one-year period or whose business has been solicited on behalf of the Company by any of its officers, employees or agents within said one-year period, other than by form letter, blanket mailing or published advertisement, and (ii) only if you have performed work for such customer during your relationship with the Company, have been introduced to, or otherwise have contact with, such customer as a result of your relationship with the Company, or have had access to Confidential Information which would assist in the solicitation of such customer. The foregoing restrictions shall not apply to general solicitation or advertising, including through media and trade publications.

"Confidential Information" means any and all information of the Company, whether or not in writing, that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, which, if disclosed, would assist in competition against the Company, including but not limited to (a) all proprietary information of the Company, including but not limited to the products and services, technical data, methods, processes, know-how, developments, inventions, and formulae of the Company, (b) the development, research, testing, marketing and financial activities and strategic plans of the Company, (c) the manner in which the Company operates, (d) its costs and sources of supply, (e) the identity and special needs of the customers, prospective customers and subcontractors of the Company, and (f) the people and organizations with whom the Company has business relationships and the substance of those relationships. Without limiting the generality of the foregoing, Confidential Information shall specifically include: (i) any and all product testing methodologies, product test results, research and development plans and initiatives, marketing research, plans and analyses, strategic business plans and budgets, and technology grids; (ii) any and all vendor, supplier and purchase records, including without limitation the identity of contacts at any vendor, any list of vendors or suppliers, any lists of purchase transactions and/or prices paid; and (iii) any and all customer lists and customer and sales records, including without limitation the identity of contacts at purchasers, any list of purchasers, and any list of sales transactions and/or prices charged by the Company. Confidential Information also includes any information that the Company may receive or has received from customers, subcontractors, suppliers or others, with any understanding, express or implied, that the information would not be disclosed. Notwithstanding the foregoing, Confidential Information does not include information that (A) is known or becomes known to the public in general (other than as a result of a breach by you), (B) is or has been independently developed or conceived by you without use of the Company's Confidential Information or (C) is or has been made known or disclosed to you by a third party without a breach of any obligation of confidentiality such third party may have to the Company of which you are aware.

3. **Non-Solicitation/Non-Hiring of Employees and Independent Contractors.** During your relationship with the Company and for a period of twelve (12) months immediately following the termination of your relationship with the Company for any reason, whether voluntary or involuntary, you will not, and will not assist anyone else to, (a) hire or solicit for hiring any employee of the Company or seek to persuade or induce any employee of the Company to discontinue employment with the Company, or (b) hire or engage any independent contractor providing services to the Company, or solicit, encourage or induce any independent contractor providing services to the Company to terminate or diminish in any substantial respect its relationship with the Company. For the purposes of this **Appendix I**, an "employee" or "independent contractor" of the Company is any person who is or was such at any time within the preceding six-month period. The foregoing restrictions shall not apply to general solicitation or advertising, including through media, trade publications and general job postings.

4. **Non-Solicitation of Others.** You agree that for a period of twelve (12) months immediately following the termination of your relationship with the Company, for any reason, whether voluntary or involuntary, you will not solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two year period preceding the termination of your relationship with the Company, to terminate or adversely modify any business relationship with the Company, or not to proceed with, or enter into, any business relationship with the Company, nor shall you otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

5. **Notice of New Address and Employment.** During the 12-month period immediately following the termination of your relationship with the Company, for any reason, whether voluntary or involuntary, you will promptly provide the Company with pertinent information concerning each new job or other business activity in which you engage or plan to engage during such 12-month period as the Company may reasonably request in order to determine your continued compliance with your obligations under this **Appendix I**. You shall notify your new employer(s) of your obligations under this **Appendix I**,

and hereby consent to notification by the Company to such employer(s) concerning your obligations under this **Appendix I**. The Company shall treat any such notice and information as confidential, and will not use or disclose the information contained therein except to enforce its rights hereunder. Any breach of this Section 5 shall constitute a material breach of this agreement.

6. **Acknowledgement of Reasonableness; Remedies**. In signing or electronically accepting the Retention Bonus Agreement, you give the Company assurance that you have carefully read and considered all the terms and conditions hereof. You acknowledge without reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the good will, Confidential Information and other legitimate business interests of the Company, that each and every one of those restraints is reasonable in respect to subject matter, length of time, and geographic area; and that these restraints will not prevent you from obtaining other suitable employment during the period in which you are bound by them. You will never assert, or permit to be asserted on your behalf, in any forum, any position contrary to the foregoing. Were you to breach any of the provisions of this **Appendix I**, the harm to the Company would be irreparable. Therefore, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and you agree that injunctive relief is an appropriate remedy to address any such breach. Without limiting the generality of the foregoing, or other forms of relief available to the Company, in the event of your breach of any of the provisions of this **Appendix I**, you will forfeit any award or payment made pursuant to any applicable severance or other incentive plan or program, or if a payment has already been made, you will be obligated to return the proceeds to the Company.

7. **Unenforceability**. In the event that any provision of this **Appendix I** shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The 12-month period of restriction set forth in Sections 1, 2, 3 and 4 hereof and the 12-month period of obligation set forth in Section 5 hereof shall be tolled, and shall not run, during any period of time in which you are in violation of the terms thereof, in order that the Company shall have the agreed-upon temporal protection recited herein.

8. **Governing Law and Consent to Jurisdiction**. The terms of this **Appendix I** shall be governed by and interpreted in accordance with the laws of the State of Delaware, as if performed wholly within the state and without giving effect to the principles of conflicts of law. In the event of any alleged breach of this **Appendix I**, you consent and submit to the exclusive jurisdiction of the federal and state courts in and of the State of Delaware. You will accept service of process by registered or certified mail or the equivalent directed to your last known address on the books of the Company, or by whatever other means are permitted by such court.

9. **Attorneys' Fees and Costs**. Except as prohibited by law, you shall indemnify the Company from any and all costs and fees, including attorneys' fees, incurred by the Company in successfully enforcing the terms of this Retention Bonus Agreement against you (including, but not limited to, a court partially or fully granting any application, motion, or petition by the Company for a temporary restraining order, preliminary injunction, or permanent injunction), as a result of your breach or threatened breach of any provision contained herein. The Company shall be entitled to recover from you its costs and fees incurred to date at any time during the course of a dispute (i.e., final resolution of such dispute is not a prerequisite) upon written demand to you.

10. **Enforcement**. The Company agrees that it will not enforce Sections 1, 2, 4 or the portion of Section 3 that prohibits you from hiring Company employees and independent contractors to restrict your employment in any jurisdiction in which such enforcement is contrary to law or regulation to the extent that you are a resident of such jurisdiction at the time your relationship with the Company terminates and does not otherwise change residency during the restriction period.

Exhibit 10.7

AVAYA HOLDINGS CORP.
CASH LONG-TERM INCENTIVE PLAN

Effective as of May 19, 2016

1. **PURPOSE**. The purpose of the Avaya Holdings Corp. Cash Long-Term Incentive Plan (the "**Plan**") is to provide cash incentives to selected employees of Avaya Holdings Corp. and its subsidiaries (collectively, the "**Company**") who are expected to be in a position to increase the value of the Company through their efforts. The Plan will reward individuals based on their performance and that of the Company and it is designed to enhance the ability of the Company to attract and retain individuals of exceptional talent upon whom, in large measure, the sustained progress, growth and profitability of the Company depends.

2. **DEFINITIONS**. As used in the Plan, the following terms shall have the meanings set forth below:

(a) **"Administrator"** shall mean the CEO or any delegate of the CEO.

(b) **"Award"** shall mean a cash payment.

(c) **"Award Agreement"** shall mean a written agreement between the Company and the Participant evidencing the Award.

(d) **"Board"** shall mean the Board of Directors of Avaya Holdings Corp.

(e) **"Cause"** shall mean:

(i) If the Participant is a party to an Employment agreement with the Company and such agreement provides for a definition of Cause, the definition contained therein; or

(ii) If no such agreement exists or if such agreement does not define Cause, (A) a material breach by the Participant of the Participant's duties and responsibilities which is not promptly remedied after the Company gives the Participant written notice specifying such breach, or (B) the commission by the Participant of a felony, or (C) the commission by the Participant of theft, fraud, a material breach of trust or any material act of dishonesty involving the Company, or (D) a significant violation by the Participant of the code of conduct of the Company or of any statutory or common law duty of loyalty to the Company.

(f) "**CEO**" means the Chief Executive Officer of Avaya Holdings Corp.

(g) **"Change in Control"** means the first (and only the first) to occur of the following:

(i) the consummation of a merger, sale, transfer, conveyance or transaction involving Avaya Holdings Corp., Avaya Inc. or its or their affiliates, such that, immediately following such transaction or disposition (or series of related transactions or

dispositions), the Sponsors and their affiliates beneficially own securities representing less than fifty percent (50%) of the voting power of all outstanding voting securities of Avaya Holdings Corp.;

(ii) the disposition, by the Sponsors and their affiliates, in one or a series of transactions, of the equity securities of Avaya Holdings Corp., such that the Sponsors and their affiliates beneficially own securities representing less than fifty percent (50%) of the voting power of all outstanding voting securities of Avaya Holdings Corp.; or

(iii) the consummation of the sale, lease, transfer, conveyance or other disposition, in one or a series of transactions, of all or substantially all of the assets of Avaya Holdings Corp., Avaya Inc. and their subsidiaries taken as a whole, to any "person" (as such term is defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) other than to a Sponsor or any of its affiliates.

(h) "**Change in Control Period**" means the period commencing on the first date on which a Change in Control occurs and ending on the second anniversary of such date.

(i) "**Code**" means the United States Internal Revenue Code, as may be amended from time to time, and the regulations promulgated thereunder.

(j) **"Committee"** shall mean the Compensation Committee of the Board (or any successor committee or delegate appointed by the Board).

(k) "**Disability**" means a disability that would entitle the Participant to long-term disability benefits under the Company's or any of its subsidiaries' long-term disability plans to which the Participant participates. Notwithstanding the foregoing, in any case in which a benefit that constitutes or includes "nonqualified deferred compensation" subject to Code Section 409A would be payable by reason of Disability, the term "Disability" shall mean a disability described in Treas. Regs. Section 1.409A-3(i)(4)(i)(A).

(l) "**Employment**" means the employment relationship with the Company. A Participant who receives an Award in his or her capacity as a Company employee will be deemed to cease Employment when the employee-employer relationship with the Company ceases. If a Participant's relationship is with a subsidiary of the Company and that subsidiary ceases to be a subsidiary of the Company, the Participant will be deemed to cease Employment when the entity ceases to be a subsidiary of the Company unless the Participant transfers Employment to the Company or its remaining subsidiaries. In any case where a cessation of a Participant's Employment would affect the Participant's rights to payment under an Award that includes nonqualified deferred compensation subject to Code Section 409A, references to cessation of Employment shall be construed to require a "separation from service" as defined in Code Section 409A.

(m) "**Good Reason**" means any of the following, in each case, without the Participant's consent:

(i) any material diminution of the Participant's responsibilities or authority or the assignment of any duties inconsistent with his or her position, from those in effect immediately prior to a Change in Control;

(ii) a reduction of the Participant's annual base salary and/or bonus as in effect on the date of a Change in Control or as the same may be increased from time to time;

(iii) a relocation of the Participant's principal office location more than fifty (50) miles from the Company's offices at which the Participant is based prior to a Change in Control (except for required travel on the Company's business to an extent substantially consistent with the Participant's business travel obligations immediately prior to the Change in Control);

(iv) any material breach by the Company or its affiliates of any other written agreement with the Participant that remains uncured for ten (10) days after written notice of such breach is given to the Company; or

(v) the failure of the Company to obtain the assumption in writing of its obligations under this Plan or any Award Agreement by any successor to all or substantially all of the assets of the Company.

The Participant's right to terminate the his or her Employment for Good Reason will not be affected by his or her incapacity due to physical or mental illness. The Participant's continued Employment will not constitute consent to, or a waiver of rights with respect to, any act or failure to act that constitutes Good Reason. Notwithstanding the foregoing, the occurrence of an event that would otherwise constitute Good Reason will cease to be an event constituting Good Reason, if the Participant does not timely provide notice to the Company within ninety (90) days of the date on which the Participant first becomes aware of the occurrence of that event. The Company shall have fifteen (15) days following receipt of the Participant's written notice in which to correct in all material respects the circumstances constituting Good Reason, and the Participant must terminate Employment within sixty (60) days following expiration of the Company's fifteen (15)-day cure period. Otherwise, any claim of such circumstances constituting "Good Reason" shall be deemed irrevocably waived by the Participant. For purposes of this Plan, the Executive's good faith determination of "Good Reason" shall be conclusive.

(n) **"Participant"** shall mean any person selected by the Administrator to participate in the Plan.

(o) "**Performance Criteria**" shall mean specified criteria the satisfaction of which is a condition for the grant, vesting or full enjoyment of certain Awards. Performance Criteria may be based on individual performance, other Company and business unit financial objectives, customer satisfaction indicators, operational efficiency measures, and other measurable objectives tied to the Company's success or such other criteria as the Administrator or the Committee shall determine.

(p) "**Sponsors**" means each of (i)(A) Silver Lake Partners II, L.P., (B) Silver Lake Technology Investors II, L.P., (C) Silver Lake Partners III, L.P., and Silver Lake Technology Investors III, L.P. and their respective affiliates who become stockholders of the Company, and

(ii)(A) TPG Partners V, L.P., (B) TPG FOF V-A, L.P., (C) TPG VOV F-B, L.P. and their respective affiliates who become stockholders of the Company.

3. **ELIGIBILITY.**

(a) Individuals employed by the Company are eligible to be Participants under the Plan and may be considered for an Award. The Administrator will select Participants from among those individuals employed by the Company who, in the opinion of the Administrator, are in a position to make a significant contribution to the success of the Company.

(b) An employee is not rendered ineligible to be a Participant by reason of being a member of the Board. Nothing in this section shall be construed to entitle a Participant to an Award.

4. **AWARDS - GENERAL.**

(a) Subject to the limitations provided herein, the Administrator will determine the terms of all Awards, including, without limitation, the vesting terms and the Performance Criteria (if any). In addition, the amount paid to a Participant with respect to an Award shall be determined in the sole discretion of the Administrator or in the sole discretion of such person or committee empowered by the Administrator; *provided*, *however*, that in accordance with the Committee's charter (as then in effect), the Committee, after consideration of the Administrator's recommendation, will determine the terms and amounts of each Award to certain Company officers.

(b) The Administrator will furnish to each Participant an Award Agreement setting forth the terms applicable to the Participant's Award, including, without limitation, the vesting terms and the Performance Criteria (if any). By entering into an Award Agreement, the Participant agrees to the terms of the Award and of the Plan.

(c) Cash payouts of vested Awards will be made by the Company through payroll as soon as practicable after completion of a particular vesting period.

5. **OTHER CONDITIONS.**

(a) No person shall have any claim to an Award under the Plan and there is no obligation for uniformity of treatment of Participants under the Plan. Awards under the Plan may not be assigned or alienated.

(b) Neither the Plan nor any action taken hereunder shall be construed as giving to any Participant the right to be retained in the employ of the Company.

(c) The Company shall have the right to deduct from any Award to be paid under the Plan any federal, state or local taxes required by law to be withheld with respect to such payment.

(d) Awards under the Plan will not be included in base compensation or covered compensation under the retirement programs of the Company for purposes of determining pensions, retirement and/or death related benefits.

6. **EFFECT OF TERMINATION OF EMPLOYMENT.** Subject to Section 7 below, if a Participant's Employment with the Company is terminated for any reason (including, without limitation, by the Company with or without Cause, by the Participant or due to death or Disability) before the Award is paid, then any outstanding and unvested Award shall be automatically forfeited. For the avoidance of doubt, vested but unpaid Awards will be paid (to the extent vested). Notwithstanding the foregoing, the Award(s) of a Participant who is on a Company-approved leave of absence or a leave of absence permitted or required under any law or regulation within the country of local jurisdiction in which such Participant's Employment is based will not be automatically forfeited under this section.

7. **EFFECT OF TERMINATION OF EMPLOYMENT IN CONNECTION WITH A CHANGE IN CONTROL.** If a Participant's Employment with the Company is terminated during the Change in Control Period (a) by the Company for any reason other than for Cause, (b) by the Participant for Good Reason or (c) due to the Participant's death or Disability, the vesting of all outstanding Awards granted to such Participant shall be accelerated and such Awards shall be fully vested as of the Participant's final day of Employment with the Company.

8. **PLAN ADMINISTRATION**.

(a) The Administrator shall have full discretionary power to administer and interpret this Plan and to establish rules for its administration (including the power to delegate authority to others to act for and on behalf of the Administrator). In making any determinations under or referred to in this Plan, the Administrator and its delegates, if any, may, but are not required, to rely on opinions, reports or statements of employees of the Company and of counsel, public accountants and other professional or expert persons.

(b) This Plan shall be governed by and interpreted under the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

9. **MODIFICATION OR TERMINATION OF PLAN.** The Board or the Committee may modify or terminate this Plan at any time, effective as of such date as the Board or the Committee, respectively, may determine. Notwithstanding the foregoing, any authorized officer of the Company, with the concurrence of the Company's legal advisors, shall be authorized to make minor or administrative changes in this Plan or changes required by or made desirable by law or government regulation. Such a modification may affect present and future Participants.

10. **TERM OF THE PLAN.** This Plan shall continue in full force and effect until such time as it is terminated by the Board or the Committee in accordance with Section 9.

11. **SUCCESSORS**. All obligations of the Company under this Plan, with respect to Awards granted hereunder, shall be binding upon any successor to the Company. The Company

shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform its obligations under this Plan and/or any Award Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Plan, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. **OTHER COMPENSATION ARRANGEMENTS.** The existence of the Plan or the grant of any Award will not in any way affect the right of the Company to award a person bonuses or other compensation in addition to Awards under the Plan.

13. **COMPLIANCE WITH CODE SECTION 409A.** It is the intent that this Plan comply with the requirements of Code Section 409A so that none of the payments to be provided hereunder will be subject to the additional tax imposed under Code Section 409A (including, without limitation, that, notwithstanding anything herein to the contrary, no payout of a vested Award will occur later than the later of (a) the fifteenth day of the third month of the Company's fiscal year following the date such Award vested, or (b) the fifteenth day of the third month of the calendar year following the date the Award vested), and any ambiguities herein will be interpreted to so comply.

14. **CLAWBACK.** Notwithstanding any other provisions in this Plan, to the extent that an Award is subject to recovery under any law, government regulation or stock exchange listing requirement, the Award will be subject to such deductions and/or clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

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IN WITNESS WHEREOF, the Company has caused this Plan to be adopted and executed as of the date first listed above.

AVAYA HOLDINGS CORP.

By: /s/ David Vellequette
Name: David Vellequette
Title: Senior Vice President and Chief Financial Officer

Exhibit 10.8

AVAYA HOLDINGS CORP.
LONG-TERM CASH AWARD AGREEMENT

AVAYA HOLDINGS CORP. STRONGLY ENCOURAGES YOU TO SEEK THE ADVICE OF YOUR OWN LEGAL AND FINANCIAL ADVISORS WITH RESPECT TO YOUR AWARD AND ITS TAX CONSEQUENCES.

Participant	**[Participant Name]**
Grant Date	**[Grant Date]**
Award Amount	**$[Grant Price]**

This Long-Term Cash Award Agreement (this "Agreement"), which is by and between Avaya Holdings Corp. (the "Company") and the Participant listed above, is made and entered into as of the Grant Date listed above.

WHEREAS, the Company has adopted the Avaya Holdings Corp. Cash Long-Term Incentive Plan, effective as of May 19, 2016 (as such may be amended from time to time, the "Plan"; capitalized terms used but not defined herein shall have the meanings assigned to them in the Plan), pursuant to which cash awards may be granted; and

WHEREAS, the Administrator (or the Committee or the Board, as applicable) has determined that it is in the best interests of the Company to grant the Award provided for herein.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. This Agreement evidences a long-term cash award as set forth in the grant details table above (the "Award") to the Participant by the Company, subject to the terms in the Plan and set forth below, including, without limitation, on Appendix I attached hereto, and the Participant agrees with the Company as set forth below.

2. *Vesting:* The Award, unless earlier terminated, forfeited or accelerated (in each case, as set forth in the Plan), shall vest as follows, subject to the Participant's continued employment with the Company on the applicable vesting date:

Vesting Date	Vesting Amount
First anniversary of the Grant Date	One-fourth (1/4) of the total Award
Following the first anniversary of the Grant Date, on each quarterly anniversary of the Grant Date until fully vested on the fourth anniversary of the Grant Date	One-sixteenth (1/16) of the total Award

Notwithstanding the table above, in the event of a termination of the Participant's Employment prior to the applicable vesting date, the Award shall be treated as set forth in the Plan.

3. *Payment.* With respect to each portion of the Award that vests, the Company shall pay amounts due as soon as practicable after each applicable vesting date.

4. *Certain Tax Matters*. The Participant expressly acknowledges that this Award is subject to standard tax withholding requirements.

5. *Governing Law*. This Agreement and all claims arising out of or based upon this Agreement or relating to the subject matter hereof shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

6. *Acknowledgement.* The Participant confirms that he or she has been provided adequate opportunity to review the terms of the Plan and this Agreement, including Appendix I attached hereto. The Participant understands that clicking the appropriate box, "Accept Grant" for acceptance or "Decline Grant" for rejection, indicates his or her irrevocable election to accept or reject, as applicable, the terms of the Award as set forth in this Agreement. The Participant further acknowledges and agrees that (a) this is an electronic agreement, (b) the signature to this Agreement on behalf of the Company is an electronic signature that will be treated as an original signature for all purposes hereunder and (c) any such electronic signature shall be binding against the Company and shall create a legally binding agreement when this Agreement is accepted by the Participant.

7. *Acceptance of Agreement.* In order for this Award to become effective, the Participant must acknowledge acceptance of the Agreement within 60 days from the Grant Date. If the foregoing does not occur by such date, then the entire Award may be cancelled at the discretion of the Company.

This version supersedes any prior agreement versions for the Award described in the grant details table above.

The foregoing Agreement is hereby accepted and agreed to as of the Grant Date listed above:

AVAYA HOLDINGS CORP. **[Participant Name]**

By:_____ **By: [Signed Electronically]**

Appendix I

NON-DISCLOSURE, IP ASSIGNMENT, NON-COMPETITION AND NON-SOLICITATION

By executing the Award Agreement, the Participant acknowledges the importance to Avaya Holdings Corp. and its Affiliates existing now or in the future (hereinafter referred to collectively as the "Company"), of protecting its confidential information and other legitimate business interests, including, without limitation, the valuable trade secrets and good will that it develops or acquires. The Participant further acknowledges that the Company is engaged in a highly competitive business, that its success in the marketplace depends upon the preservation of its confidential information and industry reputation, and that obtaining agreements such as this one from its employees is reasonable and necessary. The Participant undertakes the obligations in this Appendix I in consideration of the Participant's initial and/or ongoing relationship with the Company, this Award, the Participant's being granted access to trade secrets and other confidential information of the Company, and for other good and valuable consideration, the receipt and sufficiency of which the Participant acknowledges. As used in this Appendix I, "relationship" refers to a Participant's employment or association as an advisor, consultant or contractor, with the Company, as applicable.

1. Loyalty and Conflicts of Interest

1.1. **Exclusive Duty**. During his or her relationship with the Company, the Participant will not engage in any other business activity that creates a conflict of interest except as permitted by the Company's Code of Conduct.

1.2. **Compliance with Company Policy**. The Participant will comply with all lawful policies, practices and procedures of the Company, as these may be implemented and/or changed by the Company from time to time. Without limiting the generality of the foregoing, the Participant acknowledges that the Company may from time to time have agreements with other Persons which impose obligations or restrictions on the Company regarding Intellectual Property, as defined below, created during the course of work under such agreements and/or regarding the confidential nature of such work. The Participant will comply with and be bound by all such obligations and restrictions which the Company conveys to him or her and will take all actions necessary (to the extent within his or her power and authority) to discharge the obligations of the Company under such agreements.

2. Confidentiality

2.1. **Nondisclosure and Nonuse of Confidential Information**. All Confidential Information, as defined below, which the Participant creates or has access to as a result of his or her relationship with the Company, is and shall remain the sole and exclusive property of the Company. The Participant will never, directly or indirectly, use or disclose any Confidential Information, except (a) as required for the proper performance of his or her regular duties for the Company, (b) as expressly authorized in writing in advance by the Company's General Counsel, (c) as required by applicable law or regulation, or (d) as may be reasonably determined by the Participant to be necessary in connection with the enforcement of his or her rights in connection with this Appendix I. This restriction shall continue to apply after the termination of the Participant's relationship with the Company or any restriction time period set forth in this Appendix I, howsoever caused. The Participant shall furnish prompt notice to the Company's General Counsel of any required disclosure of Confidential Information sought pursuant to subpoena, court order or any other legal process or requirement, and shall provide the Company a reasonable opportunity to seek protection of the Confidential Information prior to any such disclosure, to the greatest extent time and circumstances permit.

2.2. **Use and Return of Documents**. All documents, records, and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company, and any

copies (including, without limitation, electronic), in whole or in part, thereof (the "Documents" and each individually, a "Document"), whether or not prepared by the Participant, shall be the sole and exclusive property of the Company. Except as required for the proper performance of the Participant's regular duties for the Company or as expressly authorized in writing in advance by the Company, the Participant will not copy any Documents or remove any Documents or copies or derivatives thereof from the premises of the Company. The Participant will safeguard, and return to the Company immediately upon termination of the Participant's relationship with the Company, and at such other times as may be specified by the Company, all Documents and other property of the Company, and all documents, records and files of its customers, subcontractors, vendors, and suppliers ("Third-Party Documents" and each individually a "Third-Party Document"), as well as all other property of such customers, subcontractors, vendors and suppliers, then in the Participant's possession or control. Provided, however, if a Document or Third-Party Document is on electronic media, the Participant may, in lieu of surrender of the Document or Third-Party Document, provide a copy on electronic media to the Company and delete and overwrite all other electronic media copies thereof. Upon request of any duly authorized officer of the Company, the Participant will disclose all passwords necessary or desirable to enable the Company to obtain access to the Documents and Third-Party Documents. Notwithstanding any provision of this Section 2.2 to the contrary, the Participant shall be permitted to retain copies of all Documents evidencing his or her hire, equity, compensation rate and benefits, this Appendix I, and any other agreements between the Participant and the Company that the Participant has signed or electronically accepted.

3. Non-Competition, Non-Solicitation, and Other Restricted Activity

3.1. **Non-Competition**. This paragraph is applicable to Participants who hold Vice President and higher positions as of the date this Award is accepted. During his or her relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, whether paid or not (a) serve as a partner, principal, licensor, licensee, employee, consultant, officer, director, manager, agent, affiliate, representative, advisor, promoter, associate, investor, or otherwise for, (b) directly or indirectly, own, purchase, organize or take preparatory steps for the organization of, or (c) build, design, finance, acquire, lease, operate, manage, control, invest in, work or consult for or otherwise join, participate in or affiliate him or herself with, any business whose business, product(s) or operations are in any respect competitive with or otherwise similar to the Company's business. The foregoing covenant shall cover the Participant's activities in every part of the Territory. "Territory" shall mean (a) all states of the United States of America from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company; and (b) all other countries from which the Company derived revenue or conducted business at any time during the two-year period prior to the date of the termination of the Participant's relationship with the Company. The foregoing shall not prevent: (a) passive ownership by the Participant of no more than two percent (2%) of the equity securities of any publicly traded company; or (b) the Participant's providing services to a division or subsidiary of a multi-division entity or holding company, so long as (i) no division or subsidiary to which the Participant provides services is in any way competitive with or similar to the business of the Company, and (ii) the Participant is not involved in, and does not otherwise engage in competition on behalf of, the multi-division entity or any competing division or subsidiary thereof.

3.2. **Good Will**. Any and all good will which the Participant develops during his or her relationship with the Company with any of the customers, prospective customers, subcontractors or suppliers of the Company shall be the sole, exclusive and permanent property of the Company, and shall continue to be such after termination of the Participant's relationship with the Company, howsoever caused.

3.3. **Non-Solicitation of Customers**. During the Participant's relationship with the Company and for a period of twelve (12) months immediately following the termination of the

Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, directly or indirectly, contact, or cause to be contacted, directly or indirectly, or engage in any form of oral, verbal, written, recorded, transcribed, or electronic communication with any customer of the Company for the purposes of conducting business that is competitive with or similar to that of the Company or for the purpose of disadvantaging the Company's business in any way; provided that this restriction applies (i) only with respect to those customers who are or have been a customer of the Company at any time within the immediately preceding one-year period or whose business has been solicited on behalf of the Company by any of its officers, employees or agents within said one-year period, other than by form letter, blanket mailing or published advertisement, and (ii) only if the Participant has performed work for such customer during his or her relationship with the Company, has been introduced to, or otherwise had contact with, such customer as a result of his or her relationship with the Company, or has had access to Confidential Information which would assist in the solicitation of such customer. The foregoing restrictions shall not apply to general solicitation or advertising, including through media and trade publications.

3.4. **Non-Solicitation/Non-Hiring of Employees and Independent Contractors**. During his or her relationship with the Company and for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company for any reason, whether voluntary or involuntary, the Participant will not, and will not assist anyone else to, (a) hire or solicit for hiring any employee of the Company or seek to persuade or induce any employee of the Company to discontinue employment with the Company, or (b) hire or engage any independent contractor providing services to the Company, or solicit, encourage or induce any independent contractor providing services to the Company to terminate or diminish in any substantial respect its relationship with the Company. For the purposes of this Appendix I, an "employee" or "independent contractor" of the Company is any person who is or was such at any time within the preceding six-month period. The foregoing restrictions shall not apply to general solicitation or advertising, including through media, trade publications and general job postings.

3.5. **Non-Solicitation of Others**. The Participant agrees that for a period of twelve (12) months immediately following the termination of the Participant's relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will not solicit, encourage, or induce, or cause to be solicited, encouraged or induced, directly or indirectly, any franchisee, joint venture, supplier, vendor or contractor who conducted business with the Company at any time during the two year period preceding the termination of his or her relationship with the Company, to terminate or adversely modify any business relationship with the Company, or not to proceed with, or enter into, any business relationship with the Company, nor shall he or she otherwise interfere with any business relationship between the Company and any such franchisee, joint venture, supplier, vendor or contractor.

3.6. **Notice of New Address and Employment**. During the 12-month period immediately following the termination of his or her relationship with the Company, for any reason, whether voluntary or involuntary, the Participant will promptly provide the Company with pertinent information concerning each new job or other business activity in which the Participant engages or plans to engage during such 12-month period as the Company may reasonably request in order to determine the Participant's continued compliance with his or her obligations under this Appendix I. The Participant shall notify his or her new employer(s) of the Participant's obligations under this Appendix I, and hereby consents to notification by the Company to such employer(s) concerning his or her obligations under this Appendix I. The Company shall treat any such notice and information as confidential, and will not use or disclose the information contained therein except to enforce its rights hereunder. Any breach of this Section 3.6 shall constitute a material breach of this agreement.

3.7. **Acknowledgement of Reasonableness; Remedies**. In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has carefully read and considered all the terms and conditions hereof. The Participant acknowledges without

reservation that each of the restraints contained herein is necessary for the reasonable and proper protection of the good will, Confidential Information and other legitimate business interests of the Company, that each and every one of those restraints is reasonable in respect to subject matter, length of time, and geographic area; and that these restraints will not prevent the Participant from obtaining other suitable employment during the period in which he or she is bound by them. The Participant will never assert, or permit to be asserted on the Participant's behalf, in any forum, any position contrary to the foregoing. Were the Participant to breach any of the provisions of this Appendix I, the harm to the Company would be irreparable. Therefore, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and the Participant agrees that injunctive relief is an appropriate remedy to address any such breach. Without limiting the generality of the foregoing, or other forms of relief available to the Company, in the event of the Participant's breach of any of the provisions of this Appendix I, the Participant will forfeit any award or payment made pursuant to any applicable severance or other incentive plan or program, or if a payment has already been made, the Participant will be obligated to return the proceeds to the Company.

3.8. **Unenforceability**. In the event that any provision of this Appendix I shall be determined by any court of competent jurisdiction to be unenforceable by reason of its being extended over too great a time, too large a geographic area or too great a range of activities, such provision shall be deemed to be modified to permit its enforcement to the maximum extent permitted by law. The 12-month period of restriction set forth in Sections 3.1, 3.3, 3.4 and 3.5 hereof and the 12-month period of obligation set forth in Section 3.6 hereof shall be tolled, and shall not run, during any period of time in which the Participant is in violation of the terms thereof, in order that the Company shall have the agreed-upon temporal protection recited herein.

3.9. **Governing Law and Consent to Jurisdiction**. The terms of this Appendix I shall be governed by and interpreted in accordance with the laws of the State of Delaware, as if performed wholly within the state and without giving effect to the principles of conflicts of law. In the event of any alleged breach of this Appendix I, the Participant consents and submits to the exclusive jurisdiction of the federal and state courts in and of the State of Delaware. The Participant will accept service of process by registered or certified mail or the equivalent directed to his or her last known address on the books of the Company, or by whatever other means are permitted by such court.

3.10. **Limited Exception for Attorneys**. Insofar as the restrictions set forth in this Section 3 prohibit the solicitation, inducement or attempt to hire a licensed attorney who is employed at the Company, they shall not apply if the Participant is a licensed attorney and the restrictions contained herein are illegal, unethical or unenforceable under the laws, rules and regulations of the jurisdiction in which the Participant is licensed as an attorney.

3.11. **Attorneys' Fees and Costs**. Except as prohibited by law, the Participant shall indemnify the Company from any and all costs and fees, including attorneys' fees, incurred by the Company in successfully enforcing the terms of this Award Agreement against the Participant, (including, but not limited to, a court partially or fully granting any application, motion, or petition by the Company for a temporary restraining order, preliminary injunction, or permanent injunction), as a result of the Participant's breach or threatened breach of any provision contained herein. The Company shall be entitled to recover from the Participant its costs and fees incurred to date at any time during the course of a dispute (i.e., final resolution of such dispute is not a prerequisite) upon written demand to the Participant.

3.12. **Enforcement**. The Company agrees that it will not enforce Sections 3.1, 3.3, 3.5 or the portion of Section 3.4 that prohibits Participant from hiring Company employees and independent contractors to restrict Participant's employment in any jurisdiction in which such enforcement is contrary to law or regulation to the extent that Participant is a resident of such jurisdiction at the time Participant's

relationship with the Company terminates and does not otherwise change residency during the restriction period.

4. Intellectual Property

4.1. In signing or electronically accepting the Award Agreement, the Participant hereby assigns and shall assign to the Company all of his or her rights, title and interest in and to all inventions, discoveries, improvements, ideas, mask works, computer or other apparatus programs and related documentation, and other works of authorship (hereinafter each designated "Intellectual Property"), whether or not patentable, copyrightable or subject to other forms of protection, made, created, developed, written or conceived by the Participant during the period of his or her relationship with the Company, whether during or outside of regular working hours, either solely or jointly with another, in whole or in part, either: (a) in the course of such relationship, (b) relating to the actual or anticipated business or research development of the Company, or (c) with the use of Company time, material, private or proprietary information, or facilities, except as provided in Section 4.5 below.

4.2. The Participant will, without charge to the Company, but at its expense, execute a specific assignment of title to the Company and do anything else reasonably necessary to enable the Company to secure a patent, copyright or other form of protection for said Intellectual Property anywhere in the world.

4.3. The Participant acknowledges that the copyrights in Intellectual Property created with the scope of his or her relationship with the Company belong to the Company by operation of law.

4.4. The Participant has previously provided to the Company a list (the "Prior Invention List") describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by the Participant prior to his or her relationship with the Company, which belong to the Participant and which are not assigned to the Company hereunder (collectively referred to as "Prior Inventions"); and, if no Prior Invention List was previously provided, the Participant represents and warrants that there are no such Prior Inventions.

4.5. Exception to Assignments. THE PARTICIPANT UNDERSTANDS THAT THE PROVISIONS OF THIS AWARD AGREEMENT REQUIRING ASSIGNMENT OF INTELLECTUAL PROPERTY (AS DEFINED ABOVE) TO THE COMPANY DO NOT APPLY TO ANY INTELLECTUAL PROPERTY THAT QUALIFIES FULLY UNDER THE PROVISIONS OF CALIFORNIA LABOR CODE SECTION 2870 (ATTACHED HERETO AS EXHIBIT A). THE PARTICIPANT WILL ADVISE THE COMPANY PROMPTLY IN WRITING OF ANY INVENTIONS THAT HE OR SHE BELIEVES MEET THE CRITERIA IN CALIFORNIA LABOR CODE SECTION 2870 AND WHICH WERE NOT OTHERWISE DISCLOSED ON THE PRIOR INVENTION LIST PREVIOUSLY DELIVERED TO THE COMPANY TO PERMIT A DETERMINATION OF OWNERSHIP BY THE COMPANY. ANY SUCH DISCLOSURE WILL BE RECEIVED IN CONFIDENCE.

5. Definitions

Words or phrases which are initially capitalized or are within quotation marks shall have the meanings provided in this Section 5 and as provided elsewhere in this Appendix I. For purposes of this Appendix I, the following definitions apply:

"Affiliates" means all persons and entities directly or indirectly controlling, controlled by or under common control with the Company, where control may be by management authority, contract or equity interest.

"Confidential Information" means any and all information of the Company, whether or not in writing, that is not generally known by others with whom the Company competes or does business, or with whom it plans to compete or do business, and any and all information, which, if disclosed, would assist in competition against the Company, including but not limited to (a) all proprietary information of the Company, including but not limited to the products and services, technical data, methods, processes, know-how, developments, inventions, and formulae of the Company, (b) the development, research, testing, marketing and financial activities and strategic plans of the Company, (c) the manner in which the Company operates, (d) its costs and sources of supply, (e) the identity and special needs of the customers, prospective customers and subcontractors of the Company, and (f) the people and organizations with whom the Company has business relationships and the substance of those relationships. Without limiting the generality of the foregoing, Confidential Information shall specifically include: (i) any and all product testing methodologies, product test results, research and development plans and initiatives, marketing research, plans and analyses, strategic business plans and budgets, and technology grids; (ii) any and all vendor, supplier and purchase records, including without limitation the identity of contacts at any vendor, any list of vendors or suppliers, any lists of purchase transactions and/or prices paid; and (iii) any and all customer lists and customer and sales records, including without limitation the identity of contacts at purchasers, any list of purchasers, and any list of sales transactions and/or prices charged by the Company. Confidential Information also includes any information that the Company may receive or has received from customers, subcontractors, suppliers or others, with any understanding, express or implied, that the information would not be disclosed. Notwithstanding the foregoing, Confidential Information does not include information that (A) is known or becomes known to the public in general (other than as a result of a breach of Section 2 hereof by the Participant), (B) is or has been independently developed or conceived by the Participant without use of the Company's Confidential Information or (C) is or has been made known or disclosed to the Participant by a third party without a breach of any obligation of confidentiality such third party may have to the Company of which the Participant is aware.

"Person" means an individual, a corporation, a limited liability company, an association, a partnership, an estate, a trust and any other entity or organization, other than the Company.

6. Compliance with Other Agreements and Obligations

The Participant represents and warrants that his or her employment or other relationship with the Company and execution and performance of the Award Agreement, including this Appendix I, will not breach or be in conflict with any other agreement to which the Participant is a party or is bound, and that the Participant is not now subject to any covenants against competition or similar covenants or other obligations to third parties or to any court order, judgment or decree that would affect the performance of the Participant's obligations hereunder or the Participant's duties and responsibilities to the Company, except as disclosed in writing to the Company's General Counsel no later than the time an executed copy of the Award Agreement, including this Appendix I, is returned by the Participant. The Participant will not disclose to or use on behalf of the Company, or induce the Company to use, any proprietary information of any previous employer or other third party without that party's consent.

7. Entire Agreement; Severability; Modification

With respect to the subject matter hereof, this Appendix I sets forth the entire agreement between the Participant and the Company, and, except as otherwise expressly set forth herein, supersedes all prior and contemporaneous communications, agreements and understandings, written or oral, regarding the same. If the Participant previously executed an Award Agreement with an Appendix I or other schedule containing similar provisions, this Appendix I shall supersede such agreement. In the event of conflict between this Appendix I and any prior agreement between the Participant and the Company with respect to the subject matter hereof, this Appendix I shall govern. The provisions of this Appendix I are severable, and no breach of any provision of this Appendix I by the Company, or any other claimed breach of contract or violation of law, shall operate to excuse the Participant's obligation to fulfill the

requirements of Sections 2, 3 and 4 hereof. No deletion, addition, marking, notation or other change to the body of this Appendix I shall be of any force or effect, and this Appendix I shall be interpreted as if such change had not been made. This Appendix I may not be modified or amended, and no breach shall be deemed to be waived, unless agreed to in writing by the Participant and the Company's General Counsel. If any provision of this Appendix I should, for any reason, be held invalid or unenforceable in any respect, it shall not affect any other provisions, and shall be construed by limiting it so as to be enforceable to the maximum extent permissible by law. Provisions of this Appendix I shall survive any termination if so provided in this Appendix I or if necessary or desirable to accomplish the purpose of other surviving provisions. It is agreed and understood that no changes to the nature or scope of the Participant's relationship with the Company shall operate to extinguish the Participant's obligations hereunder or require that a new agreement concerning the subject matter of this Appendix I be executed.

8. Assignment

Neither the Company nor the Participant may make any assignment of this Appendix I or any interest in it, by operation of law or otherwise, without the prior written consent of the other; provided, however, the Company may assign its rights and obligations under this Appendix I without the Participant's consent (a) in the event that the Participant is transferred to a position with one of the Company's Affiliates or (b) in the event that the Company shall hereafter effect a reorganization, consolidate with, or merge into any company or entity or transfer to any company or entity all or substantially all of the business, properties or assets of the Company or any division or line of business of the Company with which the Participant is at any time associated. This Appendix I shall inure to the benefit of and be binding upon the Participant and the Company, and each of their respective successors, executors, administrators, heirs, representatives and permitted assigns.

9. At-Will Employment

This Appendix I does not alter or in any way modify the at-will nature of the Participant's employment with the Company. Accordingly, this Appendix I does not in any way obligate the Company to retain the Participant's services for a fixed period or at a fixed level of compensation; nor does it in any way restrict the Participant's right or that of the Company to terminate the Participant's employment at any time, at will, with or without notice or cause.

10. Successors

The Participant consents to be bound by the provisions of this Appendix I for the benefit of the Company, and any successor or permitted assign to whose employ the Participant may be transferred, without the necessity that a new agreement concerning the subject matter or this Appendix I be re-signed at the time of such transfer.

11. Acknowledgement of Understanding

In signing or electronically accepting the Award Agreement, the Participant gives the Company assurance that the Participant has read and understood all of its terms; that the Participant has had a full and reasonable opportunity to consider its terms and to consult with any person of his or her choosing before signing or electronically accepting; that the Participant has not relied on any agreements or representations, express or implied, that are not set forth expressly in the Award Agreement, including this Appendix I; and that the Participant has signed the Award Agreement knowingly and voluntarily.

[no more text on this page]

EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870

INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."