



# Proposal

Prepared for: Jill Sumpter  
Fort Bend County Libraries

Prepared by: Bill Rogers

Date: 3/5/2012

Agreement #:

SOW #: 9847

Version Number: C

*Confidentiality Notice: Fort Bend County Libraries and its affiliates acknowledges by its receipt and use of this proposal that is confidential and proprietary information of WalkerCom, Inc. The client may use this document for the purpose of evaluating WalkerCom's proposal and for no other purpose, and ensure that this proposal is not disclosed to any persons other than your employees with a bona fide need to know.*

## Contact Information

### END USER

Company Name:	<b>Fort Bend County Libraries</b>		
Site Address:	301 Jackson, Richmond, TX 77469		
Primary Contact Name / Title:	Jill Sumpter		
Contact Address:	301 Jackson, Richmond, TX 77469		
Phone Number:	281-341-2630	E-mail:	jsumpter@fortbend.lib.tx.us

### PROVIDER OF SERVICES

Company Name:	<b>WalkerCom</b>		
Address:	2213 Garden Road, Pearland, Tx 77581		
Primary Contact Name / Title:	Bill Rogers		
Phone Number:	281-997-5741	E-mail:	brogers@walkercom.com

### PROJECT MANAGER

Project Manager Name:			
Phone Number:		E-mail:	

## Company Overview

WalkerCom, Inc. has been providing services in the Telecommunications Industry since 1987. During this period of time WalkerCom, Inc. has moved from a service only company to a "Total Telecommunications Company". Today WalkerCom, Inc. provides solutions for your business needs, helping to bring success to your company and direction for the future!

### Service First - Customer For Life

Our Mission is to continue as a regional communications service, equipment, and software provider supporting our customers with products that meet or exceed their expectations in support of our motto "Service First-Customer for Life!" We will strive to earn a satisfactory return on equity while competitively enlarging our market. In pursuit of our mission, we will enrich our employees' work life while enhancing the community as a whole.

WalkerCom, Inc. is an Organization of Telecommunication professionals, providing Project Management, System Design, Implementation and Maintenance.

- Consulting
- Sales Staff
- Senior Avaya Professionals
- WalkerCom Installation
- Software Specialist
- Avaya Certified & Trained

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## Proposed Solutions

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238977	SA PREF AURATM R6 EE 101-1000 N1 3YAN
238983	UPG ADV AURATM R6 EE 101-1000 N1 3YAN

These two part numbers comprise the Avaya Software Support and Monitoring with Upgrades. The first part is the actual Software Support/Monitoring component. The total is billed annually for duration of three years. The current contract agreement is set to expire 9/30/2012 any time left on current agreement will reduce the price of this agreement based on the actual month the new policy goes into effect.

---

WSC-MAINT	7X24 Parts – Golfview (Sets N/I)
WSC-MAINT	8X5 NBD Parts - All other sites (Sets N/I)

This component comprises WalkerCom responding to physical replacement/troubleshooting for the sites listed with the appropriate response times.

**WalkerCom's response times will be predicated based on notification from the customer or from Avaya as Avaya has the first responsibility based on monitoring Fort Bend County Libraries system. This proposed solution must be signed by April 30<sup>th</sup> to be valid.**

**WalkerCom will bill the proposed amount annually for a period of three years. Please process via DIR Contract DIR-SDD-1499. This should appear on the purchase order each year.**

## Schedule of Equipment and Services

**Projected Cutover Date:**

April 30, 2012

**Total Price:**

\$26,207.10

*Pricing excludes taxes. Pricing valid for 60 days from the date of this quote (3/5/2012).*

<u>Qty</u>	<u>Part Number</u>	<u>Description</u>	<u>Unit MSRP</u>	<u>Unit Sell</u>	<u>Ext Sell</u>
1	195476	SOFTWARE SUPPORT COMMUNICATION MGR MODEL	Incl.	Incl.	Incl.
1	227273	SAL POLICY SRVR LIC R1.5 DWNLD	Incl.	Incl.	Incl.
575	238977	SA PREF AURATM R6 EE 101-1000 N1 3YAN	\$20.76	\$19.57	\$11,252.75
575	238983	UPG ADV AURATM R6 EE 101-1000 N1 3YAN	\$17.40	\$9.79	\$5,629.25
1	WSC-MAINT	7X24 PARTS - Golfview (Sets N/I)	\$2,856.00	\$2,691.78	\$2,691.78
1	WSC-MAINT	8X5 NBD PARTS -All other sites, (Sets N/I)	\$7,038.00	\$6,633.32	\$6,633.32
<b>SERVICES SUB-TOTAL</b>					\$26,207.10

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### Avaya, Inc.

URL [Vendor Website](#)  
Vendor ID 1223713430400  
HUB Type Non HUB  
 **E-Rate Qualified**

DIR Contract Number DIR-SDD-1499  
Contract Term End Date 11/30/2013  
Contract Exp Date 11/30/2014

### Avaya, Inc.

Contact [Chas Hallett](#)  
Phone (713) 852-1137  
Fax 713-852-1161

### DIR

Contact [Sonja Elizondo](#)  
Phone (512) 936-6649  
Fax (512) 475-4759

### How to Order

1. For product and pricing information, visit the [Avaya, Inc.](#) website or contact [Chas Hallett](#) at (713) 852-1137. Reseller Vendors are also available through this Contract. Select from any Reseller Vendor contact listed below to also obtain product and pricing information.
2. Generate a purchase order, made payable to Avaya, Inc. or any Reseller Vendor listed below. You must reference the DIR Contract Number **DIR-SDD-1499** on your purchase order.
3. E-mail or Fax your purchase order and quote form to your designated vendor or reseller sales representative.

### Contract Overview

DIR negotiates pricing for a quantity of one. Customers are encouraged to negotiate additional discounts based on volume.

DIR maintains a default administrative fee of .50 percent. In some cases, the fee may be as low as .25 percent.

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Contract: [DIR-SDD-1499](#)

#### [Standard Terms and Conditions](#) PDF - 427 KB

This appendix contains the standard DIR Terms and Conditions for the contract as of the date identified. Any initial exceptions to these Terms will be contained in the original contract. All subsequent changes or updates to the Terms and Conditions will be reflected in contract amendments.

### Available Brands

Avaya  
Services

**HUB Subcontracting Plan (HSP) PDF - 363 KB | Updated 01/17/2012**

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. The HSP identifies all authorized resellers and/or all subcontractors performing services.

**Pricing PDF - 7 KB | Updated 12/02/2010**

Pricing for available products and/or services under this contract are limited to those identified in the appendix.

**Electronic and Information Resources (EIR) Accessibility**

Information regarding Electronic and Information Resources (EIR) accessibility of this vendor's offerings is included in the contract. Agencies purchasing products or services are responsible for complying with Texas EIR Accessibility statute and rules, as defined in TGC 2054 Subchapter M, 1TAC 206, and 1 TAC 213. For additional information, visit the Vendor Website or contact the vendor directly.

**Available Products & Services**

Networking Equipment  
Networking Products and Services  
Tele - Network Services  
Tele - Telecommunication Equipment

**Additional Contract Information**

[Appendix D, Customer Agreement General Terms](#) (213 KB)  
[Appendix E1, Service Agreement Full Coverage](#) (403 KB)  
[Appendix E2, Service Agreement for Hardware](#) (267 KB)  
[Appendix E3, Service Agreement for Software](#) (247 KB)  
[Amendment 1](#) (73 KB)  
[Amendment 2](#) (158 KB)  
[Amendment 3](#) (95 KB)

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**Reseller Vendor Contacts**

Vendor Name	Vendor ID	HUB Type	Contact Name	Phone/Fax	Address
Affiliated Telephone, Inc.	1751964065400	Non HUB	<a href="#">Jim Carter</a>	Phone: 972-852-4010 Fax: 972-422-9867	730 Avenue F, Suite 210 Plano, TX 75074
Avaya, Inc.	1223713430400	Non HUB	<a href="#">Rusty Atkinson</a>	Phone: (972) 852-4000 Fax: 713-852-1161	2020 University Club Drive Austin, TX 78732
Black Box Network Services, Inc.	1621202425700	Non HUB	Jeff Kelley	Phone: (214) 257-8219 Fax: (713) 307-4115	5959 Corporate Dr. LI Suite 250 Houston, TX 77036
Carousel Industries	1061502254700	Non HUB	<a href="#">Mike Mahar</a>	Phone: (518) 724-2160	
COMCO, Inc.	741655426	Non HUB	<a href="#">Vicki Adkins</a>	Fax: (915) 833-6678	200 South Alto Mesa El Paso, TX 79912

Vendor Name	Vendor ID	HUB Type	Contact Name	Phone/Fax	Address
Enterprise Systems Corporation	1020594306000	Non HUB	<a href="#">Rodney Hyde</a>	Phone: 713-343-1234 Fax: (713) 343-1242	4325 West Sam Houston Pkwy. #130 Houston, TX 77043
Globalscope Communications	1743023291200	Hispanic/Female	Edward Chavez	Phone: (210) 321-3700 Fax: 210-321-3774	7400 Blanco Road Suite 200 San Antonio, TX 78216
Lantana Communications Corp.	1752324280200	Non HUB	<a href="#">Jonathan Irwin</a>	Phone: (800) 345-4211 Fax: 817-606-3380	1700 Tech Centre Parkway Houston, TX
Layer 3 Communications, LLC.	1270097420200	Non HUB	<a href="#">Craig Wall</a>	Phone: 512-329-2920 Fax: 512-329-2921	1250 S. Capital Of Tx Hwy, Bldg. Ii, #301 Austin, TX 78746
North American Communications Resource, Inc. (NACR)	1411763228200	Non HUB	<a href="#">Klaus Hillman</a>	Phone: (800) 431-1333 ext. 1722 Fax: (972) 546-1701	555 Republic Drive Suite 400 Plano, TX 75074
Shamrock Communication	1760492240500	Non HUB	<a href="#">Kelly Minnick</a>	Phone: (281) 600-0605	16528 Park Row Houston, TX 77084
Sharco Technologies	1202205169700	Non HUB	<a href="#">Donny Brady</a>	Phone: (512) 258-0573	3000 Joe Dimaggio Blvd Round Rock, TX 78665
Shared Solutions and Services, Inc.	1331009098300	Non HUB	<a href="#">Mary Wallish</a>	Phone: (210) 497-4700 Fax: (210) 497-4700	2425 Gateway Drive Irving, TX 75063
SKC Communication Products, Inc.	1311056628101	Non HUB		Fax: (800) 454-4752	8320 Hedge Lane Terrace Shawnee Mission, KS 66227
Source, Inc.	1751369078800	Non HUB	<a href="#">Trey Logsdon</a>	Phone: (972) 371-2758 Fax: (972) 371-2668	14060 Proton Road Dallas, TX 75244
Sunturn	1841573723000	Non HUB	<a href="#">Kyle Wewe</a>	Phone: (512) 745-2615 Fax: (512) 758-7319	110 Wild Basin Road, Suite 230 Austin, TX 78746
Technology Integration Group (TIG)	19533825596902	Asian/Male	Shawn Lanham	Phone: (210) 507-6995 Fax: (210) 507-6999	3201 Cherry Ridge C302 San Antonio, TX 78230
The Newton Group dba Strategic Products and Services	223140946	Non HUB	<a href="#">Steve Springfield</a>	Phone: (512) 413-4039 Fax: (214) 529-5870	
the Via Group	1760313762500	Non HUB			2610 Technology Forest Blvd The Woodlands, TX 77381
Walkercom, Inc.	1760302758600	Hispanic/Male	<a href="#">Ray Saldivar</a>	Phone: (281) 997-5710 Fax: (281) 997-5720	2213 Garden Road Pearland, TX 77581

Vendor Name	Vendor ID	HUB Type	Contact Name	Phone/Fax	Address
Windstream Corporation, DBA Windstream Communications	1200792300100	Non HUB	<a href="#">Robert Nice</a>	Phone: (281) 490-9303	
<a href="#">Capitol Complex Directory</a>	<a href="#">Document Library</a>	<a href="#">FAQs</a>	<a href="#">Dept. of Information Resources</a>		
<a href="#">Statewide Search</a>	<a href="#">SAO Fraud Reporting</a>	<a href="#">Site Policies</a>	300 W. 15th St. Ste. 1300		
<a href="#">Sponsored Sites</a>	<a href="#">Homeland Security</a>	<a href="#">Site Map</a>	Austin, TX 78701 <a href="#">MAP</a>		
<a href="#">Planned Procurement Schedule</a>	<a href="#">Sunset Review</a>	<a href="#">Job Postings</a>	(512) 475-4700		

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HUB Type Non HUB

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Contract Term End Date 12/30/2012

Contract Exp Date 11/30/2014

**Avaya, Inc.**Contact [Mark Copeland](#)

Phone (713) 852-1148

Fax 713-852-1161

**DIR**Contact [Kathy Fleming](#)

Phone (512) 936-9864

Fax (512) 475-4759

**How to Order**

1. For product and pricing information, visit the [Avaya, Inc.](#) website or contact [Mark Copeland](#) at (713) 852-1148. Reseller Vendors are also available through this Contract. Select from any Reseller Vendor contact listed below to also obtain product and pricing information.
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DIR negotiates pricing for a quantity of one. Customers are encouraged to negotiate additional discounts based on volume.

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Black Box Network Services, Inc.	1621202425700	Non HUB	Jeff Kelley	Phone: (214) 257-8219 Fax: (713) 307-4115	5959 Corporate Dr. LI Suite 250 Houston, TX 77036
CDW Government, LLC	1364230110800	Non HUB	<a href="#">Jay Carlisle</a>	Phone: (866) 224-6448 Fax: (312) 705-9492	230 North Milwaukee Avenue Vernon Hills, IL 60061

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APPENDIX E2 TO DIR-SDD-1499

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# **SERVICE DESCRIPTION**

## **Service Agreement Supplement**

### **Hardware Support**

**Version 5.0 , July 2010**

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# Introduction

This Service Description describes the Avaya Support Advantage Essential and Preferred Support services for eligible Software and Hardware and supersedes all prior descriptions or contract supplements relating to such support. This document is an attachment to the Customer's Commercial Agreement with Avaya, and shall serve as the Service Description with respect to such support offering. In the event of a conflict between DIR-SDD-1499, this Service Description and the Customer's Commercial Agreement with Avaya, the terms and conditions of DIR-SDD-1499 will control. In the event that the Customer is an Avaya authorized reseller, distributor, systems integrator or service provider purchasing support coverage for the Customer's end user customers (or resellers, as applicable), Avaya will provide the support specified herein to the Customer. The Customer will be responsible for performing the end user customer responsibilities under this document and securing (either directly or through resellers, as applicable) all necessary approvals, consents and performance from the end user customer. This description is valid in all United States and Canadian locations.

## 1. General

Overview – Avaya offers service support on Avaya and selected non-Avaya hardware products and components. You can choose from the following three levels of support, which are more fully described below:

- Remote Hardware Support, 24x7
- Remote Hardware Support with Advanced Parts Replacement, 8x5 or 24x7
- On-site Hardware Maintenance, 8x5 or 24x7

***Customers may purchase Avaya Hardware Maintenance Support only if the software associated with that hardware is receiving Avaya Software Support.***

The level of support and supported products will be designated on the applicable order or associated quote sheet and support will commence on the in-service date of the Supported Product. The coverage described in this document is limited to Supported Products and can only be purchased if you have Avaya Software Support or Avaya Software Support Plus Upgrades coverage.

It is important to understand how hardware support is different from your warranty coverage. Warranty under your commercial contract generally provides that the hardware will work in accordance with the product's specifications. In the event that the product does not operate in accordance with specifications, Avaya will repair, replace or refund the amount you paid for the affected product.

Hardware support includes remote telephone support, remote diagnostics, troubleshooting, problem resolution and hardware firmware updates/fixes – none of which are included under warranty.

Avaya's remote support options are standardized and generally available throughout the world. On-site and advance parts services, however, may vary from country to country. Therefore, if you are purchasing on-site services, it is important for you to read the on-site and advance parts service description in conjunction with the ***Addendum: Country Availability and Major Cities***, which describes where advanced parts and on-site services are available and the limitations associated with these services.

End of Support – Periodically, Avaya may declare "end of life," "end of service," "end of support," "manufacture discontinue" or similar designation ("End of Support") for certain Supported Products. Unless your commercial agreement specifies how End of Support products will be treated, Avaya will

continue to provide the same level of support described in this document for End of Support products, with the following exceptions:

Tier IV R&D product developer support and going-forward maintenance upgrades, such as Product Correction Notices (PCNs), “bug fixes,” interoperability/usability solutions, are no longer provided.

Certain faults or functionality issues may not be resolvable without upgrading the system to a version currently supported by the manufacturer. You will be responsible for the costs associated with any upgrades.

Replacement parts, products or components may become increasingly scarce or require replacement with substitute parts.

You may experience delays in response or repair intervals.

A list of products that are currently supported is available from Avaya at <http://avaya.com/support> (Maintenance Services Index by Product).

Certification – Newly purchased products, used products and products that have not been continuously covered are all eligible for coverage. However, certification of the products is sometimes required to ensure that the products are properly installed and in good working order.

Certification is required when one of the following criteria is met:

Avaya, an Avaya Authorized BusinessPartner, or for non-Avaya products, a manufacturer or manufacturer-authorized service provider did not install equipment which is not classified as “customer installable.”

Avaya, an Avaya Authorized BusinessPartner, or for non-Avaya products, a manufacturer or manufacturer-authorized service provider previously installed the equipment, and Avaya service coverage has lapsed for more than ninety (90) days.

Equipment not classified as “customer installable” is not installed or moved by Avaya or an authorized BusinessPartner to a new site. If you have an INADS line, you must also re-register the line at its new location.

Certification is not included in the services or support described in this document. The cost of the certification will be charged at Avaya's then current standard rates.

Dedicated Access – You must install or arrange for the installation of a dedicated remote access methodology for systems/devices that support remote access no later than the delivery date of the Avaya-installed systems/devices or prior to the commencement of service in all other situations. Remote access is made possible with the Secure Access Link (SAL) Software Gateway, a traditional phone line for modem-equipped products or through an Avaya-approved VPN access solution. The line number or IP address must be provided to Avaya as soon as it is available. The modem line or VPN must remain available and dedicated to provide remote access on a 24x7 basis or there may be degradation to the service and support you receive from Avaya. IF 24x7 REMOTE ACCESS IS NOT GRANTED, AVAYA MAY NOT BE ABLE TO PROVIDE SERVICES AND AVAYA MAY CHARGE ADDITIONAL PER-INCIDENT MAINTENANCE RATES IF THERE IS ADDITIONAL COST TO AVAYA IN PROVIDING SERVICES TO YOU.

## Remote Hardware Support, 24x7

### 2.1 Benefits of Remote Hardware Support, 24x7

Following are the benefits you will receive under the Remote Hardware Support option. Unless otherwise noted, these benefits are available twenty-four hours a day, seven days a week, and three hundred sixty-five days a year consistent with response intervals.

#### Troubleshooting

- If you experience a problem with a Supported Product, you can report/log a request via telephone, facsimile, or via Avaya's support website (<http://avaya.com/support> or <http://webticketing.avaya.com> within the EMEA region). You will also have unlimited access

to remote maintenance assistance, documentation, and other information via web-enabled case-based reasoning tools on Avaya's support website. Avaya may require that only those individuals you have identified as Avaya authorized contacts are able to initiate requests, access the support website or check on problem status, and Avaya may request you limit the number of authorized contacts.

- Avaya will respond to, diagnose, and clear system-generated major alarms received via Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools (on Avaya products that support that functionality). Any problem that cannot be automatically cleared by Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools will be responded to according to response intervals designated in this document.
- Avaya will troubleshoot, analyze and resolve problems with Supported Products via telephone or remote dial-in connection.
- Avaya will identify inconsistencies or errors in Avaya product documentation.

Access to Helpline Support – During Standard Business Hours, you will have access to helpline support, which includes:

- Answering general usability or product-specific questions, such as non-programming issues and general information around the functionality of a Supported Product. Usability information can be provided without knowing the specific programming and configuration details of your system. This general support does not include consultation on appropriate methods and procedures for your environment nor does it include custom programming.
- Providing advice, which includes directing you to sections of the documentation that may answer a question, clarifying the documentation or recommending possible training courses.
- Working with trained individuals from your company to enhance understanding of the use and features of Avaya hardware products.

Access to Product Correction Notices (PCNs) and Updates

- PCNs and updates will be issued as technician, remote, or customer-installable and with a classification level dependent on the product, level of severity and complexity of the PCN or update.  
Class 1 (major system failure due to product non-conformance with high probability of potential loss of system use or functionality and/or loss of customer information)  
Class 2 (moderate system failure with moderate probability of loss of system use or functionality and/or loss of customer information)  
Class 3 (minor system failure with low probability of potential loss of system use or functionality and/or loss of customer information).
- You are responsible for installing PCNs and updates designated as customer installable. For technician-installable PCN's you are responsible for applicable parts and labor.
- Parts and on-site labor for Technician installable Product Correction Updates is billable at Avaya's then current Per Incident Maintenance rates, unless specifically provided for in the PCN.
- Remote help line support for PCNs and updates is available during Standard Business Hours.
- PCNs deemed as Class 1 or 2 and remotely installable are available 24x7.
- If a Product Correction Update requires a system hardware upgrade to comply with current manufacturer's specifications, Avaya will provide a cost estimate prior to providing any chargeable hardware upgrades.
- PCNs and updates will be available on Avaya's support website; however, only Avaya-issued PCNs and updates are included as part of support.
- Trouble isolation and fault management associated with the installation of PCNs and updates for non-standard environments is limited to correcting faults with the standard environment.

## **Exclusions from Remote Hardware Support, 24x7**

Remote Hardware Support does not include the following:  
Parts replacement and/or on-site support.

Customized system features, configuration changes or reports (unless specifically included in the Avaya solution).

Provisioning or installation of hardware upgrades or reprogramming to add additional capabilities or functionality to the Supported Product.

Services and all troubleshooting support not directly attributable to a fault in Supported Products (including faults in the Customer's own network or the public network).

The capture of off-board alarms for trunk interfaces is not included.

Support for any products other than Supported Hardware. In the event that a fault or problem is traced to products other than Supported Hardware and other Avaya maintenance coverage does not apply, you will be responsible for Avaya's time and materials charges for such support.

## **Response Intervals of Remote Hardware Support, 24x7**

Response intervals define Avaya's objectives for responding to a request for support. The interval is defined as the elapsed time between registration of an assistance request with Avaya's services center and the commencement of problem resolution efforts by the remote engineer.

Avaya's remote response objective is two (2) hours for Major Failures and next business day during Standard Business Hours for Minor Failures

## **Remote Hardware Support with Advance Parts Replacement, 8x5 or 24x7**

### **Benefits of Remote Hardware Support with Advance Parts Replacement, 8x5 or 24x7**

Where applicable, the customer may elect either 8x5 or 24x7 for the Remote Support element of Remote Hardware Support with Advance Parts Replacement.

**Remote Support with Advanced Parts Replacement 8x5:** Provides coverage during Standard Business Hours. Requests for support outside the Standard Business Hours may be accommodated at Avaya's option and will be subject to Avaya's then current Per Incident Maintenance rates.

**Remote Support with Advanced Parts Replacement 24x7:** Provides coverage twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year for Major Failures.

Remote Hardware Support with Advance Parts Replacement will provide for advance replacement by mail of any covered part Avaya determines to be inoperative. This includes advance parts for PCNs and updates, but does not include system hardware upgrades that may be required. You must follow the procedure outlined below to receive advance parts.

Contact the local Avaya Support Center for replacement of faulty component/device during Standard Business Hours. If Avaya determines the component/device to be inoperative, a replacement will be shipped to arrive next business day (only for countries referred to in the Addendum for Countries and major cities).

Receive and replace the field-replaceable component/device.

Ship the faulty component/device to be received by Avaya within thirty (30) business days of receipt of replacement component/device, using industry-standard material handling processes (including the use of Electrostatic Discharge or ESD preventive measures and protective packaging provided by



Avaya for products being returned prepaid to Avaya) and the return procedures provided. (You can also ship the faulty device through a logistics service provider, if applicable, and which may vary by geographical locations.) You may be charged for the replacement device if Avaya does not receive the faulty part within this time frame.

Certain minor materials, such as internal cabling, fans, fan assemblies, transformers, embedded operating system software, power supplies, fuses and firmware may not be independently replaceable. In these circumstances, Avaya may require and will send the larger component to be replaced rather than the minor material.

## **Exclusions from Remote Hardware Support with Advance Parts Replacement, 8x5 or 24x7**

Remote Hardware Support with Advance Parts Replacement, does not include parts that are consumables, accessories, including, but not limited to, headsets, remote controls (TV & video), printer ribbons, back-up tapes or other blank media, wall brackets, rack mounting and other hardware kits, face plates, bezels, blank panels, designation strips, technical documentation, labels or other accessories.

UPS and DC Battery coverage are considered consumables and are not covered under maintenance. However, in the US only, they are considered major components and as such are covered under maintenance for replacement.

Wireless batteries are not considered major components of the various Wireless solutions supported by Avaya. Batteries are considered a consumable product and replacements must be purchased.

## **4. On-site Hardware Maintenance, 8x5 or 24x7**

### **Benefits of On-site Hardware Maintenance**

There are two coverage options for on-site hardware maintenance: 8x5 or 24x7. Both options provide for the benefits described in Remote Hardware Support with Advance Parts Replacement and same day parts replacement for Major Failures. Under both on-site options, if a fault cannot be resolved remotely, and Avaya determines on-site intervention is required, Avaya will dispatch Avaya's field technical resources or designated resource, including engineering support, consistent with the response intervals set out below.

The following is also included for both on-site hardware maintenance options:

Installation of technician installable PCNs and updates during Standard Business Hours.

Support outside of Standard Business Hours is included for remote and technician-installable Class 1 and Class 2 PCNs, for customers that have On-site Hardware Maintenance 24x7.

Routine preventive maintenance for Avaya DEFINITY products.

Correction of damage to voice hardware products (not including data products, VPN, video, etc.) where lightning or a power surge is the direct cause of damage to the voice hardware products, provided that **(This benefit is available in US/Canada only)**:

- You complied with all documentation, installation, electrical code standards and site requirements
- All power feeds for the switching products, analog central office facilities connected to the switching product, and ancillary equipment are protected by a properly installed protection device; UPS (Uninterruptible Power System) are not acceptable protection devices
- All T1/DS1 facilities are terminated in a CSU and/or DSU.

## Exclusions from On-site Hardware Maintenance

Avaya field technician remaining on-site after resolution of a problem in the Supported Products.

Avaya field technician remaining on-site outside of coverage hours.

Providing standby service, such as requesting field technicians to be present on your premises during electrical power shutdowns, disaster recovery tests, or special events.

Additional charges may apply if an Avaya field technician is scheduled to service equipment and the technician must wait one (1) or more hours after arriving on-site for equipment to become available for servicing.

## Response Intervals of On-site Maintenance (for US and Canada)

Response intervals define Avaya's objectives for responding to a request for support. If Avaya deems the fault cannot be cleared remotely, the interval is from the time the Avaya Service Center identifies an on-site visit is required to the time the technician arrives at your site.

Major Failures

- **Within two (2) business hours for Major Failures on the DEFINITY® and Avaya Communication Manager switch. To qualify for this response interval the Customer site must be located within a certain major metropolitan area, as defined by Avaya. This response is available during the hours of 8:00 a.m. to 5:00 p.m. in the time zone of the covered products, Monday through Friday, excluding Avaya observed holidays. The two (2) hour response interval is not applicable between the hours of 5:00 p.m. & 8:00 a.m. if the Full Coverage 7x24 option is elected.**
- **Within four (4) business hours for Major Failures for Customer sites located outside the defined major metropolitan area, for non-Avaya labeled or customized software and all other products. This interval is provided during the hours of 8:00 a.m. to 5:00 p.m. in the**
- **Time zone of the covered products, Monday through Friday, excluding Avaya observed holidays, or is provided 24x7 if Full Coverage 24x7 option is elected.**

Minor Failures – Next business day during Standard Business Hours.

All Other On-site Maintenance – As scheduled by you and Avaya.

## Response Intervals of On-site Maintenance (for EMEA)

Response intervals define Avaya's objectives for responding to a request for support.

Onsite response interval: If Avaya deems the fault cannot be cleared remotely, the interval is from the time the Avaya Service Center identifies an on-site visit is required to the time the technician or replacement part arrives at your site.

To qualify for this response interval the site must be located within an Avaya covered Major Cities.

**24x7 option:** Within four (4) hours for Major Failures for sites in Major Cities.

**8x5 option:** Within four (4) Standard Business Hours for Major failures, and for minor failures Next business day during Standard Business Hours.

All Other On-site Maintenance – As scheduled by you and Avaya.

## 5. SMBS Enhancement Support – US Only

SMBS Enhancement support for IP Office, Partner ACS 3.0 and above and Merlin Magix is only available with a Support agreement. On-site support is not included for Remote Administration and Subsequent On-Line Training options. Support options include:

**Remote Administration Coverage:** Provides an unlimited number of standard software translations performed by Avaya's Global Technical Support (GTS) group. Translations will be completed during coverage period hours applicable to Minor Failures. Qualifying translations are listed in the applicable product documentation under the general categories of "System Administration" or "Client Responsibilities". Includes programming for features such as: call accounting, toll restriction, etc. Translations will be performed via remote access to your product.

**Subsequent On-Line Training:** Provides additional on-line coaching and training assistance to the customer through GTS (Global Technical Services). This training is for all components of Avaya SMBS systems and/or adjuncts covered by Avaya's warranty or Service agreement. System training documentation is available via fax or other electric on-line media.

**Wire Maintenance Coverage for Structured Cable (Inside Wire) and Exclusions:** Provides support for horizontal cabling, single customer riser cables (not part of building riser cable), connecting blocks, wall jacks, cross-connect fields, patch panels, repeaters and Avaya standard repair products. This option does not cover black cable (inter-building –OSP), riser cables used for multiple customers, fiber optic cabling, network facilities (poles, conduits, local access trunks and lines), non-Avaya supplied surge protectors, lightning arrestors/protectors, exterior wire, non-Avaya product cabling (e.g. alarm systems, building automation, security systems, card readers, etc.). Coverage also does not cover Force Majeure (floods, earthquakes, tornadoes, avalanches, mud slides, etc.), major externally caused damage (e.g. fires, pipe bursts, etc.), major unintentional damage (e.g. contractors cut cables, etc.), non-Avaya contractor use of improperly spliced wires and problems requiring non-standard tools to repair (e.g. elevator shafts, need for fork lifts, etc.).

## 6. Product Correction Support Coverage US/Canada Only

Product Correction Support coverage is a separate services offer available at an additional charge that provides (1) Avaya installation for all Customer installable Product Correction Updates, and (2) support outside of Standard Business Hours, excluding Sunday and Avaya observed holidays, for all technician and remote installable Product Correction Updates. Product Correction Updates include Product Correction Notices (PCNs), Software and Firmware Updates and maintenance patches. Avaya will perform the work remotely when possible; otherwise, an on-site technician will be dispatched.

### Limitations and Exclusions

PCN, Software and Firmware Updates and maintenance patches for Expansion Port Network (EPN) sites will be performed at the Processor Port Network (PPN) site when applicable. The customer must provide Avaya with access and required permissions. There must be a functional link from the EPN to the PPN; otherwise the EPN site will be priced the same as the PPN.

Remote and customer installable PCN, Firmware and Software Updates and maintenance patches will be completed remotely when applicable. The customer must provide Avaya with access and required permissions. Additionally, for certain update the customer will be required to insert a diskette into the disk drive. If the customer requests an on-site technician to perform this function, then per incident charges will be billed.

Only Avaya issued Product Correction Updates are included in this offer and only for the eligible products covered by this offer.

Trouble isolation and fault management associated for the installation of Product Correction Updates for non-standard CMS environments is limited to correcting faults with the standard CMS application. Additional maintenance support is billable at Avaya's then current per incident maintenance rates.

System backups are not included and are the customer's responsibility.

Firmware Updates to voice terminals and other end-user devices (e.g., IP Softphone) are included for customers that have On-Site Hardware Maintenance on the switch and terminals. Avaya will download the update, but the customer will be required to register the voice terminals. This can be accomplished by a busy-out or having the users unplug and plug-in the voice terminal. If the customer has switch-only coverage, Software and Firmware Updates to voice terminals are either the customer's responsibility, or per incident charges will apply.

Product Correction Support for CMS, IVR/Conversant products excludes updates issued by Sun Microsystems<sup>SM</sup>, including those approved by Tier IV, unless they have been incorporated into an Avaya issued PCN.

## 7. Definitions

**Commercial Agreement:** Means, as the context requires, DIR Contract No. DIR-SDD-1499.

**Customer:** Means, as the context requires, any of the following: an end user customer, Reseller, Value Added Reseller, Distributor, Systems Integrator or Service Provider purchasing support services directly from Avaya for the Supported Products.

**Service Description:** The Service Description may also be referred to as a Service Agreement Supplement or Customer Service Agreement Information

Major/Minor Failures – Avaya determines whether the outage or fault constitutes a Major and Minor Failure. The following are the guidelines for Major and Minor Failures according to product group:

DEFINITY, Communication Manager, AUDIX®, Intuity™ and Supported Non-Avaya Systems such as but not limited to, SUN®:

*Major Failure:* Twenty-five percent (25%) or more of the trunks and/or stations supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya; the attendant console or common control processor is out of service; twenty-five percent (25%) or more of the data peripherals supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya; or twenty-five percent (25%) or more of the special network capabilities supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya. Twenty-five percent (25%) or more of the user community is out of service at any time due to the failure of a Supported Product not manufactured by Avaya.

*Minor Failure:* Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

*Note:* An alarm is designated as either major or minor by software within the product. A major alarm is not necessarily an indication of a Major Failure and may be handled differently than a major failure. A minor alarm is not necessarily an indication of a minor failure and may be handled differently than a minor failure.

PARTNER®, MERLIN Legend, MERLIN MAGIX® and IP Office Integrated systems:

*Major Failure:* Failures that materially affect the operation of your telecommunications system.

*Minor Failure:* Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

CRM, Modular Messaging and Messaging Software Products:

*Major Failure:* Failures that materially affect critical operations. Critical operations are those such as: complete outages of operating system or application software; software bugs that cause a complete system crash or significant loss of data; or other software problems that significantly impede access or use of the software.

*Minor Failure:* Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

CONVERSANT®, Interactive Response (IR), Voice Portal (VP) and Call Management Systems (CMS):

*Major Failure* CMS - The system is down, not accessible by more than 50% of users and/or the system is losing data or not collecting data.

Conversant/IR/VP - The system is down, not accessible by more than 50% of users and/or the system is losing data or not collecting data, the system is not processing calls or 25% or more of T1 or tip/ring capacity is out of service.

*Minor Failure:* Any failure of the system that is not included in the definition of a Major Failure.

Octel® Message Servers, Supported Non-Avaya Voice Mail and Associated Hardware and Software:

*Major Failure:* Message Server – Unscheduled total system outage and failure to reboot for any reason; inability to access the system through the System Manager Terminal (SMT), if applicable; inability to access the system through 25% or more of all ports; interoperability of one or more of the disk drives that store message or data; loss of system integration; continual system restarts; inability of system to collect Call Detail Records (CDR™) data, if applicable; message waiting not functioning system wide; installed networking not functioning.

Data Module (for Aspen systems and OMD 250/350 message servers) – Inability to access the data module through the Data Module console terminal; inability to access the messaging server through SMT emulation; inability to access the Data Module through the fax board, voice board, module interface board or service modem; inability to access a host computer via the relevant Data Module application; inoperability of the interface to the Data Module.

Covered software feature – Anytime that the software feature or entire custom application, works, data module or prepackaged application is not functioning.

*Minor Failure:* Any failure of the system that is not included in the definition of Major Failure.

Data and Avaya Supported Servers:

*Major Failure:* Failures that Avaya determines materially affect critical operations.

*Minor Failure:* Any failure of data products that is not included in the definition of a Major Failure.

Meeting Exchange Conference Products:

*Major Failure* Failures that materially affect critical business operations and have no acceptable workaround. Examples of Major Failures are: total system failure that results in the loss of all transaction processing capability (e.g. loss of browser based call conferencing, data transmission); or cause significant reduction in conference traffic handling capability or the function of conferencing applications.

*Minor Failure* Failures causing particular features or functionality to be inoperative but not materially affecting normal business operations.

Standard Business Hours – Monday through Friday between the hours of 8:00 am and 5:00 pm in the time zone where the Supported Product is located, excluding Avaya-observed holidays. A list of Avaya observed holidays is available upon request.

Supported Products – The hardware products included on a service order form or associated service quote. Software is expressly excluded from coverage under this document. **Products manufactured by independent third parties (OEM products) may be included as Supported Products; however, these products are often serviced by third parties and the levels of service coverage and response intervals are designated by the third party performing the service. The service levels and response times contained in this document will not apply to these third party products.**

## 8. Addendum – Products with Remote Hardware Support with Advanced Parts Replacement 8x5

The 8x5 option of Remote Hardware Support with Advance Parts Replacement is available:

In the U.S.

On the following products **ONLY**:

Modular Messaging Release 4+  
Meeting Exchange Express Release 1.5+  
Unified Communication Standard Edition  
Communication Manager Release 5+

## 9. Addendum – Major Cities\*

To qualify for the Major Failure onsite response interval your site must be located within an Avaya covered major metropolitan area within North America or in the following major cities in supported countries.

## **North America – Texas**

Arlington	Austin	Carrollton
Coppell	Dallas	DeSoto
Duncanville	El Paso	Fort Worth
Garland	Grand Prairie	Houston
Irving	Mesquite	Plano
Richardson	San Antonio	

\*Not all zip codes within a named metropolitan area may qualify for Major Failure onsite response intervals. Then current detailed zip code listings will be provided at point of sale, if requested.



APPENDIX E1 TO DIR-SDD-1499

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# **SERVICE DESCRIPTION**

**Service Agreement Supplement**

**Full Coverage**

**Version 6.0 , July 2010**



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## I. Introduction

This Service Description describes the Avaya Support Advantage Essential and Preferred Support services for eligible Software and Hardware and supersedes all prior descriptions or contract supplements relating to such support. This document is an attachment to the Customer's Commercial Agreement with Avaya, and shall serve as the Service Description with respect to such support offering. In the event of a conflict between DIR-SDD-1499, this Service Description and the Customer's Commercial Agreement with Avaya, the terms and conditions of DIR Contract No. DIR-SDD-1499 will control. In the event that the Customer is an Avaya authorized reseller, distributor, systems integrator or service provider purchasing support coverage for the Customer's end user customers (or resellers, as applicable), Avaya will provide the support specified herein to the Customer. The Customer will be responsible for performing the end user customer responsibilities under this document and securing (either directly or through resellers, as applicable) all necessary approvals, consents and performance from the end user customer. This description is valid in all United States and Canadian locations.

## II. Maintenance Service Coverage: Full Coverage 8x5 and Full Coverage 24x7

*Coverage includes remote telephone support, remote diagnostics, troubleshooting, problem resolution, software maintenance updates/fixes, on-site parts replacement (if the covered product includes hardware), and any on-site support Avaya deems necessary to resolve a fault.*

### ***Product Eligibility for Coverage under this Supplement:***

This description applies to Avaya and selected non-Avaya products and components that Avaya has designated in the applicable order or associated quote sheet to be eligible for coverage and currently supported ("Supported Products"). A current list of Supported Products is available from Avaya at <http://avaya.com/support> (Maintenance Services Index by Product). Products and/or Applications manufactured by Avaya OEMs/Partners may not be covered by the same Service Level Objectives and response times. Please refer to the specific Product or Application Service Offer Definition for details.

### ***Coverage Hours and Elections***

*Standard Business Hours are 8:00a.m. To 5:00p.m. in the time zone of the covered products, Monday through Friday, excluding Avaya observed holidays.*

### ***Customer may elect either 8x5 or 24x7 coverage:***

- **Full Coverage 8x5:** Provides coverage during Standard Business Hours. Requests for support outside the Standard Business Hours may be accommodated at Avaya's option and will be subject to Avaya's then current Per Incident Maintenance rates.
- **Full Coverage 24x7:** This coverage option extends the benefit of Full Coverage to twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year for Major Failures. There is an additional cost for this coverage option.

## Coverage Elements:

### 1. Remote Maintenance Support

Subject to coverage hours, as part of Full Coverage Avaya will:

- Receive Customer's request for assistance through the Avaya Services Center
  - Avaya may require only Avaya authorized Customer contacts are able to initiate requests or check on their status and Avaya may limit the number of authorized contacts.
  - Customer may report/log a request via the method of their choice: toll-free telephone number, facsimile request, or Avaya's <http://avaya.com/support> website (or other website designated by Avaya).
- Troubleshoot and resolve product related problems via telephone or remote dial-in connection. Avaya will analyze the system malfunction, if applicable, or remotely access the system to verify existence of the problem and conditions under which it exists or recurs.
- Answer Customer questions regarding product problems.
- Provide recommendations for Software Updates and Service Packs to clear faults. In most circumstances and at Avaya's sole discretion, upgrades to the latest Minor Release or Update version of a product will be required before application of an applicable Patch or Service Pack in order to address a problem.
- Commence remedial maintenance service activities, including software maintenance (bug) fixes, product documentation and Update releases.
- Respond to, diagnose, and clear system-generated major alarms received via Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools (on Avaya products that support that functionality).
  - Any problem that cannot be automatically cleared by Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools will be responded to according to response intervals.
- Isolate or determine the source of problems or anomalies that are the result of installation or configuration errors, as long as the configuration errors are specific to an Avaya Software Product. Support is limited to unaltered versions of the software that are supported by Avaya, and to problems that are reproducible in that version of the software.
- Identify inconsistencies or errors in Avaya Software Product documentation.
- Identify appropriate resources to assist with activities or Customer requests falling outside of Avaya Software Support. Note that these additional resources may be billable and/or may be resources outside of Avaya.
- Both 8x5 and 24x7 Coverage options include 24x7 access to remote maintenance assistance, documentation, and other information via web-enabled case-based reasoning tools on "<http://avaya.com/support>" (or other website designated by Avaya).
- Provide Helpline support which includes:
  - Answering general usability or software application-specific questions: General usability issues are defined as, but not limited to; non-programming issues, and includes general information around the functionality of a product. Usability information can be provided without knowing the specific programming and configuration details of the Customer's system. This general support does not include consultation on appropriate methods and procedures for the Customer's environment nor does it include custom programming. On-going system administration is the Customer's responsibility.
  - Providing advice, which includes directing the Customer to sections of the documentation that may answer a question, clarifying the documentation or recommending possible training courses.
  - Working with trained individuals from the Customer to enhance understanding of the use and features of Avaya supported Products.
  - Helpline support is limited to Business Hours. Helpline requests provided outside of coverage hours (after 5:00 PM) are subject to availability, and will be quoted and billed at Avaya's then current Per Incident Maintenance rates. Helpline support is limited to the Customer's Authorized Systems Managers only.
- Support does not cover customized system features or reports created by the Customer or Third Parties. Any bug fixing or system re-configuration that Avaya must perform to clear a trouble

resulting from Customer's configuration changes are not included in Service Agreement coverage.

- If Avaya determines that a problem is due to the Customer's or a third party's application, then resolution and diagnostic fees may be charged at Avaya's then current Per Incident Maintenance rates.

## 2. On-site Maintenance Support

If a fault cannot be resolved remotely, and Avaya determines on-site intervention is required to do so, 8x5 coverage provides the dispatch of Avaya's field technical resources 8:00am to 5:00pm in the time zone of the covered products, excluding Avaya holidays, including engineering support. 24x7 coverage extends this support to all Major Failures twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year.

When customers are negatively impacted by localized events or disasters Avaya will make every effort to repair or replace equipment as soon as possible.

- Exclusions and Limitations:
  - **Additional charges will apply if an Avaya field technician is requested by the Customer to:**
    - **Wait one (1) or more hours after arriving on-site for equipment to become available for servicing;**
    - **Remain on-site after resolution of a problem in the covered Products;**
    - **Remain on-site outside of coverage hours;**
    - Provide Standby Service. For example, requesting field technicians to be present on the Customer's premises during electrical power shutdowns, disaster recovery tests, or special events.
    - Perform moves, changes, or other activities not covered under the scope of the selected coverage options
    - Perform any support on Products not covered by this Agreement.
  - All support (Remote, on-site and parts replacement) of terminals is excluded if the Customer selects Switch-Only Coverage option.
  - On-site support of terminals is limited to functional locations. Individual terminals located in remote offices or personal residences must be brought to a functional location for on-site support or a replacement part can be mailed directly to the remote location.
  - On-site support is not available for Spectralink terminals and associated accessories. Replacement parts will be mailed directly to the Customer.

### GCS and SMB Wire Maintenance

Provides support for horizontal cabling, single customer riser cables (not part of building riser cable), connecting blocks, wall jacks, cross-connect fields, patch panels, repeaters and Avaya standard repair products. This option does not cover black cable (inter-building -OSP ), riser cables used for multiple customers, fiber optic cabling, network facilities (poles, conduits, local access trunks and lines, non-Avaya supplied surge protectors, lightning arrestors/protectors, exterior wire, non-Avaya product cabling (e.g. alarm systems, building automation, security systems, card readers, etc.). Coverage also does not cover Force Majeure (floods, earthquakes, tornadoes, avalanches, mud slides, etc.), major externally caused damage (e.g. fires, pipe bursts, etc.), major unintentional damage (e.g. contractors cut cables, etc.), non-Avaya contractor use of improperly spliced wires and problems requiring non-standard tools to repair (e.g. elevator shafts, need for fork lifts, etc.).

### 3. Parts and Materials Replacement

*If covered configuration includes hardware, Full Coverage provides for on-site replacement of any covered part Avaya determines to be defective. Replacement parts may be new or refurbished.*

- Consumables (including but not limited to headsets, remote controls (TV & video), printer ribbons, back-up tapes or other blank media, wall brackets, rack mounting and other hardware kits, face plates, bezels, blank panels, designation strips, technical documentation, labels or other accessories) are not included in maintenance coverage.
- Equipment that is part of a standard configuration receives maintenance coverage as a component of a covered system. The equipment is defined as Minor Material and may include but is not limited to internal cabling, fans, fan assemblies, transformers, embedded operating system software, power supplies, fuses & firmware.
- **Service support does not include the provisioning or installation of hardware upgrades or reprogramming to add additional capabilities or functionality to the Product(s).**

#### Avaya-licensed Software:

- Defective software media will be replaced at no charge. Avaya will replace only the number of copies originally provided to the Customer.
- It is the Customer's responsibility to maintain original software media. In situations where the Customer has no backup copies of Avaya-licensed Software, Avaya will provide a backup copy of the originally licensed Software release in the event of a loss if the Software is a currently supported release. Replacement of media and any implementation services are subject to additional charges. If the lost release is not currently supported, the Customer must pay for an upgrade to a currently supported release.

### 4. Product Correction Updates

*In order to assess the quality and reliability of its systems, Avaya tracks repair information on our Customer's systems. Recurring problems are analyzed and where generally applicable corrective measures are identified, Avaya may issue a Product Correction Update. A Product Correction Update can be a Product Correction Notice (PCN), Service Packs, Software and firmware updates.*

#### Standard Full Coverage Service:

- Avaya will issue Product Correction Notices (PCN), Service Packs and Software and firmware Updates.
- PCNs will be issued as technician, remote or Customer installable and with a classification of either 1, 2 or 3 depending on the product, level of severity and complexity of the Update.
- Full Maintenance Coverage includes installation for remote and technician installable Product Correction Updates at no charge during Standard Business Hours. Full Maintenance Coverage 24x7 also includes support outside of Standard Business Hours for remote and technician installable PCNs that have been deemed by Avaya as Major Failures. All other support outside of Standard Business Hours is billable at Avaya's then current Per Incident Maintenance rates, unless specifically provided for in the PCN.
- There may be cases where a Product Correction Update may require a system hardware upgrade to comply with current manufacturer's specifications. Such hardware upgrades are not provided as part of Full Maintenance Coverage. Avaya will provide Customer with a cost estimate prior to providing any chargeable hardware upgrades.
- In most circumstances and at Avaya's sole discretion, upgrades to the latest Minor Release or Update version of a product will be required before application of an applicable Patch or Service Pack in order to address a problem.

- Customer installable Product Correction Updates are the responsibility of Customer. Upon Customer's request, Avaya will perform the installation at Avaya's then current Per Incident Maintenance rates. Remote help line support is available during Standard Business Hours. Full Maintenance Coverage 24x7 includes remote help line support outside of Standard Business Hours for Customer installable Product Correction Updates that have been deemed by Avaya as Major Failures. All other support outside of Standard Business Hours is billable at Avaya's then current Per Incident Maintenance rates.
- For certain Avaya designated Software applications, Customer will be entitled to receive Software Minor and Major Releases as well as Updates under Full Maintenance Coverage. Eligible Products will be designated on the applicable order or associated quote sheet as being entitled to "Full Coverage Plus Software Upgrade." The upgrades that will be provided may include new Software features and functionality, provided however, Customer will not be entitled to receive upgrades to optional features or functionality that Customer did not previously license and which Avaya licenses as separate Products. Any upgrades that are provided to eligible Products will be provided under the same provisions applicable for Updates as set forth herein.
- For Software applications designated by Avaya as eligible for "Full Coverage Plus Software Upgrades," Customer must provide a test or lab environment for verification of Updates, Minor Releases, and Major Releases before being moved into a production environment.
- For software applications eligible for "Full Coverage plus software upgrades", if Customer terminates such coverage, or coverage was never previously purchased and Customer wishes to initiate Full Coverage, Avaya will assess a re-initiation fee. The re-initiation fee is calculated as 125% of the coverage fees for the period in which the software was not under Full Coverage and such fee is billable in advance by Avaya on the first customer bill.

Note: 1) The customer is not required to be on the current release to re-initiate contract coverage. 2) This fee is subject to change at any time without notice. 3) Re-initiation fees are not discountable. 4) Time and Materials (T&M) support is not available if a support contract has lapsed.

## 5. Proactive IP Support

This description applies to Avaya and selected non-Avaya products and components that Avaya has designated in the applicable order or associated quote sheet to be eligible for Proactive IP Support coverage and currently supported ("Supported Products"). A current list of Supported Products includes:

- Avaya Servers: S8300, S8400, S8500, S8700 series
- Avaya Media Gateways: SCC1, MCC1, G250, G350, G600, G650, G700
- Data network elements as documented in the Master Site Grid. NOTE: Data network devices that are actively involved in transporting IP Telephony traffic originating from a supported Avaya S8XXX Server, must be included as Supported Products for monitored data network elements.
- The router and/or CSU/DSU at Customer's facility used to terminate the connection between Customer's network and Avaya must be included as a Supported Product.

All Avaya Media Gateways connected to an Avaya S8XXX Server must be included as a Supported Product. Avaya Media Gateways located outside of the US but connected to US-based Servers will be covered by the services described in this section of the document.

### Implementation

Implementation begins on the Effective Date and ends prior to the Service Assumption Date. Service Assumption will begin sixty (60) calendar days after the Effective Date. Avaya will develop a Service Implementation Plan (SIP) outlining the timeline of the relevant tasks to be performed by both Customer and Avaya. The Service Assumption date is dependent on the completion of items in the SIP that provide for monitoring of the Avaya S8XXX Server and associated Media Gateways. Services described in this



document for the data devices will be provided subject to receipt by Avaya of the required Customer information as outlined in the SIP.

Avaya will work with Customer to develop a comprehensive, up-to-date inventory ("Master Site Grid") of the products by site for which Avaya will provide the services described in this document ("Supported Products"). Inclusion of data devices on the Master Site Grid will require the receipt by Avaya of the required Customer information as outlined in the SIP. If any additional Supported Products or lists of locations covered under the Agreement ("Supported Sites"), are added to the Master Site Grid, the changes will be approved and processed as described in the SIP.

Depending upon network design, Avaya will install, at Customer's site or within Avaya Data Center, Avaya-owned equipment to allow Avaya to monitor and correlate events of the Supported Products within this document. Customer may choose to place a firewall between the Avaya-owned device and their network, provided Avaya is able to interrogate and receive events and alarms for all IP endpoints, and into all Supported Products. Customer maintains control of firewall access lists and policy. Customer thereby retains control over Avaya's access to the managed and/or monitored devices. Customer will provide connectivity via VPN or frame relay between Customer's network and Avaya, or Avaya will purchase a frame relay connection for Customer for an additional fee. Avaya-owned equipment must be returned to Avaya upon expiration or termination of services in working order. Title to such equipment remains with Avaya at all times.

Customer will take reasonable steps to prevent delays and ensure that all of the foregoing roles or responsibilities are performed. If services for the data devices does not occur on the Service Assumption date due to customer delays in providing required Customer information to Avaya as outlined in the SIP then Avaya may begin invoicing the Customer (and Customer shall begin to pay Avaya) for both recurring and non-recurring charges.

Avaya and Customer agree that the Supported Products installed within the Customer's environment may differ from the initial Master Site Grid supplied to Avaya, and agree to implement a Network Discovery process to properly reflect the actual data. In the event that the actual inventory differs from the initial Master Site Grid, Avaya may adjust charges to reflect the actual data. Data collected in the Network Discovery process includes, but is not limited to, the actual number of: sites, Supported Product inventory, software versions, and number of Equipped TDM Ports, Administered IP Ports, data devices and type of stations.

#### Monitoring of Supported Products

For Monitoring Services, Avaya will perform 24x7 SNMP, intelligent agent monitoring of alarms for the Supported Products, polling and syslog monitoring. Avaya will also detect failures and fault conditions for the Supported Products and correlate events within the Customer's network utilizing Avaya's proprietary tools.

For Event Notification and Management, Avaya will notify Customer of detected major alarms within 15 minutes of receipt. NOTE: The 15 minute notification is a service level objective target for Avaya. Notification intervals are not commitments for resolution time of reported troubles. Avaya will also answer calls and respond to alarms with qualified technicians trained on Supported Products. If the alarm is related to an Avaya Server/Media Gateway, Avaya will initiate fault diagnostics by validating events via dial up or network connection and analyzing the system malfunction. For events isolated to an Avaya Server/Media Gateway covered under a direct Avaya Maintenance Agreement, Avaya will case manage resolution of events. For event isolated to an Avaya Server/Media Gateway not covered under a direct Avaya Maintenance Agreement, such as an Avaya Media Gateway located outside of the US but connected to a US-based Server, Avaya will inform Customer's identified point of contact of events but will not be responsible for resolution of events. Disruptive testing will not be initiated unless coordinated with and agreed to by Customer.

## **Access**

Avaya will provide a designated telephone number for Customer to call regarding all operational support and accountability for Proactive IP Support services described in this document. The Service Desk will be staffed with English-language personnel and will be answered 24 hours per day, 7 days a week, and 365 days per year. Avaya will also provide Customer with access to a proprietary web portal which will provide trouble summary reports, trouble tickets, contact information and contract details.

## **Single Point of Contact (SPOC)**

SPOC is an optional Coverage Element available for an additional charge. To the extent that Avaya will provide SPOC, the following will apply.

Avaya will provide Customer with a designated Proactive IP Support team to coordinate trouble resolution activity on Customer's Avaya Server/Media Gateway/terminal/adjuncts at locations covered by Proactive IP Support, across all Avaya support organizations and platforms. SPOC response objectives, hours of coverage and major failure definitions are defined in Customer's Avaya Maintenance Agreement.

If Customer has purchased Enhanced Remote Services SPOC or has Remote Managed Services for Traditional Telephony for other locations, this SPOC will act as the SPOC for all covered locations.

## **Major Troubles**

Customer will be notified of all major troubles which are not automatically cleared by Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools. Major troubles are defined in Customer's Avaya Maintenance Agreement.

For major troubles, Avaya will:

- Work with Customer to determine the most effective way to handle each major trouble.
- Follow special handling instructions that have been mutually agreed upon by Customer and Avaya.
- Notify Customer upon receipt of major troubles not otherwise cleared.
- Monitor tickets to ensure timely progress and provide regular updates to Customer. Updates will include:
  - o Remote diagnostics completion
  - o Trouble dispatch
  - o Technical escalation
  - o Equipment to be ordered
  - o Remote commitment missed
  - o Remote closure

## **Minor Troubles**

SPOC includes case management or proactive notification of minor troubles as defined in Customer's Avaya Maintenance Agreement. Customer status updates for minor troubles will be based on status changes to the event rather than time intervals.

For minor troubles, Avaya will:

- Follow special handling instructions that have been mutually agreed upon by Customer and Avaya.
- Provide Customer with updates on status changes. Additionally, assistance can be provided in finding trouble status at the Avaya web site.
- Notify Customer of minor DS1 Alarms not cleared by EXPERT Systems<sup>SM</sup> Diagnostic Tools or the switch and provide updates to Customer. Updates will include information on:
  - o Dispatch
  - o Escalation



- o Closure

As part of SPOC, Avaya will also perform the following activities:

- Coordinate and case manage Avaya Labs modification requests (Tier IV).
- Conduct remote seasonal clock changes twice per year for Supported Products. (On-site dispatch is not included.)

## 6. Power Surge Protection

For customers with a current Avaya Maintenance Service Agreement, Avaya will repair damage to voice hardware products where lightning or a power surge is the direct cause of damage to the voice hardware products.

To qualify for equipment replacement, at the time of the power surge or lightening strike, Customer must have properly protected equipment that complies with:

- Product manual installation requirements,
- Product manual electrical protection requirements
- The National Electrical Code standards,
- Applicable local electrical code standards, and
- Any Applicable site requirements (power surge protection)

Customer must provide additional protection as follows:

- All power feeds for the switching products and ancillary equipment must be protected by a properly installed protection device (AC protector, line protector)
- All analog central office facilities connected to the switching product such as a loop start, ground start, or DID, must be protected by a properly installed protection device.
- All T1/DS1 facilities must be terminated in a CSU and/or DSU.
  - o All out of building stations or other services must be protected per out of building instructions provided in the appropriate installation manual.
  - o All additional protection equipment must be installed in compliance with the National Electrical Code, any applicable local standards, and any Avaya specified site requirements

The policy does not include coverage for:

- Damage to data, VPN or video products
- Loss or corruption of data records
- Damage from lightening strikes which indirectly cause damage to the voice hardware products (e.g. lightening causes a fire – the fire then damages/destroys the switch)
- “Acts of God” as defined in the Customer Agreement

*Note* - UPS (Uninterruptible Power System) is not a substitute for protection devices

## Response Intervals

*Response intervals define Avaya’s objectives for responding to a request for maintenance support.*

- **For Hardware Products; if Avaya deems the fault cannot be cleared remotely, interval is from the time the Avaya Service Center identifies an on-site visit is required to the time the technician or replacement part arrives at the Customer’s site. For Software Products, interval is from the time the Customer contacts the Avaya Services Center with an Assistance Request to the time the technician/engineer contacts the Customer.**

- **Hours are stated in coverage period hours. Work will be performed during the Customer's specified coverage hours. Avaya will attempt to clear all failures remotely before dispatching a technician to the Customer's premises.**
  - **Major Failures**
    - **Within two (2) business hours for Major Failures on the DEFINITY® and Communication Manager switch. To qualify for this response interval the Customer site must be located within a certain major metropolitan area, as defined by Avaya. This response is available during the hours of 8:00 a.m. to 5:00 p.m. in the time zone of the covered products, Monday through Friday, excluding Avaya observed holidays. The two (2) hour response interval is not applicable between the hours of 5:00 p.m. & 8:00 a.m. if the Full Coverage 7x24 option is elected.**
    - **Within four (4) business hours for Major Failures for Customer sites located outside the defined major metropolitan area, for non-Avaya labeled or customized software and all other products. This interval is provided during the hours of 8:00 a.m. to 5:00 p.m. in the time zone of the covered products, Monday through Friday, excluding Avaya observed holidays, or is provided 24x7 if Full Coverage 24x7 option is elected.**
  - **Minor Failures –For all other failures, response intervals are next Business Day by 5:00 p.m., provided the work will be performed during the normal Business Day, 8:00 a.m. to 5:00 p.m. in the time zone of the covered products, Monday through Friday.**

## ***Definition of Major/Minor Failures***

### **Definitions for Software**

**Major/Minor Failures:** Avaya determines whether the outage or fault constitutes a Major and Minor Failure. The following are guidelines for classification of Major and Minor Failures:

***Major Failure:*** Failures that materially affect critical operations and have no acceptable workaround. Critical operations are those such as:

- complete outages of the application software that results in the loss of all processing capability or that cause significant reduction in the capability or the function of the application;
- outages of the application software that impact more than 50% of the users;
- the system is losing data, not collecting data, or the system is not processing calls as a result of the application software;
- software bugs that cause a complete system crash or significant loss of data;
- other software problems that significantly impede access or use of the software.
- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

***Minor Failure:*** Any failure of the system that is not included in the definition of a Major Failure; or failures that cause particular features or functionality to be inoperative but not materially affecting normal business operations.

***Note:*** An alarm is designated as either major or minor by software within the applicable product. A major alarm is not necessarily an indication of a Major Failure and may not be handled as a Major Failure. A minor alarm is not necessarily an indication of a Minor Failure and may not be handled as a Minor Failure.

## **Definitions Hardware**

### **Major/Minor Failures**

*Failures not otherwise caused by Customer are classified as major or minor. The condition is assigned to the system when the Customer makes a request of Avaya for maintenance assistance. The classification determines how quickly the specific problem will be assigned a resource and responded to.*

### **DEFINITY®, Communication Manager, Modular Messaging, Intuity™, Predictive Dialer, Proactive Contact, and Supported Non-Avaya Systems such as but not limited to, SUN®\*:**

**Major Failure** Twenty-five percent (25%) or more of the trunks and/or stations supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya; the attendant console or common control processor is out of service; twenty-five percent (25%) or more of the data peripherals supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya; or twenty-five percent (25%) or more of the special network capabilities supported by the Avaya common control unit are out of service at any time due to the failure of products provided by Avaya.

- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

**Minor Failure** Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

#### **Alarm Conditions**

An alarm is designated as either major or minor by software within the Product. A major alarm is not necessarily an indication of a Major Failure and may be handled differently than a major failure. A minor alarm is not necessarily an indication of a minor failure and may be handled differently than a minor failure.

\* SUN is a trademark of Sun Microsystems, Inc.

### **PARTNER®, MERLIN Legend, MERLIN MAGIX® and IP Office Integrated systems:**

**Major Failure** Failures that Avaya determines materially affect the operation of the Customer's telecommunications system.

**Minor Failure** Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

### **CRM, Avaya Software/Applications, Avaya Supported Software Products and Messaging Software Products:**

**Major Failure** Failures that materially affect critical Customer operations. Critical Customer operations are those such as: complete outages of operating system or application software; software bugs that cause a complete system crash or significant loss of data; or other software problems that significantly impede access or use of the software

- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

**Minor Failure** Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

## **CONVERSANT<sup>®</sup>, Interactive Response (IR) and Call Management Systems (CMS):**

**Major Failure**     **CMS** - The system is down, not accessible by more than 50% of users and/or the system is losing data or not collecting data.  
**Conversant/IR** - The system is down, not accessible by more than 50% of users and/or the system is losing data or not collecting data, the System is not processing calls or 25% or more of T1 or tip/ring capacity is out of service.

- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

**Minor Failure**     Any failure of the system that is not included in the definition of a Major Failure.

## **Octel<sup>®</sup> Message Servers, Supported Non-Avaya Voice Mail and Associated Hardware and Software:**

**Major Failure**     **Message Server** – Unscheduled total system outage and failure to reboot for any reason; Inability to access the system through the System Manager Terminal (SMT), if applicable; inability to access the system through 25% or more of all ports; interoperability of one or more of the disk drives that store message or data; loss of system integration; continual system restarts; inability of system to collect Call Detail Records (CDR<sup>™</sup>) data, if applicable; message waiting not functioning system wide; installed networking not functioning.

**Data Module (for Aspen systems and OMD 250/350 message servers)** – Inability to access the Data Module through the Data Module console terminal; inability to access the messaging server through SMT emulation; inability to access the Data Module through the fax board, voice board, module interface board or service modem; inability to access a host computer via the relevant Data Module application; inoperability of the interface to the Data Module.

**Covered software feature** – Anytime that the software feature or entire custom application, Works, Data Module or prepackaged application is not functioning.

- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

**Minor Failure**     Any failure of the system that is not included in the definition of Major Failure.

## **Meeting Exchange Conference Products:**

**Major Failure**     Failures that affect the End User's normal business operations and have no acceptable workaround. Examples of Major Failures are: *total system* failure that results in the loss of all transaction processing capability (e.g. loss of browser based call conferencing, data transmission); or cause *Significant reduction* in conference traffic handling capability or the function of conferencing applications.

- Any resolution, even the resolution of a minor issue, requiring the shutdown of Customer's entire system or application will be considered a major failure and will not be subject to time and material charges if Customer is covered under the 7x24 maintenance offer.

**Minor Failure**     Failures causing particular features or functionality to be inoperative but not affecting normal business operations.

## **Data and Avaya Supported Servers:**

**Major Failure**     Failures that Avaya determines materially affect critical Customer operations.

**Minor Failure** Any failure of Products provided by Avaya that is not included in the definition of a Major Failure.

### **Product Correction Notices (PCNs):**

**Major Failure** Class 1 and 2 PCNs. Major system failure due to Product non-conformance. Moderate to high probability of potential loss of system use or functionality and or loss of customer information.

**Minor Failure** Class 3 PCN. Minor system failure due to Product non-conformance. Low probability of potential loss of system use or functionality and or loss of customer information.

## **Security**

- Toll Fraud Intervention: If the Supported Products includes any Communication Manager, G3 or DEFINITY products and the Customer suspects active toll fraud, the Avaya Services Center will assist the Customer in analyzing the situation and help the Customer understand what it may do to intervene and help stop long-distance theft (toll fraud). Note: This service supplement does not prevent the possibility of toll fraud.
- If the Supported Products includes any Communication Manager, any G3 or DEFINITY, Avaya will provide general security advice to help the Customer secure its system against toll fraud.
- Each Avaya Maintenance Customer will receive, on a Quarterly Basis, a Security Screener Letter via email. The purpose of the security screening service is to provide specific detailed important information pertaining to the risk of toll fraud associated with the use of the Customer's Avaya DEFINITY® Enterprises Communications Server, or Communication Manager. (Toll fraud occurs when unauthorized persons gain access to the Customer's system to make phone calls. Under applicable law, the Customer is responsible for paying for these unauthorized calls.) The security screening service checks the Remote Port Security Device, Default passwords on Customer Logins and the Remote Access Feature. The Customer should not assume that their system is totally secure, even if it passes the screening.
- The Customer should, with respect to Avaya products, use the "Avaya Products Security Handbook" along with the individual product documentation, as a guide, to help secure remote access capabilities. This guide is available on the Avaya Customer Support Web site, "<http://avaya.com/support>."

## **Maintenance Software Permissions and Logins**

Avaya's Service Agreement coverage includes limited right-to-use of DEFINITY®/Communication Manager Maintenance Software Permissions (MSP's), for Customers who wish to participate in clearing minor alarms on their equipment and routine administrative tasks. MSP's allow the Customer access to certain maintenance capabilities to perform low level/minor maintenance tasks. MSP's are Avaya proprietary information and are not transferable or assignable to a service provider or any third party. For Communication Manager 4.0 and all prior Communication Manager/ DEFINITY® systems upon expiration or prior to termination of Customer's Service Agreement or MSP Permission License, Customer will provide Avaya prompt access to the applicable products to de-activate the MSP's.

The Customer may not gain access to proprietary software, in the manner described below, without authorization from Avaya. The following changes to the DEFINITY®/Communication Manager proprietary software cannot be made without authorization from Avaya:

- Accessing and taking control of Avaya DEFINITY®/Communication Manager logins (INIT, INADS, DADMIN and Craft). These logins are accessed exclusively by Avaya personnel (or it's authorized agents/representatives in the case of DADMIN).

- Making changes to the permissions of logins intended for exclusive use of Avaya (INIT, INADS, DADMIN, and Craft).
  - Accessing the “Change System Parameters Custom Options” screen and turning on features in the DEFINITY®/Communication Manager system without paying right-to-use fees.

## ***Preventive Maintenance for DEFINITY Products***

Full Coverage provides routine Preventive Maintenance (PM) activities for Enterprise DEFINITY warranty and service agreement customers at no additional charge. PM routines and service is performed during business day hours, Monday-Friday, 8am-5pm. Each DEFINITY product type defines Preventive Maintenance activities and intervals.

## **III. Permissive Use and Demarcation**

**For Supported Products that are not configured to meet Avaya's guidelines for technical compatibility and connectivity to non-Avaya products, Avaya has the right to restrict its diagnostic and/or corrective procedures to those problems that originate entirely within such Supported Products and do not arise out of or in connection with the Supported Products' interoperation with any other non-Avaya Products.**

## **IV. Extended Services Support**

Avaya may discontinue or limit the scope of services for Supported Products that Avaya or a third party manufacturer has declared “end of life,” “end of service,” “end of support,” “manufacture discontinue” or similar designation (“End of Support”) effective as of the effective date of the manufacturer's End of Support notice. Following the effective date, Avaya services for manufacturer End of Support Products will be under the terms of “Extended Services Support.”

Extended Services Support will continue to provide the same Full Coverage Maintenance Services described in this document, with the following exceptions. At the end of manufacturer support, Tier IV R&D product developer support and going-forward maintenance Updates (e.g., Product Change Notices (“PCN's”), “bug fixes,” interoperability/usability solutions) are no longer provided by the manufacturer. Therefore, certain complex faults or functionality issues may not be resolvable without the Customer upgrading the system to a version currently supported by the manufacturer at the customer's expense.

In addition, as replacement parts are manufacture discontinued, some products or components may become increasingly scarce or require replacement with substitute parts. This may result in delays in response or repair intervals, may require upgrades to other components or the entire product itself replaced with manufacturer supported technology at customer's expense in order to ensure compatibility and preserve Supported Product functionality. As a result of these affects, Service Level Agreements will no longer apply.

Extended Services Support is provided only to Avaya customers purchasing support services (i.e.: Full Coverage, Remote Plus Parts, Remote Only etc.) for the affected Product. Customers who have not purchased support services for the affected Product are not eligible for Per Incident (a.k.a T&M) services when Extended Support becomes effective on such Product.

**Note: Effective July 1, 2010, Per Incident (a.k.a. T&M) services are provided only to Avaya**



**customers purchasing support services (i.e.: Full Coverage, Remote Plus Parts, Remote Only etc.) for the affected Product.**

## **V. Dedicated Access**

You must install or arrange for the installation of an Avaya-approved remote access methodology for systems/devices that support remote access no later than the delivery date of the Avaya-installed systems/devices or prior to the commencement of support in all other situations. Remote access is made possible with a traditional phone line for modem-equipped products or through an Avaya-approved VPN access solution. The line number or IP address must be provided to Avaya as soon as it is available.

This modem line or VPN must remain available to provide remote access on a 24x7 basis or there may be degradation to the service and support received from Avaya. Avaya's support obligations under this document are contingent on the provision of remote access. IF REMOTE ACCESS IS NOT GRANTED, AVAYA MAY NOT BE ABLE TO PROVIDE SERVICES AND WILL NOT BE LIABLE FOR SUCH FAILURE.

## **VI. Certification**

Newly purchased products, used products and products that had not been continuously covered are all eligible for coverage. Certification of the products is sometimes required to ensure that the products are properly installed and in good working order. Certification allows for the inspection of Avaya products and Avaya-supported products in order to ensure that they meet all Avaya environmental and technical specifications prior to issuing a Support Agreement.

Customer/Partners/Resellers must notify Avaya when there are moves or new system installs so Avaya can certify the equipment when required and update the Customer's records. Customers with an INADS line must also re-register the line at its new location.

Certification is required when one of the following criteria is met:

Avaya, an authorized Avaya BusinessPartner, or for non-Avaya products, a manufacturer or manufacturer-authorized service provider did not install equipment not classified as "customer installable." Avaya, an authorized Avaya BusinessPartner, or for non-Avaya products, a manufacturer or manufacturer-authorized service provider previously installed the equipment and Avaya service coverage has lapsed for more than ninety (90) days.

Equipment not classified as "customer installable" is not installed or moved by Avaya or an authorized BusinessPartner to a new site. If you have an INADS line, you must also re-register the line at its new location.

Certification is not included in the services or support described in this document. The cost of the certification will be charged at Avaya's then current standard rates. Avaya does not guarantee that products subject to certification will be certified.

## **VII. Customer Responsibilities**

### **Proactive IP Support, RMS IPT and SRM Customer Responsibilities**

*The following customer responsibilities apply when the customer has purchased one of the before-mentioned offers.*

- For Avaya Media Gateways located outside of the US but connected to a US-based Server, Customer must have a maintenance agreement through either Avaya or an Avaya Authorized BusinessPartner.
- Keep Supported Products at the current Major Release of Avaya Software or maintained to within one Major Release in order to get Avaya Product House support on issues such as PCN's. Products not kept at current Major Release or within one Major Release will be treated under the terms of Extended Support.

- **Provide full and timely access to Supported Products upon request by Avaya, and such access shall be available in any period during which a work request remains open.**
- Designate an individual with thorough understanding and authorization to make binding decisions on Customer's behalf as single point of contact (SPOC) for Avaya.
- Provide all information and materials requested by Avaya to implement and deliver the services stipulated within this SAS, including but not limited to:
  - Supported Product information including product IP addresses,
  - Site contact information,
  - Network discovery information,
  - Circuit information (e.g., subnet mask, gateway, machine names, and modem numbers) including network diagrams.
- **Ensure corporate security reviews and approves planned remote network access architecture. If applicable, Customer is responsible for ensuring required internal change control or security review processes are approved before installation date.**
- Verify and arrange for installation of all applicable network connections.
- Provide a VPN connection for the SIG to allow Avaya to interrogate and receive events and alarms for all Supported Products.
- **If network design dictates, provide a VPN device to be configured at Customer's location to allow Avaya to perform the services described in this SAS.** The Avaya-preferred VPN endpoint is a Juniper NetScreen VPN/Firewall appliance (ScreenOS 5.3 or better). Commencement of the delivery of services will not begin until Avaya deems this Customer activity complete. Avaya shall not be responsible for the delivery of these services without this connectivity.
- If network design dictates, provide an out of band access (1 Measured Business line (MB)) for backup purposes.
- When installed on Customer's site, take necessary precautions for the security of Avaya-owned equipment, including hardware and software components, used to deliver services covered by this SAS. Customer shall restrict access to Avaya-owned equipment to properly authorized personnel and shall remain responsible for the risk of loss of the equipment while on Customer premises.
- **Distribute and safeguard digital certificates which provide access to Customer's web portal. Notify Avaya if a digital certificate is compromised so that Avaya can resolve the digital certificate and issue a new one.**
- Ensure the web portal is updated with current and correct contact information.
- Provide own level 1 helpline support to answer Customer employee's questions and problems for the Supported Products, and will be sufficiently trained to answer these. Only then will nominated Customer coordinators contact Avaya for services described in this SAS.
- **Prevent delays and ensure that all of the** foregoing roles or responsibilities are performed, or the Service Assumption Date may be delayed without penalty to Avaya. If, due to such failure or delay on the part of Customer, the Service Assumption Date does not occur within thirty (30) days after the date specified in the Implementation Plan, Avaya may begin invoicing Customer (and Customer shall begin to pay Avaya) for both recurring and non-recurring charges.
- **Excuse Avaya from failure to achieve Avaya's service level objectives that result from Customer's failure to meet these preceding requirements.**
- **For Software applications designated by Avaya as eligible for "Full Coverage Plus Software Upgrades" customer must be on current software release prior to purchase.**



## VIII. Additional Benefits/Tools

Avaya offers additional tools to customers and channel partners who have purchased Avaya Service Agreements.

- **HealthCheck-** (Hardware support offers only) Proactively checking your System's Health. HealthCheck will identify misadministration and provide an easy to understand report that will enable you to make changes to your system to improve your systems reliability and performance. This is available on many of Avaya's applications and hardware and will provide detailed information along with recommendations for administration changes if any are discovered. Requesting a HealthCheck Report: <http://support.avaya.com>, login using your SSO login and click on the HealthCheck link located under "Related Links" on the support landing page.
- **Case Status Alerts-**Provides customers and channel partners the ability to sign up to receive proactive notifications with up-to-date status information on trouble tickets and service requests related to your communication solutions. Alerts will be sent via email and other test enable communication devices at no additional cost. To sign up for Case Status Alerts, you will need to have a Single Sign On (SSO) User ID. Your SSO User ID must be associated with the Sold-To Locations in which you wish to receive Case Status Alerts. You can view/add/change Sold To number associations at <http://support.avaya.com>>Sold To Administration. If the Sold To number is already "owned" by another User ID, you should ask that person to add you as a "user".
- **InSite Knowledge Management Technical Guide-** The Avaya InSite Knowledge Management search engine will provide powerful new search capabilities and access to the Avaya knowledge base used by Avaya Global Service Delivery engineers. This tool provides Discussion Forums with Subject matter experts, Resolution Wizards to provide clarity in understanding problems to expedite trouble resolution, and Improved search capabilities. To access Avaya Knowledge Base, Services Customers and Authorized BusinessPartners go to <http://support.avaya.com>, enter your SSO login and a valid Sold-To/Functional Location number.

## IX. Product Correction Support Coverage— US/Canada Only

Product Correction Support coverage is a separate services offer available at an additional charge that provides (1) Avaya installation for all Customer installable Product Correction Updates, and (2) support outside of Standard Business Hours, excluding Sunday and Avaya observed holidays, for all technician and remote installable Product Correction Updates. Product Correction Updates include Product Correction Notices (PCNs), Software and Firmware Updates and maintenance patches. Avaya will perform the work remotely when possible; otherwise, an on-site technician will be dispatched.

### Limitations and Exclusions

- PCN, Software and Firmware Updates and maintenance patches for Expansion Port Network (EPN) sites will be performed at the Processor Port Network (PPN) site when applicable. The customer must provide Avaya with access and required permissions. There must be a functional link from the EPN to the PPN; otherwise the EPN site will be priced the same as the PPN.
- Remote and customer installable PCN, Firmware and Software Updates and maintenance patches will be completed remotely when applicable. The customer must provide Avaya with access and required permissions. Additionally, for certain updates the customer will be required to insert a diskette into the disk drive. If the customer requests an on-site technician to perform this function, then per incident charges will be billed.
- Only Avaya issued Product Correction Updates are included in this offer and only for the eligible products covered by this offer.

- Out of hours support excludes Sundays or Avaya observed holidays unless the installation of the update is required for resolution of a maintenance trouble.
- Trouble isolation and fault management associated for the installation of Product Correction Updates for non-standard CMS environments is limited to correcting faults with the standard CMS application. Additional maintenance support is billable at Avaya's then current per incident maintenance rates.
- System backups are not included and are the customer's responsibility.
- Firmware Updates to voice terminals and other end-user devices (e.g., IP Softphone) are included for customers that have On-Site Hardware Maintenance on the switch and terminals. Avaya will download the update, but the customer will be required to register the voice terminals. This can be accomplished by a busy-out or having the users unplug and plug-in the voice terminal. If the customer has switch-only coverage, Software and Firmware Updates to voice terminals are either the customer's responsibility, or per incident charges will apply.
- Product Correction Support for CMS, IVR/Conversant products excludes updates issued by Sun Microsystems<sup>SM</sup>, including those approved by Tier IV, unless they have been incorporated into an Avaya issued PCN.

## X. Glossary

Terms	Definition
<i>Major Release</i>	A major change to the Software that introduces new optional features and functionality. Major Releases are typically designated as a change in the digit(s) to the left of the first decimal point (e.g. [n].y.z)
<i>Minor Release</i>	A change to the Software that introduces a limited amount of new optional features and functionality. Minor Releases are typically designated as a change in the digit to the right of the first decimal point (e.g. n.[y].z)
<i>Update</i>	Changes in the Software that typically provide maintenance correction only. An Update is typically designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]), representing a re-release of the corrected Software version, or an issue(s)-specific correction provided in the form of a patch, super patch, service pack, maintenance release, bug fix, etc.
<i>Unauthorized Service Provider</i>	Any 3rd party that is not an Avaya Authorized BusinessPartner.
<i>Commercial Agreement</i>	Means, as the context requires, DIR Contract No. DIR-SDD-1499.
<i>Customer</i>	Means, as the context requires any of the following: an end user customer, Reseller, Value Added Reseller, Distributor, Systems Integrator or Service Provider purchasing support services directly from Avaya for the Supported Products.
<i>Service Description</i>	The Service Description may also be referred to as a Service Agreement Supplement or Customer Service Agreement Information

**STATE & LOCAL GOVERNMENT/EDUCATION  
CUSTOMER AGREEMENT  
GENERAL TERMS**

This Customer Agreement (the “**Agreement**”) is entered into by and between Avaya Inc., with an address of 211 Mt. Airy Road, Basking Ridge, New Jersey 07920 United States (“**Avaya**”) and the undersigned Customer. The terms of DIR Contract No. DIR-SDD-1499 and this Agreement govern the undersigned Customer's purchase and/or license of hardware, software and associated Documentation (as defined in Section 6.1) (“**Products**”) and related services as described in the relevant Attachment(s) (“**Services**”). The “**Effective Date**” of this Agreement is the date Avaya countersigns it. For purposes of this Agreement, the Customer is an agency or department of a State or Municipal Government or a publicly funded educational institution, as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code, and for non-telecommunications IT Commodity products and services, “assistance organizations” defined in Section 2175.001, Texas Government Code. This Agreement covers Products and Services for use only in the United States.

If applicable, the Agreement also consists of one or more of the following Attachments:

- X **Attachment 1** – Supply of Generally Available Products
- X **Attachment 2** – Implementation & Technical Services Terms
- X **Attachment 3** – Maintenance/Managed Services Terms
- X **Attachment 4** – Purchase / License of Legacy Nortel Products and/or Services

The parties acknowledge that DIR Contract No. DIR-SDD-1499 is a prior written agreement the provisions of which shall prevail over any inconsistent provisions found in these terms.

## 1. ORDERS

Orders are subject to acceptance by Avaya. Avaya may accept an order by shipping Products or commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to DIR Contract No. DIR-SDD-1499 and the Agreement. Orders will be governed by the terms of the Agreement even when they lack an express reference to the Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in the Agreement will have no effect.

## 2. INVOICING AND PAYMENT

**2.1 Invoicing and Payment.** Avaya will invoice Product and Services fees as provided in the applicable attachment. Customer requests Avaya to invoice to and process payments from Customer via paper. Payment will be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 7. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with Customer's chosen method of payment (e.g. wire transfer, money order). Avaya's remedy for non-payment shall be in accordance with Texas Government Code, Sec. 2251.051.

**2.2 Taxes.** Taxes shall be handled in accordance with DIR Contract No. DIR-SDD-1499, Section 4F.

## 3. CUSTOMER RESPONSIBILITIES

Customer will cooperate with Avaya as reasonably necessary for Avaya's delivery of Products and performance of Services in a timely manner. Customer will provide Avaya with interface and other information regarding access to third party products in Customer's network and necessary third party consents and licenses to enable Avaya's performance under the Agreement. Customer is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good computing practices. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans to Customer (“Avaya Tools”) for the purpose of providing Services under this Agreement, such as, but not limited to, the Secure Intelligent Gateway. Customer will bear risk of loss and damage to Avaya Tools until returned to Avaya. Avaya Tools shall not be considered Products as that term is defined in these General Terms. If Customer fails to meet its cooperation obligations under this Section or as otherwise provided in the Agreement, Avaya may delay or suspend its delivery of Products or performance of Services relating to Customer's failure.

## 4. CONFIDENTIAL INFORMATION

**4.1 “Confidential Information”**, to the extent this provision is consistent with the Texas Public Information Act, means either party's business and/or technical information, pricing, discounts and other information or data, regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within 30 days after disclosure. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination or disclosure; (iii) was known by the receiving party prior to its receipt and was not received from a third party in breach of that third party's confidentiality obligations; (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by court order or other lawful government action.

**4.2 Obligations.** To the extent authorized by the Texas Public Information Act, each party will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. To the extent authorized by the Texas Public Information Act, neither party will use or disclose the other party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under the Agreement. The confidentiality obligations of each party will survive expiration or termination of the Agreement. To the extent authorized by applicable records retention laws and policies, upon termination of the Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request destroy, all Confidential Information, including any copies, in tangible form in that party's possession or under its control, to the extent authorized by applicable records retention laws and policies, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section.

## 5. INTELLECTUAL PROPERTY RIGHTS

**5.1 Customer Owns Customer IP.** Customer reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases,

documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively "Intellectual Property" or "IP") that Customer makes available to Avaya (collectively "Customer IP").

**5.2 Avaya Owns Avaya IP.** Avaya reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any Intellectual Property that Avaya owned prior to providing Services under the Agreement, any Intellectual Property that Avaya develops, creates, or otherwise acquires independently of this Agreement, and any Intellectual Property that Avaya develops, creates, or otherwise acquires (excluding Customer IP) while performing Services under the Agreement.

**5.3 Customer Ownership of Delivered Software.** Upon the effective date of this Agreement, neither party contemplates that the Customer will order customized deliverables from Avaya that will result in the transfer of any ownership rights of software or other proprietary data from Avaya to the Customer. Prior to any obligation of Avaya to transfer such rights, a written amendment to this Agreement shall be executed by authorized representatives of both parties expressly identifying the subject intellectual property and identifying the ownership rights that will be transferred.

## **6. SOFTWARE LICENSE TERMS AND RESTRICTIONS**

**6.1 License.** Avaya grants Customer a personal, non-sublicenseable, non-exclusive, non-transferable, perpetual license to use software and Documentation provided under the Agreement and for which applicable fees have been paid at the indicated capacity and feature levels and within the scope of the applicable license types described in Attachment 1 (Supply of Generally Available Products) hereto for Customer's internal business purposes and at the locations in the United States. Except for the limited license rights expressly granted in the Agreement, Avaya reserves all rights, title and interest in and to the software and Documentation and any modifications to it. "Documentation" means Avaya information manuals containing operating instructions and performance specifications that Avaya generally makes available to users of its products and delivers to Customer with the Products. Documentation does not include marketing materials. For software that is delivered electronically to or downloaded by Customer via Avaya's secured website, the license terms contained in this Agreement will prevail over the license terms (including Avaya's standard End User License Agreement, if applicable) that Customer might have accepted concurrent with license activation or downloading of the Software from Avaya's secured website.

**6.2 License Restrictions.** To the extent permissible under applicable law, Customer agrees not to: (i) decompile, disassemble, or reverse engineer the software; (ii) alter, modify or create any derivative works based on the software or Documentation; (iii) merge the software with any other software other than as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the software or Documentation except as expressly authorized by the Agreement; (v) distribute, disclose or allow use of the software or Documentation, in any format, through any timesharing service, service bureau, network or by any other means; (vi) allow any service provider or other third party to use or execute any software commands that cause the software to perform functions that facilitate the maintenance or repair of any Product; (vii) gain access to or the use of any software or part thereof without authorization from Avaya; (viii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Avaya; or (ix) permit or encourage any third party to do so.

**6.3 Backup Copies.** Customer may create a reasonable number of archival and backup copies of the software and Documentation, provided all proprietary rights, notices, names and logos are duplicated on all copies.

**6.4 Termination of License.** Termination shall be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 10. Upon termination or expiration of the license for any reason, Customer shall immediately return the Product and any copies to Avaya or at Avaya's discretion and written notice to Customer, Customer shall permanently destroy all copies of the Product and any related materials in Customer's possession or control to the extent allowed by applicable records retention laws and policies..

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

## **7. WARRANTIES AND LIMITATIONS**

Specific warranties for Products and Services are provided in the Attachments. THESE WARRANTIES ARE LIMITED AS PROVIDED IN EACH ATTACHMENT AND GENERALLY AS PROVIDED BELOW.

**7.1 Exclusions and Disclaimers.** The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under the Agreement or in a manner inconsistent with the Documentation; (ii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iii) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (iv) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; (v) failure to implement all new Updates (defined below) to software provided under the Agreement; (vi) Products that have had their original manufacturer's serial numbers altered, defaced or deleted; or (vii) Products that have been serviced or modified other than by Avaya or a third party specifically authorized by Avaya to provide the service or modification. An "Update" is a change in software that typically provides maintenance correction only and is designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]). EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES OR OTHERWISE RELATED TO THE AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS OR THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THE AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

## **8. INFRINGEMENT DEFENSE AND INDEMNIFICATION**

**8.1 Defense and Indemnity.** Indemnification shall be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 9.

**8.2 Remedial Measures.** If a Product becomes, or Avaya reasonably believes use of a Product may become, the subject of a Claim, Avaya may, at its own expense and option: (i) procure for Customer the right to continue use of the Product; (ii) replace or modify the Product; or to the extent that neither (i) nor (ii) are deemed commercially practicable, (iii) refund to Customer a pro-rated portion of the applicable fees for the Product based on a linear depreciation monthly over a five (5) year useful life, in which case Customer will cease all use of the Product and return it to Avaya.

**8.3 Exceptions.** Avaya will have no defense or indemnity obligation for any Claim based on: (i) a Product that has been modified by someone other than Avaya; (ii) a Product that has been modified by Avaya in accordance with Customer-provided specifications or instructions; (iii) use or combination of a Product with Third Party Products; (iv) Customer Products or Third Party Products; (v) a Product that is used or located by Customer in a country other than the country in which or for which it was supplied by Avaya; or (vi) possession or use of the Product after Avaya has informed Customer of modifications or changes in the Product required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Avaya's suggestions and to the extent Customer did not provide Avaya with a reasonable opportunity to implement Avaya's suggestions.

**8.4 "Third Party Products"** means any products manufactured by a party other than Avaya, and may include, without limitation, products ordered by Customer from third parties pursuant to Avaya's recommendations. However, components of Avaya-branded Products are not Third Party Products if they are both: (i) embedded in Products (i.e., not recognizable as standalone items); and (ii) are not identified as separate items on Avaya's price list, quotes, order specifications forms or Documentation.

**8.5 Sole Remedy.** THE FOREGOING STATES AVAYA'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PARTY.

**8.6 General Indemnification.** Indemnification shall be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 9.



## 9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, OR TOLL FRAUD. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO TWICE THE TOTAL CONTRACT PRICE (OR IN THE ABSENCE OF A CONTRACT PRICE, TWICE THE AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THE AGREEMENT IN THE 24 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM) THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS. THE LIMITATIONS OF AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THE AGREEMENT.

## 10. GOVERNING LAW AND DISPUTE RESOLUTION

**10.1 Governing Law.** The Agreement and any disputes arising out of or relating to the Agreement ("**Disputes**") will be governed by the laws of the state of Texas, excluding conflict of law principals. Any legal action brought pursuant to the Agreement shall be in state courts in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

## 11. TERM AND TERMINATION

**11.1 General Terms.** The Agreement will be effective and continue in effect for one year with three (3) one (1) year options to renew, unless terminated earlier in accordance with this Section. Either party may terminate the Agreement by written notice to the other party effective immediately upon receipt, if the other party fails to cure any material breach of the Agreement within a 30 day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured. Customer may terminate the Agreement for convenience upon 30 days written notice and subject to termination or cancellation fees, if any. If Customer terminates this Agreement for convenience, Avaya shall submit to Customer a termination settlement claim containing any charges up to the date of termination and any applicable termination fees, in the form of an invoice, within ninety (90) days from the effective date of the termination. Notwithstanding the foregoing, except for Customer's termination for non-appropriation of funds as set forth in subsection 11.2 below, termination of Maintenance Services shall be as set forth in Attachment 3. The provisions concerning confidentiality, license grant to Customer, and indemnity (as well as any other terms which, by their nature, are intended to survive termination or expiration) of these General Terms will survive any termination or expiration of the Agreement and any order. Except as expressly provided otherwise in the Agreement and termination for uncured breach, any termination of the Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of the Agreement became effective.

**11.2 AVAILABILITY OF FUNDS.** Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation, then Customer may terminate this Agreement as of the last day for which funds were appropriated in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 10.

## 12. AUDIT

Audits will be handled in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 8C.

## 13. MISCELLANEOUS

**13.1 Compliance.** The parties will observe all applicable laws and regulations, including export and re-export laws and regulations, when using the Products and work product of any Services.

**13.2 Assignment & Subcontractors.** Assignments will be handled in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 4D.

**13.3 Force Majeure.** Force Majeure will be handled in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 10C

**13.4 Entire Agreement.** DIR Contract No. DIR-SDD-1499 and the Agreement constitutes the entire understanding of the parties with respect to the subject matter of the Agreement and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. Any modifications or amendments to this Agreement must be in writing and signed by both parties, which in no event shall include any form of electronic communication (such as e-mail). If any provision of the Agreement is determined to be unenforceable or invalid by court decision, the Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. In case of conflict of terms DIR Contract No. DIR-SDD-1499 will prevail.

**13.5 No Waiver.** The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate the Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms.

**13.6 Notices.** Notices will be handled in accordance to DIR Contract No. DIR-SDD-1499, Appendix A, Section 11.

The parties have caused the Agreement to be executed by their duly authorized representatives with the intent to be legally bound, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged.

**AVAYA INC.**

**COMPANY NAME:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**STATE & LOCAL GOVERNMENT/ /EDUCATION  
CUSTOMER AGREEMENT  
ATTACHMENT 1  
SUPPLY OF GENERALLY AVAILABLE PRODUCTS**

These terms for Supply of Generally Available Products are part of the Customer Agreement between Avaya and Customer, which incorporates them by reference (the "Agreement"). They apply if and to the extent Customer purchases or receives licenses for Products under the Agreement that are generally available on Avaya's price lists. Products acquired under the Agreement are for use in the ordinary course of Customer's business and are not for resale by Customer.

## **1. DELIVERY AND IN-SERVICE DATES**

**1.1** The "**Delivery Date**" means the date on which Avaya delivers: (i) Avaya-installed Products to Customer's premises; or (ii) other Products to a carrier for shipment. In the case of software features that can be enabled by Avaya remotely or delivered via electronic means, "**Delivery Date**" means the date the features are enabled or the software is downloaded to the target processor. Customer agrees that for Software that Avaya delivers electronically to its customers, the instructions posted on Avaya's website for downloading and installation of the Software may be provided in English only. The "**In-Service Date**" means the date on which Avaya notifies Customer that the Avaya-installed Products are installed in good working order in accordance with applicable Documentation. "**Installation Start Date**" means the date on which Avaya's personnel arrive at Customer's premises to install Products.

**1.2 Acceptance.** For Customer-installed products, acceptance shall occur no later than thirty (30) days following the Delivery Date. For Avaya-installed products, acceptance shall occur no later than thirty (30) days following the In-Service Date. In the event that Customer has not provided Avaya with either (a) written acceptance, or (b) a rejection of the order with reasonably detailed explanation of the basis for such rejection, within thirty days following the In-Service Date, formal acceptance of Avaya-installed products will be deemed complete by default. Acceptance shall not be deemed a waiver of any warranties, or any other rights under this Contract.

## **2. ORDER OF PRECEDENCE**

In the event of conflict among the terms of this Attachment 1 and the General Terms, the order of precedence is: (i) the terms of this Attachment 1; and (ii) the General Terms. In the event of a conflict between the license terms contained in this Agreement and the license terms the Customer accepts prior to license activation, installation or downloading of the Software that Avaya delivers electronically to its customers, the license terms in this Agreement will prevail, except with respect to third party elements subject to a Shrinkwrap License, in which case the Shrinkwrap License will prevail

## **3. PRODUCT CHANGES**

Avaya may make changes to Products or modify the drawings and specifications relating to Products, or substitute Products of later design, provided that the changes do not adversely and materially impact Product form, fit or function.

## **4. ORDER CHANGES AND CANCELLATIONS**

For purposes of this Section, "Configured Products" means made-to-order Products provided under this Attachment and "Non-configured Products" are all other Products provided under this Attachment. Customer may change or cancel orders as follows:

Configured Products:

- Changes within 72 hours of order placement – 5% of Product and related installation fees
- Changes after 72 hours of order placement or any cancellation prior to Delivery Date – 15% of Product and related installation fees

Non-Configured Products

- Change or cancellation prior to Delivery Date– No Charge
- Change or cancellation after Delivery Date, but prior to Installation Start Date AND Avaya is installing the Product – 15% of Product and related installation fees.

In the event of a permitted cancellation, all preliminary or advance Products that have been delivered to Customer will be returned promptly to Avaya in the original, unopened packaging and in the same condition as delivered. No other changes or cancellations are permitted.

## **5. SHIPPING; RISK OF LOSS; TITLE**

Shipping and handling will be in accordance to DIR Contract No. DIR-SDD-1499, Section 4E. Title to all hardware will pass to Customer on the Acceptance Date, provided Customer maintains all delivered hardware in a secure environment with controlled access. Title to Software provided under the Agreement will remain solely with Avaya and its licensors.

## **6. INVOICING**

Invoicing and Payments will be handled in accordance to DIR Contract No. DIR-SDD-1499, Appendix A, Section 7. Unless otherwise agreed, Avaya will invoice Customer for Products as follows: (i) non-Avaya-installed Products will be invoiced 100% on the Delivery Date; (ii) Avaya installed Products will be invoices 100% on the In-Service Date.

## **7. WARRANTY AND LIMITATION OF LIABILITY**

**7.1 Warranty.** Avaya warrants to Customer that during the applicable warranty period, the Product will conform to and operate in accordance with the applicable Documentation in all material respects. The Products are not fault-tolerant and are not designed, manufactured or intended for any use requiring fail-safe performance in which the failure of a Product could lead to death, serious personal injury, severe physical or environmental damage ("High Risk Activities"). This includes the operation of aircraft or nuclear facilities. Customer agrees not to use, or license the use of, the Products in connection with any High Risk Activities.

**7.2 Warranty Period.** Unless a different period is specified in the applicable order, the warranty periods for Products are as follows: (i) hardware: 12 months, beginning on the In-Service Date for Avaya-installed hardware and on the Delivery Date for all other hardware; and/or (ii) software and software media: 90 days, beginning on the In-Service Date for Avaya-installed software and on the Delivery Date for all other software.

**7.3 Remedies.** If a Product is not in conformance with the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, Avaya at its option will: (i) repair or replace the Product to achieve conformance and return the Product to Customer; or (ii) refund to Customer the applicable fees upon return of the non-conforming Product to Avaya. For software warranty claims, Customer must provide Avaya with information in sufficient detail to enable Avaya to reproduce and analyze the failure and must provide remote access to the affected Products. Replacement hardware may be new, factory reconditioned, refurbished, or re-manufactured, but will be functionally equivalent and carry the remainder of the warranty of the replaced hardware and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period.

**7.4 Warranty Procedures.** Products subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions accompanied by evidence satisfactory to Avaya that the Products remain entitled to warranty protection.

**7.5 Costs.** If a Product is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Avaya determines that the Product was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current rates.

## **8. SOFTWARE LICENSE TERMS**

The following license terms and restrictions will apply to software licensed pursuant to this Attachment in addition to those in the General Terms.

**8.1 License Types.** Avaya grants Customer a license within the scope of one of the license types described below. The license type abbreviations below may be referenced in the order and/or Product Documentation. Where the order or Documentation does not expressly identify a license type, the applicable license will be a Designated System License. Where the order does not expressly indicate a specific number of licenses or units of capacity, the applicable number of licenses and units of capacity for which the license is granted will be one. For purposes of this list of license types: (i) "**Designated Processor**" means a single stand-alone computing device; and (ii) "**Server**" means a Designated Processor that hosts a software application to be accessed by multiple users.

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

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

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

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

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

**8.1.6 Shrinkwrap License (SR).** Customer may install and use the software in accordance with the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "click-through" licenses, accompanying or applicable to the software ("**Shrinkwrap License**").



**STATE & LOCAL GOVERNMENT/ /EDUCATION  
CUSTOMER AGREEMENT  
ATTACHMENT 2  
IMPLEMENTATION & TECHNICAL SERVICES TERMS**

These Implementation & Technical Services Terms are part of the Customer Agreement between Avaya and Customer, which incorporates these Services Terms by reference (the "**Agreement**"). These Implementation & Technical Services Terms apply if and to the extent Customer acquires Implementation & Technical Services.

**1. SCOPE; ORDER OF PRECEDENCE; CHANGES**

**1.1 Services Provided.** Avaya will provide the Services described in this paragraph ("**Implementation & Technical Services**") as specified in an order and further described in an applicable ISD and/or where custom Implementation Services are involved, a Statement of Work executed by both parties ("**SOW**"). The "**Implementation Services Description**" or "**ISD**" is the description of Avaya's standard Implementation Services under a defined Implementation Services Package then current as of the date of Avaya's acceptance of an order for Implementation Services. As used in this Attachment, "SOW" refers to the Statement of Work or ISD, as applicable. Implementation & Technical Services can include installation and configuration of Products, consulting and other services where Avaya (i) creates and delivers customized software, hardware, documentation, or other work product ("**Deliverables**") or (ii) completes other defined objectives ("**Milestone Objectives**") on a milestone basis or on a time and material basis ("**T&M Services**"). T&M Services are Implementation & Technical Services provided on a time and materials basis in exchange for hourly, daily or monthly fees and expense reimbursements calculated on the basis of Avaya service records. Deliverables and work product of T&M Services do not include generally available hardware and software and are not Products. To the extent an SOW provides that Avaya will deliver Products, the terms for Supply of Generally Available Products will apply to those Products. Implementation & Technical Services do not include Maintenance Services or Managed Services.

**1.2 Order of Precedence.** Unless otherwise provided for in these Implementation & Technical Services Terms, in the event of conflict among the General Terms, these Implementation Services Terms, an SOW and any ancillary attachments to or documents referenced in an SOW, the order of precedence is: (i) these Implementation & Technical Services Terms; (ii) the General Terms; (iii) any SOW; and (iv) ancillary documents; except that in relation to limitations of liability, licensing provisions, intellectual property rights and indemnification, the provisions contained in the General Terms will always take priority.

**1.3 Changes.** Changes in Implementation & Technical Services will be made in accordance with Avaya's standard change control procedures or procedures agreed to in writing by both parties in the SOW.

**2. ACCEPTANCE**

**2.1 T&M Services.** T&M Services are deemed accepted upon performance.

**2.2 SOW without Acceptance Procedures.** Where the SOW does not contain specific acceptance criteria and procedures ("**Acceptance Procedures**"), Implementation & Technical Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) production use of Deliverables or installed Products.

**2.3 SOW with Acceptance Procedures.** Where the SOW contains Acceptance Procedures, the Deliverable or Milestone Objective is deemed accepted upon the earlier of either: (i) the end of the acceptance period defined in the Acceptance Procedures, unless Avaya has received from Customer a rejection notice indicating in reasonable detail the material failure of the Deliverable or Milestone Objective to conform to the criteria in the Acceptance Procedures ("**Rejection Notice**"); or (ii) production use (except to the extent production use is included in the Acceptance Procedures). If the Deliverable or Milestone Objective fails to conform to the criteria in the Acceptance Procedures and Avaya has received a timely Rejection Notice, then Avaya will re-perform the respective Milestone Objective and re-submit the Deliverable or Milestone Objective for acceptance as described above. If, after resubmission, Customer provides another Rejection Notice, then Customer's remedies will be either to: (a) terminate the SOW, return all Deliverables and receive a refund of fees paid under the SOW; or (b) accept the Deliverable or Milestone Objective subject to the warranties and remedies described in Section 5.

**3. TRANSFER OF RISK, TITLE; LICENSE TO DELIVERABLES**

**3.1 Transfer of Risk and Title.** Transfer of Risk will be handled in accordance to Dir Contract DIR No. DIR-SDD-1499, Section 4E Title to hardware components of Deliverables will pass to Customer upon acceptance.

**3.2 Customer's License to Deliverables.** Subject to Customer's payment of fees for the Services, Avaya grants Customer a non-exclusive, non-transferable, perpetual, limited, non-sublicensable license to use the Deliverables. Software contained in Deliverables will be licensed subject to the Software License Terms contained in the Agreement.

**4. INVOICING AND PAYMENT**

Fees will be invoiced as follows: (i) Implementation & Technical Services on completion of the Services, unless otherwise provided in the SOW; and (ii) T&M Services monthly in arrears, unless otherwise provided in the SOW.

**5. WARRANTY**

**5.1 Warranty Period.** The warranty period for Implementation & Technical Services and Deliverables will be 30 days beginning on the acceptance or deemed acceptance date of the Deliverables or the performance of the Service (the "**Warranty Period**").

**5.2 Warranty.** During the Warranty Period, Avaya warrants to Customer that (i) Implementation & Technical Services will be carried out in a professional and workmanlike manner by qualified personnel; and (ii) Deliverables will conform in all material respects to the specifications contained in the SOW. However, Avaya does not warrant that software contained in the Deliverables will perform uninterrupted or error-free.

**5.3 Remedies.**

**5.3.1 Implementation & Technical Services.** To the extent that Avaya has not performed Implementation & Technical Services in accordance with the above warranty ("**Non-Conformity**") and Avaya receives written notice from the Customer within the Warranty Period that identifies the Non-Conformity in reasonable detail and requests Avaya cure the Non-Conformity, Avaya will re-perform the applicable Services or if Avaya determines that re-performance is not commercially reasonable, either (i) Avaya will refund to Customer the fees for the Non-Conforming Implementation & Technical Services; or in the case of T&M Services, (ii) Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed.

**5.3.2 Deliverables** If Avaya receives from Customer within the Warranty Period a written notice describing in reasonable detail how the Deliverables failed to be in conformance with the above warranty, Avaya will, at its option, repair or replace the non-conforming Deliverables, or refund to Customer the applicable fees upon return of the non-conforming Deliverables.

**5.3.3 Exclusive Remedies.** THE REMEDIES SET FORTH IN THIS SECTION 5.3 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF IMPLEMENTATION & TECHNICAL SERVICES AND DELIVERABLES.

**5.4 Disclaimer.** Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.



## **6. TERM AND TERMINATION**

**6.1 Term.** The term of an SOW will begin on the date specified in the SOW or order if any, or on the date executed by the last party to sign the SOW or Order. The term of the SOW will continue until the work is completed or the SOW is terminated earlier in accordance with this Section.

**6.2 Termination.** Any termination will be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 10 B.



**STATE & LOCAL GOVERNMENT/ /EDUCATION  
CUSTOMER AGREEMENT  
ATTACHMENT 3  
MAINTENANCE/MANAGED SERVICES TERMS**

These Maintenance/Managed Services Terms are part of the Customer Agreement between Avaya and Customer, which incorporates these Services Terms by reference (the "**Agreement**"). These Maintenance/Managed Services Terms apply if and to the extent Customer acquires Maintenance/Managed Services.

## **1. ORDER, PROVISION AND SCOPE OF SERVICES**

**1.1 Order and Provision of Services.** In return for the payment of the fees specified in the order, Avaya will provide the Maintenance/Managed Services options for Supported Products or Supported Systems at Supported Sites, as described further in this Attachment and the SAS (for purposes of this Attachment, "**Services**"). The "**Service Agreement Supplement**" or "**SAS**" is the applicable Avaya Service Agreement Supplement then current as of the date of Avaya's acceptance of an order for Services and available to Customer upon request. The parties may execute a statement of work describing specific Services to be provided by Avaya ("**Statement of Work**" or "**SOW**"). As used in this Attachment, "**SAS**" refers to the Service Agreement Supplement or Statement of Work, as applicable. "**Supported Products**" are: (i) hardware or software products identified in the order; and (ii) Added Products (defined in Section 1.9). Supported Products may include non-Avaya products to the extent they are specified in the order. "**Supported Systems**" are a group of products or networks specified in the order. "**Supported Sites**" are locations specified in the order.

**1.2 Documents and Order of Precedence.** Unless otherwise provided for in these Maintenance/Managed Services Terms, in the event of conflict among the General Terms, these Maintenance/Managed Services Terms; the SAS and any ancillary attachments to or documents referenced in the SAS, the order of precedence is: (i) these Maintenance/Managed Services Terms; (ii) the General Terms; (iii) SAS; and (iv) ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and indemnification, the provisions contained in the General Terms will always take priority.

**1.3 Monitoring.** Avaya may electronically monitor Supported Products and Supported Systems for the following purposes: (i) remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) when providing managed Services, to assess Customer needs for additional products or Services; (v) as otherwise provided in the SAS.

**1.4 Error Correction.** Some Services options may include correction of Errors. An "**Error**" means a failure of a Supported Product to conform in all material respects to the manufacturer's specifications that were currently applicable when the Supported Product was purchased or licensed.

**1.5 Help Line Support.** Where the selected Services option includes help line support, Avaya will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Customer has selected.

**1.6 Updates.** Where the selected Services option includes the provision of Updates, Avaya will make Updates available to Customer if, and when, the manufacturer makes them generally available to its other customers. Avaya will provide Updates via a website, email or post mail, at Avaya's option. Updates may be remotely installed by Avaya or delivered to Customer for self-installation.

**1.7 End of Support.** Periodically, Avaya or a third party manufacturer may declare "end of life," "end of service," "end of support," "manufacture discontinue" or similar designation ("**End of Support**") for certain Supported Products. Customer may access Avaya's user support website ([www.support.avaya.com](http://www.support.avaya.com)) for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide the support described in the SAS except for the End of Support exceptions listed therein ("**Extended Support**"). If the support described in the SAS does not include Extended Support information, Avaya will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly.

**1.8 Replacement Hardware.** Replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, or re-manufactured, but will be functionally equivalent and carry the remainder of the warranty of the replaced hardware and will be furnished only on an exchange basis.

**1.9 Added Products.** If Customer acquires additional products of the same type and manufacturer(s) as the existing Supported Products and locates them with existing Supported Products at a Supported Site, they will be considered "**Added Products**", and will be added to the order automatically for the remainder of the term. Added Products purchased from a party other than the manufacturer or an authorized reseller are subject to certification by Avaya at Avaya's then current Services rates. If Added Products fail certification, Avaya may choose not to add them to the Supported Products.

**1.10 General Limitations.** Unless the SAS provides otherwise, Avaya will provide software Services only for the unaltered current release of the software and the prior release. The following items are included in the Services only if the SAS specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or that have had their serial numbers altered, defaced or deleted

## **2. INVOICING AND PAYMENT**

**2.1 Invoicing.** Invoicing and Payment will be handled in accordance to DIR Contract No. DIR-SDD-1499, Appendix A, Section 7. Avaya will invoice Customer for Services in advance unless another payment option is specific in the order or SAS.

## **3. CUSTOMER RESPONSIBILITIES**

**3.1 General.** Customer will cooperate with Avaya as reasonably necessary for Avaya's performance of its obligations, such as: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; and (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them. All items will be provided by Customer at Customer's expense. If Avaya provides an Update or other new release of software as part of the Services, Customer will implement it promptly.

**3.2 Provision of Supported Products and Systems.** Except for Avaya hosted facilities identified in the SAS Customer will provide all Supported Products, Supported Systems and Supported Sites. Customer continuously represents and warrants that: (i) Customer is either the owner of, or is authorized to access and use, each of them; and (ii) Avaya, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

**3.3 Moves of Supported Products.** Customer will notify Avaya in advance before moving Supported Products.

**3.4 Vendor Management.** Where Avaya is to instruct or request products or services on Customer's behalf from third party vendors under Customer's supply contracts with the third party vendors ("**Vendor Management**"), Customer will provide Avaya upon request a letter of agency or similar document, in a form reasonably satisfactory to Avaya, permitting Avaya to perform the Vendor Management. Where the third party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

**3.5 Third Party Hosting.** In the event one or more network address(es) to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third party service provider ("**Host**"), Customer will: (i) notify Avaya of the Host prior to commencement of the Services; (ii) obtain the Host's

advance written consent for Avaya to perform the Services on the Host's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the Host in connection with the Services.

**3.6 Access to Personal Data.** From time to time, Customer may require Avaya to access a Supported Product or Supported System containing employee, customer or other individual's personal data (collectively, "**Personal Data**"). Where Customer instructs Avaya to access any Personal Data or a third party identified by Customer with access, Customer will (i) notify all relevant employees and other individuals of the fact that Avaya will have access to such Personal Data in accordance with Customer's instructions, and (ii) to the extent authorized by Texas Law and Constitution, indemnify Avaya and its officers, directors, employees, subcontractors and affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

#### **4. TITLE AND RISK OF LOSS TO EQUIPMENT**

Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer when it arrives at the Supported Site.

#### **5. SOFTWARE LICENSE**

Where Services include provision of patches, Updates or feature upgrades for Supported Products ("New Software"), they will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original software from Avaya. Where there is no existing license from Avaya, New Software will be provided subject to the manufacturer's then current license terms and restrictions for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the "shrinkwrap" or "clickwrap" end user license agreement accompanying them.

#### **6. WARRANTY AND LIMITATION OF LIABILITY**

**6.1 Warranty.** Avaya warrants to Customer that Services will be carried out in a professional and workmanlike manner by qualified personnel.

**6.2 Remedy.** If Services are not in conformance with the above warranty and Avaya receives Customer's detailed request to cure a non-conformance within thirty (30) days of its occurrence, Avaya will re-perform those Services. This remedy will be Customer's sole and exclusive remedy and will be in lieu of any other rights or remedies Customer may have against Avaya with respect to the non-conformance of Services.

**6.3 Disclaimer.** Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

#### **7. TERM AND TERMINATION**

**Term.** Unless a different term is mandated in the applicable SAS, Avaya will provide Services for an initial term of one year. Unless otherwise specified in the SAS, Customer may terminate Services in whole or in part upon 30 days written notice subject to cancellation fees equal to maintenance Service fees for 12 months or the remaining term, whichever is less.



**STATE & LOCAL GOVERNMENT/ /EDUCATION  
ATTACHMENT 4  
PURCHASE / LICENSE OF LEGACY NORTEL PRODUCTS AND/OR SERVICES**

This Attachment 4 includes the terms that apply to Customer's purchase of legacy Nortel Products and/or Services and are part of the Customer Agreement between Avaya and Customer (the "Agreement"). Attachments 1 and 2 do not apply to the purchase or licenses associated with legacy Nortel Products and/or implementation or installation Services. Attachment 3 will apply to the extent Customer purchases Maintenance Services on the legacy Nortel Products. To the extent the terms in Attachment 4 amend, modify, or conflict with the terms of the Agreement, the terms in Attachment 4 will govern.

**1. Definitions.**

- 1.1 "Furnish-only" means Products which Customer is responsible for installing.
- 1.2 "Hardware" means a legacy Nortel manufactured machine or components.
- 1.3 "Material" or "Materials" mean any and all engineering reports, designs, documentation and other work product prepared by Avaya and delivered to Customer pursuant to an Order. Materials shall be treated as Confidential Information.
- 1.4 "Products" means any Hardware, Software or Third Party Vendor Items provided under this Agreement; provided however, that Third Party Vendor Items shall not be considered a Product for purposes of Section 8 (Infringement Defense and Indemnity).
- 1.5 "Services" mean the activities as described in a quote, proposal, or Statement of Work.
- 1.6 "Service Descriptions" mean the published specifications in effect at the time Avaya accepts an Order for services performed on legacy Nortel Products. For legacy Nortel Products, the Service Description may serve as the SAS (as defined in Attachment 3).
- 1.7 "Software" means computer programs in object code form or firmware which is owned or licensed by Avaya, its parent or one of its subsidiaries or affiliates, and is copyrightable and licensed, not sold. Software consists of machine-readable instructions, its components, data, audio-visual content (such as images, text, recordings or pictures) and related licensed materials including all whole or partial copies. Software shall be treated as Confidential Information.
- 1.8 "Specifications" means the published technical description of the legacy Nortel Products.
- 1.9 "Statement of Work" is a document prepared by Avaya, describing the scope of work, estimated schedule, deliverables, Materials, Services, assumptions, responsibilities and other relevant terms specific to a project and an Order. A Statement of Work, if applicable, shall be governed by the terms and conditions of, and constitute a part of, this Agreement. In the event of a conflict between the Agreement and a Statement of Work, the terms of the Agreement shall prevail unless otherwise expressly agreed to in writing.
- 1.10 "Third Party Vendor Item" is a Third Party Product as defined in the General Terms, and may include "Third Party Hardware" and "Third Party Software" and means any hardware and/or software manufactured by a party other than Avaya and supplied to Customer under this Agreement.

**2. Orders.** Customer may purchase pursuant to DIR Contract No. DIR-SDD-1499 and this Agreement by issuing a purchase order signed by an authorized representative or, by submitting an electronic order (collectively, "Order"). All Orders shall reference DIR-SDD-1499 and this Agreement or Agreement number and shall specify the quantity, price, Services, Avaya quotation, proposal number, or Statement of Work, billing instructions, location, and requested commencement date, if applicable. Avaya reserves the right to reject an Order and to charge a cancellation fee for authorized Order cancellations. Customer agrees that all electronic Orders issued are equivalent to a written Order, are governed by the terms and conditions of this Agreement and that in the event of any conflict between this Agreement and the information contained in Customer's or Avaya's electronic commerce website, DIR-SDD-1499 governs.

**3. Changes to Orders.** The parties may, by mutual agreement, make changes to an Order ("Change"). The party asking for a Change shall describe in writing the details of the requested Change ("Change Order Request"). Avaya shall provide in writing to Customer a summary of any and all adjustments to the charges and other changes resulting from the Change Order Request. In no event shall any Change be effective or acted upon in any way until such time as (i) an authorized representative of each party has agreed to the terms of the Change Order Request in writing and (ii) Avaya has received an Order from Customer for any additional charges resulting from the Change Order Request.

**4. Licensed Use of Software.** Avaya grants Customer a personal, nonexclusive, nontransferable, nonsublicenseable license to internally: (i) install and execute the copy of the Software solely (a) to the extent of the authorized activation or authorized usage level and solely for the purpose specified in the Documentation, (b) in the country where the Software was delivered, and (c) with specifically designated Hardware and/or with Avaya authorized customer furnished equipment ("CFE") (collectively, the "Licensed Use"); (ii) use the associated Documentation solely in support of such Licensed Use; and (iii) make a single copy of the Software and associated Documentation solely for backup purposes. Customer agrees to maintain an accurate record of the whereabouts of the Software and any backup copy. Avaya and/or its suppliers (as applicable) retain all right, title and interest in and to the Software and Documentation, including any derivatives thereto and copies thereof. If any Software is subject to a free or open source license that provides the end user with rights to use, copy or modify a software program that are broader than the rights granted elsewhere in this license, then such rights shall take precedence. Customer also agrees to abide by any additional or different terms and conditions and restrictions provided by Avaya with respect to any third party software provided in or with the Software.

**5. Charges and Payment.**

5.1 Charges for Services may be based on a fixed price, time and materials or other commercial arrangement, as specified in the applicable Avaya quotation, proposal or Statement of Work. Unless otherwise provided in a valid Avaya quotation, proposal or Statement of Work, Avaya will invoice Customer one hundred percent (100%) of the price of the Products upon shipment of the Products and one hundred percent (100%) of the Services upon completion unless the Service continues beyond thirty (30) days, in which case Avaya will invoice Customer at the end of each month for Services performed in that month. Unless otherwise included as part of quote, Customer will reimburse Avaya for all reasonable out-of-pocket expenses incurred by Avaya in performing the Services (including, without limitation, all reasonable travel, meal, lodging, and mileage expenses). Payments will be in accordance with DIR Contract No. DIR-SDD-1499, Appendix A, Section 7. Reimbursement for all pre-approved travel and lodging expenses will be made in accordance with the DIR Contract No. DIR-SDD-1499, Section 1 G.

5.2 Shipping and Handling will be handled in accordance with DIR Contract No. DIR-SDD-1499, Section 4E.

5.3 Charges for Software may be based on extent of use authorized as specified in an Order or invoice. Customer agrees to pay the charges applicable for any activation or usage beyond the authorized level.

5.4 Customer consents without qualification to the sale of receivables, in whole or in part, including all or any part of any associated rights, remedies, and obligations, by Avaya without further notice and authorizes the disclosure of this Agreement, Orders, and associated documentation as necessary to facilitate such sale.

**6. Product Warranty.**

6.1 Avaya warrants that Hardware (i) is free from defects in materials and workmanship and (ii) substantially conforms to Specifications. If Hardware does not function as warranted during the warranty period, Avaya will determine to either (i) make it do so, or (ii) replace it with equivalent Hardware.

**6.2** Avaya warrants that when Software is used in the specified operating environment it will substantially conform to its Specifications. If Software does not function as warranted during the warranty period, Avaya will provide a suitable fix or workaround or will replace the Software; provided Software is within one software release level of the then-current software.

**6.3** The warranty period for Hardware and Software shall be as set forth in the current Global Product and Pricing Catalogue in effect at the time of Customer's Order and is available upon request. In the event Avaya determines that repair or replacement as set forth in this Section 6 cannot be made using commercially reasonable efforts, Avaya will give Customer a credit equal to Customer's net book value for the Product, provided Customer has followed generally-accepted accounting principles.

**6.4** Avaya provides Third Party Vendor Items on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Avaya specifies otherwise. However, such Third Party Vendor Items may carry their own warranties and Avaya shall pass through to Customer any such warranties to the extent authorized. Exercise of such warranty shall be directly between Customer and the third party provider.

**7. Service Warranty.** Avaya will perform the Services in a professional and workmanlike manner. If Services are not performed as warranted and Avaya is notified in writing by Customer within thirty (30) days, Avaya will re-perform the non-conforming Services.

**8. Warranty Service.** During the warranty period, Avaya provides certain types of warranty services without charge for specified Products to correct Product defects or to bring them up to conformance with Avaya published specifications. Avaya will inform Customer of the types of warranty services available to Customer which are consistent with Avaya standard practices and response times. Customer will obtain Avaya's concurrence prior to returning any Product for repair or replacement and must reference a return material authorization number issued by Avaya on documentation accompanying such returned Product. Customer agrees to ship Product prepaid and suitably packaged to a location Avaya designates. Avaya will return the Hardware to Customer at Avaya's expense. Avaya is responsible for loss of or damage to, Customer Hardware while it is (i) in Avaya's possession or (ii) in transit back to Customer. Any returned Hardware becomes Avaya's property and, subject to Avaya's receipt of the exchanged Hardware, its replacement becomes the Customer's property. Replacement Hardware may not be new but will be in working order and equivalent to the item exchanged. Customer agrees to ensure that exchanged Hardware is free of any legal obligations or restrictions that prevent its exchange and represents that all returned items are genuine and unaltered. Where applicable, before Avaya provides warranty services, Customer agrees to (i) follow the problem determination, problem analysis, and warranty services request procedures that Avaya provides; (ii) secure all programs and data contained in Hardware; and (iii) inform Avaya of changes in the Hardware's location. Services to supplement the warranty and maintenance services, including advance shipment of replacement parts may be available at Avaya's then-current prices and policies.

**9. Title and Risk of Loss.** Title to all hardware will pass to Customer on the Acceptance Date, provided Customer maintains all delivered hardware in a secure environment with controlled access. Title to Software provided under the Agreement will remain solely with Avaya and its licensors.

**10. Implementation and Installation Services.** Avaya will perform its responsibilities in accordance with the standard Avaya Statement of Work or Service Description where applicable. Avaya will successfully complete its standard installation and commissioning procedures before it considers Implementation and Installation Services to be completed. Avaya may make alterations to any Products or Service as necessary to comply with Specifications, changed safety standards or governmental regulations, to make Products or Services non-infringing with respect to any patent, copyright or other proprietary interest, or to otherwise improve a Product or Service.

<b>APPENDIX C - PRICING INDEX TO DIR-SDD-1499</b> <b>Avaya Inc.</b> <b>Manufacturer/Product Line/Product Category</b>	<b>Customer Discount % off MSRP</b>
<b>AVAYA/NORTEL HARDWARE/SOFTWARE</b> NOTE: Software must be bundled with hardware. Stand-alone software is not within the scope of this contract.	
<b>CM Common Hardware, AURA, Messaging, Phones, Octel, Unified Communications</b>	<b>43.75%</b>
<b>ECAD - Call Center, Self Service, Proactive Contact, Call Recording</b>	<b>34.75%</b>
<b>IP Office, Dist Enterprise, Headsets, SMBS</b>	<b>35.50%</b>
<b>Intelligent Internet</b>	<b>42.75%</b>
<b>SERVICES</b>	
<b>Avaya Services/Avaya Maintenance</b>	<b>5.75%</b>



# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

## - - Agency Special Instructions/Additional Requirements - -

### SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: Avaya, Inc. State of Texas VID #: 1223713430400
- Point of Contact: Chas Hallett Phone #: 713-852-1137
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☒ - No
- c. Solicitation #: DIR-SDD-1499

### SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §111.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- ☒ - Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- ☐ - No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
(If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
( #1) - Order Fulfillment	(#11) -
( #2) - Training	(#12) -
( #3) - Installation	(#13) -
( #4) -	(#14) -
( #5) -	(#15) -
( #6) -	(#16) -
( #7) -	(#17) -
( #8) -	(#18) -
( #9) -	(#19) -
(#10) -	(#20) -

\*If you have more than twenty subcontracting opportunities, a continuation page is available at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont1.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont1.doc).



**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

Enter your company's name here: Avaya, Inc.

Solicitation #: DIR-SDD-1499

**IMPORTANT:** You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

### SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 1 Description: 1- Order Fulfillment

### SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

### SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.) ☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

### SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

### SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note:** Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
Globalscope	174-302-3291-200	06/22/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Sharco Technologies Inc. Walkercom, Inc.	120-220-5169-700 176-030-275-8600	02-20-09 06/26/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No



IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

Enter your company's name here: Avaya, Inc.

Solicitation #: DIR-SDD-1499

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 2

Description: 2 - Training

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.)

☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.)

☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
Globalscope	174-302-3291-200	06/22/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Sharco Technologies Inc. Walkercom, Inc.	120-220-5169-700 176-030-275-8600	02-20-09 06/26/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No <input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

Enter your company's name here: Avaya, Inc.

Solicitation #: DIR-SDD-1499

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc).

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 3

Description: 3 - Installation

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

☐ - Yes (If Yes, complete SECTION 8 and 10.)

☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

☐ - Yes (If Yes, complete SECTION 8 and 10.)

☒ - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
Globalscope	174-302-3291-200	06/22/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Sharco Technologies Inc.	120-220-5169-700	02-20-09	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Walkercom, Inc.	176-030-275-8600	06/26/07	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

## SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
Globalscope Communications	174-302-3291-200	3%	\$360,000.00	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No*
Sharco Technologies Inc	120-220-5169-700	2%	\$240,000.00	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No*
Walkercom, Inc.	176-030-275-8600	10%	\$1,200,000	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No*
Avaya	122-371-3430-400	20%	\$2,400,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Affiliated Telephone	175-196-4065-400	9%	\$1,080,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Blackbox Network Services	162-120-2425-700	4%	\$480,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
CDW Government, Inc.	136-423-011-800	2%	\$240,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Cross Telecom Corp	141-186-1853-800	5%	\$600,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Enterprise Systems Corp	102-059-4306-000	4%	\$480,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Lantana Communications Corp	175-232-4280-200	5%	\$600,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Layer 3 Communications, llc	127-009-7420-200	4%	\$480,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
North American Communication Resource	141-176-3228-200	5%	\$600,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Shamrock Communication	176-049-2240-500	1%	\$120,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Shared Technologies	133-100-9098-300	5%	\$600,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
SKC	131-105-6628-101	1%	\$120,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Source, Inc.	175-136-9078-800	3%	\$360,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Strategic Products and Services LLC	122-314-0946-2	1%	\$120,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Sunturn	184-157-3723-0	4%	\$480,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
The Via Group	176-031-3762-500	2%	\$240,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
XETA Technologies	173-113-004-5700	3%	\$360,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
Verizon	113-274-5891-200	7%	\$840,000.00	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*

\*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:  
They were the best qualified and there were no other Hub vendors available to ask to participate that were Avaya Certified.

**SECTION 9 - SELF PERFORMANCE JUSTIFICATION**

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

- ☐ - **Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.
- ☐ - **No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

**SECTION 10 - AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/progressassessmentrpt>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

\_\_\_\_\_  
Signature on File  
Signature

Mark Copeland  
Printed Name

Regional Sales Leader  
Title

10/20/2011  
Date

**Appendix A**  
**Standard Terms and Conditions For Product and Related Services Contracts**

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## Appendix A

### Standard Terms and Conditions For Product and Related Services Contracts

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## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

#### **1. Contract Scope**

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

#### **2. No Quantity Guarantees**

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

#### **3. Definitions**

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.



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- B. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- C. CPA** – refers to the Texas Comptroller of Public Accounts
- D. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- E. Order Fulfiller** – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.
- F. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- G. State** – refers to the State of Texas.

#### **4. General Provisions**

##### **A. Entire Agreement**

The Contract, Appendices, and Exhibits constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

##### **B. Modification of Contract Terms and/or Amendments**

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

##### **C. Invalid Term or Condition**

- 1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.
- 2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain

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valid and in full force and effect.

**D. Assignment**

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

**E. Survival**

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**G. Limitation of Authority**

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

**5. Product Terms and Conditions**

**A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible

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Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

#### **B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)**

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

## **6. Contract Fulfillment and Promotion**

### **A. Service, Sales and Support of the Contract**

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

### **B. Use of Order Fulfillers**

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

#### **1) Designation of Order Fulfillers**

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State’s Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor

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shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller CPA Identification Number, Order Fulfiller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

#### **2) Changes in Order Fulfiller List**

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 6.B.1.a above.

#### **3) Order Fulfiller Pricing to Customer**

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

### **C. Product Warranty and Return Policies**

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

### **D. Customer Site Preparation**

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

### **E. Internet Access to Contract and Pricing Information**

#### **1) Vendor Website**

Within thirty days of the effective date of the Contract, Vendor will establish and maintain a website specific to the product and service offerings under the Contract

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which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Go DIReCt program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

#### **2) Accurate and Timely Contract Information**

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

#### **3) Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

#### **4) Website Changes**

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

#### **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

#### **6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

### **F. DIR Logo**

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when



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displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

#### **G. Vendor and Order Fulfiller Logo**

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

#### **H. Trade Show Participation**

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

#### **I. Orientation Meeting**

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

#### **J. Performance Review Meetings**

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

#### **K. DIR Cost Avoidance**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

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**7. Purchase Orders, Invoices, and Payments**

**A. Purchase Orders**

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

**B. Invoices**

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

**C. Payments**

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

**8. Contract Administration**

**A. Contract Administrators**

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

**1) State Contract Administrator**

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

**2) Vendor Contract Administrator**

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.



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**B. Reporting and Administrative Fees**

**1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect E-Mail Box at [GoDirect.Sales@dir.state.tx.us](mailto:GoDirect.Sales@dir.state.tx.us). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Filler's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

**3) Historically Underutilized Businesses Subcontract Reports**

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

**4) DIR Administrative Fee**

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee is specified in Section 5 of the Contract. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or

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late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

#### **C. Records and Audit**

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall

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be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

**D. Contract Administration Notification**

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Go DIRect E-Mail Box information.

**9. Vendor Responsibilities**

**A. Indemnification**

**1) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**2) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and

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service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**3) Independent Contractor**

**VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.**

**B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES

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**Standard Terms and Conditions For Product and Related Services Contracts**

FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

**C. Vendor Certifications**

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor represents and warrants that the Customer's payment to Vendor and Vendor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xiii) under Section



## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

#### **D. Ability to Conduct Business in Texas**

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

#### **E. Equal Opportunity Compliance**

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

#### **F. Use of Subcontractors**

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

#### **G. Responsibility for Actions**

Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

#### **H. Confidentiality**

1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

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- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

**I. Security of Premises, Equipment, Data and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller fails to comply with Customer's security requirements, then Customer may immediately terminate its Purchase Order and related Service Agreement.

**J. Background and/or Criminal History Investigation**

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement.

**L. Overcharges**

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

**M. Prohibited Conduct**

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order



## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

#### **N. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

##### **1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

##### **2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

##### **3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for

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bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

**O. Use of State Property**

Vendor is prohibited from using the Customer's equipment, the Customer's Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

**P. Immigration**

Vendor shall comply with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of 1996 Act., who will perform any labor or services under this Contract.

**Q. Public Disclosure**

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of DIR.

**R. Substitutions**

Substitutions are not permitted without the written permission of DIR or Customer.

**10. Contract Enforcement**

**A. Enforcement of Contract and Dispute Resolution**

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not

## **Appendix A**

### **Standard Terms and Conditions For Product and Related Services Contracts**

inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

#### **B. Termination**

##### **1) Termination for Non-Appropriation**

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers.

##### **2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

##### **3) Termination for Convenience**

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

##### **4) Termination for Cause**

###### **a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

###### **b) Purchase Order**

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Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

#### **5) Customer Rights Under Termination**

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

#### **6) Vendor or Order Fulfiller Rights Under Termination**

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

### **C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

## **11. Notification**

### **A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

### **B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

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Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**12. Captions**

The captions contained in the Contract and its Appendices are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.



# **SERVICE DESCRIPTION**

## **Service Agreement Supplement**

### **Software Support**

**Version 9.0 , July 2010**

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# Introduction

This Service Description describes the Avaya Support Advantage Essential and Preferred Support services for eligible Software and Hardware and supersedes all prior descriptions or contract supplements relating to such support. This document is an attachment to the Customer's Commercial Agreement with Avaya, and shall serve as the Service Description with respect to such support offering. In the event of a conflict between DIR-SDD-1499, this Service Description and the Customer's Commercial Agreement with Avaya, the terms and conditions of the DIR Contract No. DIR-SDD-1499 will control. In the event that the Customer is an Avaya authorized reseller, distributor, systems integrator or service provider purchasing support coverage for the Customer's end user customers (or resellers, as applicable), Avaya will provide the support specified herein to the Customer. The Customer will be responsible for performing the end user customer responsibilities under this document and securing (either directly or through resellers, as applicable) all necessary approvals, consents and performance from the end user customer.

## General

### **Support Coverage Options:**

Avaya offers two remote software support options:

- Software Support Plus Upgrades, 24x7
- Software Support, 24x7

***In order to be eligible to purchase Avaya hardware maintenance, you must have active software support coverage for corresponding software.***

The coverage described in this document is limited to unaltered versions of Supported Software and to problems that are reproducible in such versions. "Supported Software" means the software products included on a service order form or associated service quote that are eligible for software support from Avaya. Corrections to certain problems may only be available through a future version of the Supported Software or through a documentation update. Hardware products are expressly excluded from coverage under this document. For OEM SW that is covered by an Avaya maintenance agreement, the SLOs will conform to standard Avaya SLOs. Any OEM SW that is not covered by Avaya, and is covered by the OEM, would be subject to the OEM's SLOs available from the OEM provider.

Support coverage can be either Software Support Plus Upgrades (provided you are on the current release) or Software Support and is based upon the total number of licenses to be covered. Certain Supported Software also qualifies for coverage under the terms of Appendix B. Such coverage will be included when specified on the applicable order accepted by Avaya.

### **Commencement of Support:**

Software Support Plus Upgrades and Software Support will commence and be chargeable as follows:

- If Avaya sells the software directly and installs the software, software support will commence on the date Avaya notifies you that the software is installed according to specifications.
- If Avaya sells the software directly, but does not install the software, support will commence on the earlier of the date when software (i) features are enabled, (ii) is downloaded to the target processor or (iii) physically delivered to the customer premises.
- If the software is purchased through an authorized Avaya reseller, support will commence on the first day of the second month following software order closure. Support for additional licenses (after initial commencement of support) will commence on the first day of the month following order closure for those additional licenses.

**Renewal of Coverage:**

Notwithstanding anything to the contrary in your written commercial agreement with Avaya, Software Support coverage for Supported Software may renew, for up to three (3) additional one(1) year periods, at the end of the initial term of coverage and any renewal term under Avaya's then current Service Description applicable to Supported Software upon 30 days' prior written notice to the Customer, to which Customer agrees. Software Support Plus Upgrades will renew for successive 3 year terms of coverage, or such shorter term of coverage as may be offered by Avaya as of the date of renewal. Software Support coverage will renew for successive 1 year periods. The support rate for the second through final year of coverage within a multi-year support agreement will be the same rate as applicable for the first year of coverage for the same Supported Software. Thereafter coverage will renew at then-current rates as identified in Appendix C of DIR Contract DIR-SDD-1499.

**Reinitiation of Lapsed Coverage:**

A re-initiation fee will apply to reinstate support when coverage has lapsed or to initiate coverage when it was not initiated at the time of purchase of the software license. The new support coverage is based on the total number of licenses covered on the new contract. The re-initiation fee is a one time fee equal to 25% of the first year of the new support coverage. The applicable re-initiation fee will be paid on the first billing of the new contract. SSE product discounting can not be applied to this re-initiation fee.

Reinstatement of lapsed SS contracts does not require the customer to be on the current release.

Reinstatement of Lapsed SSU contracts does require the customer to be on the current release. If the SSU customer is not on the current release, new licenses must first be purchased. Then, the re-initiation fee is calculated based on the entire 3 year coverage period.

Note: 1) This fee is subject to change at any time without notice. 2) Re-initiation fees are not discountable, 3) Time and Materials (T&M) support is not available if a support contract has lapsed.

***Note: Effective July 1, 2010, Per Incident (a.k.a. T&M) services are provided only to Avaya customers purchasing support services (i.e.: Full Coverage, Remote Plus Parts, Remote Only etc.) for the affected Product.***

**Same Level Coverage:**

All licenses for a single application on a single server must have the same level of coverage. If you are found to have varying levels of coverage on the licenses for a single application or for a single server, the following will occur:

- Licenses covered at Software Support level will be brought up to Software Support Plus Upgrade coverage;
- The existing Software Support coverage will be cancelled and you will be credited for the remaining term; and
- An equalization fee will be applied.

The current equalization fee is a one time fee equal to the difference in coverage fees paid and fees applicable for Software Support Plus Upgrades coverage for the licenses. This fee is subject to change without notice and the applicable equalization fee will be as in effect at the time the new coverage is established.

**Coverage Required for Avaya Integrated Applications:**

All Avaya applications that are integrated with other Avaya applications that are covered by Software Support Plus Upgrades or Software Support must also be covered by Software Support Plus Upgrades or Software Support. In the event that Avaya becomes aware of fragmented coverage (e.g. Avaya Communications Manager integrated with Avaya Call Center Software where only Avaya Communications Manager is covered by Software Support), it will notify you. In the event that coverage is not initiated on the uncovered application(s) within ninety (90) days of such notification, support on the covered application will be treated as though canceled by you pursuant to the "Termination of Support" provisions set forth below and the cancellation fees set forth therein shall apply.

**End of Support/Extended Services Support:**

Periodically, Avaya or a third party manufacturer may declare “end of life,” “end of service,” “end of support,” “manufacture discontinue” or similar designation (“End of Support”) for certain Supported Software. Avaya may discontinue or limit the scope of services for Supported Software that Avaya or a third party manufacturer has declared “End of Support” effective as of the effective date of the manufacturer’s End of Support notice. Following the effective date, Avaya services for manufacturer End of Support Software will be under the terms of “Extended Services Support.” Unless your commercial agreement specifies how End of Support products will be treated, Avaya will continue to provide the same level of support described in this document for End of Support software, with the following exceptions:

- Tier IV R&D product developer support and going-forward maintenance upgrades, such as Product Correction Notices (PCNs), “bug fixes,” interoperability/usability solutions, are no longer provided.
- Certain faults or functionality issues may not be resolvable without upgrading the system to a version currently supported by the manufacturer. You will be responsible for the costs associated with any upgrades.
- There may be delays in response or repair intervals.

Extended Services Support is provided only to Avaya customers purchasing support services (i.e.: Full Coverage, Remote Plus Parts, Remote Only etc.) for the affected Product. Customers who have not purchased support services for the affected Product are not eligible for Per Incident (a.k.a T&M) services when Extended Support becomes effective on such Product.

A list of currently supported software is available from Avaya at: <http://support.avaya.com> (Maintenance Services Index by Product).

**Access:**

You must install or arrange for the installation of a dedicated remote access methodology for systems/devices that support remote access no later than the delivery date of the Avaya-installed systems/devices or prior to the commencement of service in all other situations. Remote access is made possible with the Secure Access Link (SAL) Software Gateway, a traditional phone line for modem-equipped products or through an Avaya-approved VPN access solution. The line number or IP address must be provided to Avaya as soon as it is available. The modem line or VPN must remain available and dedicated to provide remote access on a 24x7 basis or there may be degradation to the service and support you receive from Avaya. IF 24x7 REMOTE ACCESS IS NOT GRANTED, AVAYA MAY NOT BE ABLE TO PROVIDE SERVICES AND AVAYA MAY CHARGE ADDITIONAL PER-INCIDENT MAINTENANCE RATES IF THERE IS ADDITIONAL COST TO AVAYA IN PROVIDING SERVICES TO YOU.

**Termination of Software Support:**

Software Support Plus Upgrades and Software Support coverage (collectively for purposes of this section, “Support”) may be cancelled at any time during the current Term upon at least 30 days’ written notice prior and shall be subject to payment by Customer of (i) Support Charges up to and including the date of termination, and (ii) cancellation charges. Cancellation charges shall be equal to the Support Charges that would otherwise be payable for the affected Support for the remainder of the year of the Term in effect as of the effective date of the termination. The parties agree that the cancellation charges are liquidated damages comprising a reasonable estimate of Avaya’s damages in the event of Customer’s early termination and are not a penalty.

Unless already paid, the cancellation fees shall be immediately due and payable upon cancellation.

## **Software Support Plus Upgrades, 24x7**

***Benefits of Software Support Plus Upgrades, 24x7***

Software Support Plus Upgrades, 24x7, provides the services listed below as well as a level of investment protection for software purchases. If Avaya makes a Minor or a Major Release (as defined in Appendix A) of a Supported Software product commercially available during the coverage term, if you have purchased

this option, you will have access to the features and functions of the new release without having to pay additional fees. Additionally, you determine when the upgrade occurs, allowing you the ability to manage the migration to new versions. All upgrades must be scheduled and implemented while Software Support Plus Upgrades is in effect. You can sign-up for email notifications (E-Notifications) of the availability of new releases at <http://support.avaya.com> (Online Service Manager/My E-Notifications).

Customers that do not upgrade during the term of the support agreement will not be refunded any portion of their support fees.

Following are the services provided with the Software Support Plus Upgrades option. Unless otherwise noted, these services are available twenty-four hours a day, seven days a week, and three hundred sixty-five days a year consistent with response intervals.

- Troubleshooting
  - If you experience a problem with Supported Software, you can report/log a request via telephone number, or Avaya's website (<http://avaya.com/support> or <http://webticketing.avaya.com> outside the US). You will have unlimited access to remote maintenance assistance, documentation, and other information via web-enabled case-based reasoning tools on Avaya's support website. Avaya may require that only Avaya authorized contacts are able to initiate requests, access the support website or check on problem status and may limit the number of authorized contacts.
  - Avaya will commence remedial service activities, including patches, bug fixes, and provide product documentation.
  - Corrections to certain problems may only be available through a future version of the Supported Software Application or through a Documentation update.
  - Avaya will troubleshoot, analyze and resolve problems with Supported Software via telephone or remote dial-in connection.
  - Avaya will isolate or determine the source of reproducible problems or anomalies that are the result of installation or configuration errors, as long as the configuration errors are specific to an unaltered Avaya software product.
  - Avaya will identify inconsistencies or errors in Avaya product documentation.
  - Support is limited to Supported Software being operated in a Standard Operating Environment. A "Standard Operating Environment" is one where the covered applications, databases and operating systems have been tested and certified by Avaya. If the Supported Software is not being run in a Standard Operating Environment, then the Avaya response intervals shall be as applicable to Minor Failures and additional charges may apply.
  - Support is limited to unaltered versions of the Supported Software being operated in standard configurations and in accordance with the Specifications supported by Avaya.
  - In the event that support is requested for Supported Software that is not being run in a Standard Operating Environment and Avaya requests that it be put in a Standard Operating Environment in order to reproduce and diagnose the problem, Avaya will not be responsible for the delays caused by such reconfiguration and you may be responsible for performing such reconfiguration. In the event that no trouble is found after putting the Supported Software into a Standard Operating Environment, you may be charged Avaya's time and materials rates for Avaya's efforts to troubleshoot the problem.
- Access to Helpline Support – During Standard Business Hours, you will have access to helpline support. "Standard Business Hours" are Monday through Friday (or any other local period of five (5) consecutive working days according to local custom) between the hours of 8:00 a.m. and 5:00 p.m. in the time zone where the Supported Software is located, excluding Avaya-observed holidays (a list is available upon request). Helpline support includes:
  - Answering general usability or product-specific questions, such as non-programming issues and general information around the functionality of a product. Usability information can be provided without knowing the specific programming and configuration details of your system. This general support does not include consultation on appropriate methods and procedures for your environment nor does it include custom programming.
  - Providing advice, which includes directing you to sections of the documentation that may answer a question, clarifying the documentation or recommending possible training courses.

- Working with trained individuals from your company to enhance understanding of the use and features of Avaya software products.
- Access to Product Correction Notices (PCNs) and Software Updates
  - PCNs and Updates (as defined in Appendix A) will be issued as technician-, remote- or customer-installable and with a classification level dependent on the product, level of severity and complexity of the PCN or Update.
    - Class 1 (major system failure due to product non-conformance with high probability of potential loss of system use or functionality and/or loss of customer information)
    - Class 2 (moderate system failure with moderate probability of loss of system use or functionality and/or loss of customer information)
    - Class 3 (minor system failure with low probability of potential loss of system use or functionality and/or loss of customer information).
  - You are responsible for installing PCNs and Updates designated as customer- or technician-installable. You may also be responsible for facilitating remote-installable installations.
  - Remote help line support for PCNs and Updates is available during Standard Business Hours. If the PCN or Update corrects a Major Failure, as defined in Appendix A to this document, support will be available 24x7.
  - There may be cases where a product correction or Update may require a system hardware upgrade to comply with current manufacturer's specifications. Hardware upgrades are not included. Avaya will provide you with a cost estimate prior to providing any chargeable hardware upgrades.
  - Implementation, installation, and customization services may be required and may be provided by Avaya at an additional cost and are outside the scope of coverage provided in this document.
  - PCNs and Updates will be available on Avaya's support website; however, only Avaya-issued PCNs and Updates are included as part of support.
  - You may be required to insert a disk into the disk drive for certain PCNs and Updates.
  - Trouble isolation and fault management associated with the installation of PCNs and Updates for non-standard environments is limited to correcting faults with the standard environment.
  - An installation charge may apply for Updates within a Major Release.
  - In most circumstances and at Avaya's sole discretion, upgrades to the latest Minor Release or Update version of the Supported Software will be required before application of the applicable patch or service pack in order to address the problem.

## ***Exclusions from Software Support Plus Upgrades, 24x7***

Software Support Plus Upgrades covers only the actual software application when upgrading from one release to a subsequent Major Release of the same application. The following are not included in this offer:

- Service charges for, but not limited to, installation, implementation, or professional services.
- Any provisioning of the software.
- Any equipment costs.
- Upgrading of components located in a customer "crash kit" or of maintenance spared equipment.
- Hardware changes required to comply with minimum vintage requirements.
- Project management costs.
- Upgrades to any and all different or adjunct software applications.
- New or additional feature functionality, capabilities or capacity beyond the scope of the original license grant including Upgrades to optional features or functionality that you did not previously license and which Avaya licenses as separate products.
- Migrating the software application to a new or different hardware platform.
- Parts replacement and/or on-site support; it is your responsibility to secure any parts and on-site technical expertise.
- Support of customized system features or custom applications (including those written using Avaya software).



- Configuration changes or reports.
- The provisioning or installation of software upgrades or reprogramming to add additional capabilities or functionality to the Supported Software.
- Services and all troubleshooting support not directly attributable to a fault in unaltered versions of Supported Software (including faults in your network or the public network).
- Any customization of, or labor to install, software application(s) on applicable hardware.
- Media replacement for damages or malfunctions caused by: (1) actions of non-Avaya personnel or the attachment of products not supported by Avaya; (2) failure to follow manufacturer's installation, operation, or maintenance instructions; (3) failure of products not serviced under this agreement; (4) abuse, misuse, or negligent acts of non-Avaya personnel; (5) repair to products if you or a party authorized by you modified the product in any manner.
- Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools.
- Support for any products other than Supported Software. In the event that a fault or problem is traced to products other than Supported Software and other Avaya maintenance coverage does not apply (e.g. hardware maintenance agreement), you will be responsible for Avaya's time and materials charges for such support.

Avaya may not be able to provide services and will not be liable for such failure if:

- Supported Software is not used in accordance with the software license agreement and/or documentation under which the software was supplied to you;
- Supported Software has been altered or modified by you or a third party;
- You make significant changes to the hardware and/or software in your operating environment that are not supported by or compatible with the Supported Software;
- You fail to provide Avaya with remote access as set forth herein.

## Software Support, 24x7

### ***Benefits of Software Support, 24x7***

Software Support, 24x7, provides the same Troubleshooting, Helpline Support and Access to Product Correction Notices (PCNs) and Software Updates as Software Support Plus Upgrades, but does not include Upgrades to Major Releases. If Avaya makes a Minor Release (as defined in Appendix A) of a Supported Software product commercially available during the coverage term, you will have access to the features and functions of the new Minor Release without having to pay additional fees.

### ***Exclusions from Software Support, 24x7***

The Software Support coverage option does not include the following:

- Service charges for, but not limited to, installation, implementation or professional services.
- Any provisioning of the software.
- Any equipment costs.
- Upgrading of components located in a customer "crash kit" or of maintenance spared equipment.
- Hardware changes required to comply with minimum vintage requirements.
- Project management costs.
- Upgrades to any and all different or adjunct software applications to the Supported Software.
- New or additional feature functionality, capabilities or capacity beyond the scope of the original license grant including Upgrades to optional features or functionality that you did not previously license and which Avaya licenses as separate products.
- Migrating the software application to a new or different hardware platform.
- Parts replacement and/or on-site support; it is your responsibility to secure any parts and on-site technical expertise.
- Support of customized system features or custom applications (including those written using Avaya software).
- Configuration changes or reports.

- The provisioning or installation of software upgrades or reprogramming to add additional capabilities or functionality to the Supported Software.
- Services and all troubleshooting support not directly attributable to a fault in unaltered versions of Supported Software (including faults in your network or the public network).
- Any customization of, or labor to install, software application(s) on applicable hardware.
- Media replacement for damages or malfunctions caused by: (1) actions of non-Avaya personnel or the attachment of products not supported by Avaya; (2) failure to follow manufacturer's installation, operation, or maintenance instructions; (3) failure of products not serviced under this agreement; (4) abuse, misuse, or negligent acts of non-Avaya personnel; (5) repair to products if you or a party authorized by you modified the product in any manner.
- Avaya EXPERT Systems<sup>SM</sup> Diagnostic Tools.
- Support for any products other than Supported Software. In the event that a fault or problem is traced to products other than Supported Software and other Avaya maintenance coverage does not apply (e.g. hardware maintenance agreement), you will be responsible for Avaya's time and materials charges for such support.

Avaya may not be able to provide services and will not be liable for such failure if:

- Supported Software is not used in accordance with the software license agreement and/or documentation under which the software was supplied to you;
- Supported Software has been altered or modified by you or a third party;
- You make significant changes to the hardware and/or software in your operating environment that are not supported by or compatible with the Supported Software;
- You fail to provide Avaya with remote access as set forth herein.

## Customer Responsibilities

For the term of the support agreement, your responsibilities include the following:

- Follow installation, operation, software and maintenance instructions of the Supported Software's manufacturers.
- Advise Avaya of all changes that affect network configurations and operations of Supported Products which may include IP addresses, subnet assignments, topology, server configuration or changes to firewalls that impact Avaya's ability to monitor or remotely access the Supported Products.
- Provide system passwords and equipment access control features required for Avaya to provide support.
- Provide Avaya with remote system access (dial up or equivalent) as set forth herein.
- Maintain the software at the generally available version or one-back.
- Maintain a procedure external to the software programs for reconstruction of lost or altered files, data, or programs.
- Provide Avaya a letter of agency to act on your behalf with product manufacturers, if necessary for trouble resolution.
- Inform Avaya about changes in the device software.

## Response Intervals of Remote Software Support, 24x7

Avaya seeks to respond to requests for support within the response intervals defined below. The interval is defined as the elapsed time between registration of a problem with Avaya's Services Center through an assistance request and commencement of problem resolution efforts by the Avaya technician/engineer.

Avaya's global remote response objective is two (2) hours for Major Failures, as defined in Appendix A.

Avaya's global remote response objective is Next Business Day for Minor Failures, as defined in Appendix A.



# Appendix A: DEFINITIONS

**Commercial Agreement:** Means, as the context requires, DIR Contract No. DIR-SDD-1499.

**Customer:** Means, as the context requires, any of the following: an end user customer, Reseller, Value Added Reseller, Distributor, Systems Integrator or Service Provider purchasing support services directly from Avaya for the Supported Products.

**Service Description:** The Service Description may also be referred to as a Service Agreement Supplement or Customer Service Agreement Information.

**Major/Minor Failures:** Avaya determines whether the outage or fault constitutes a Major and Minor Failure. The following are guidelines for classification of Major and Minor Failures:

**Major Failure:** Failures that materially affect critical operations and have no acceptable workaround. Critical operations are those such as:

- complete outages of the application software that results in the loss of all processing capability or that cause significant reduction in the capability or the function of the application;
- outages of the application software that impact more than 50% of the users;
- the system is losing data, not collecting data, or the system is not processing calls as a result of the application software;
- software bugs that cause a complete system crash or significant loss of data;
- other software problems that significantly impede access or use of the software.

**Minor Failure:** Any failure of the system that is not included in the definition of a Major Failure; or failures that cause particular features or functionality to be inoperative but not materially affecting normal business operations.

**Note:** An alarm is designated as either major or minor by software within the applicable product. A major alarm is not necessarily an indication of a Major Failure and may not be handled as a Major Failure. A minor alarm is not necessarily an indication of a Minor Failure and may not be handled as a Minor Failure.

**Major Release** – means a major change to the software that introduces new optional features and functionality. Major Releases are typically designated as a change in the digit(s) to the left of the first decimal point (e.g. [n].y.z).

**Minor Release** – means a change to the software that introduces a limited amount of new optional features and functionality. Minor Releases are typically designated as a change in the digit to the right of the first decimal point (e.g. n.[y].z).

**Update** – means a change in the software that typically provides a maintenance correction only. An Updates are typically designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]) representing a re-release of the corrected software version, or an issue(s)-specific correction provided in the form of a patch, service pack, maintenance release, etc.

**Order Closure** – Date on which an order is booked and closed within Avaya's system of record (SAP).

## Appendix B: Proactive IP Support

This Appendix B description applies to Avaya and selected non-Avaya products and components that Avaya has designated to be eligible for Proactive IP Support coverage and which are currently supported ("PIPS Products"). A current list of PIPS Products includes:

- Avaya Servers: S8300, S8400, S8500, S8700 series
- Avaya Media Gateways: SCC1, MCC1, G250, G350, G600, G650, G700

- Data network elements as documented in the Master Site Grid (as defined below). NOTE: Data network devices that are actively involved in transporting IP Telephony traffic originating from a supported Avaya Server, must be included on the Master Site Grid.
- The router and/or CSU/DSU at your facility used to terminate the connection between your network and Avaya must be included on the Master Site Grid.

This list is subject to change at any time without notice.

All Avaya Media Gateways connected to an Avaya Server must have Proactive IP Support coverage. Avaya Media Gateways located outside of the US but connected to US-based Servers will be covered by the services described in this Appendix B.

***In order to be eligible to purchase Proactive IP Support, you must have current Avaya Software Support Plus Upgrades coverage and Avaya Hardware Support maintenance coverage for applicable hardware.***

## ***Implementation***

Implementation begins on the date that Avaya accepts an order for Proactive IP Support or on such other date as the parties may agree upon in writing (the “Effective Date”) and ends prior to the Service Assumption Date. The “Service Assumption Date” is sixty (60) calendar days after the Effective Date. Avaya will develop a Service Implementation Plan (“SIP”) outlining the timeline of the relevant tasks to be performed by both you and Avaya. The Service Assumption Date is dependent on the completion of items in the SIP that provide for monitoring of the Avaya Server and associated Media Gateways. Services described in this Appendix B for the data devices will be provided subject to receipt by Avaya of the required customer information as outlined in the SIP.

Avaya will work with you to develop a comprehensive, up-to-date inventory (“Master Site Grid”) of the products by site for which Avaya will provide the services described in this Appendix B (“PIPS Products”). Inclusion of data devices on the Master Site Grid will require the receipt by Avaya of the required customer information as outlined in the SIP. If any additional PIPS Products or locations covered under your support coverage with Avaya (“Supported Sites”) are added to the Master Site Grid, the changes will be approved and processed as described in the SIP.

Depending upon network design, Avaya will install at your site or within the Avaya Data Center, Avaya-owned equipment to allow Avaya to monitor and correlate events of the PIPS Products within this Appendix B. You may choose to place a firewall between the Avaya-owned device and your network, provided Avaya is able to interrogate and receive events and alarms for all IP endpoints, and into all PIPS Products. You will maintain control of the firewall access lists and policy. You thereby retain control over Avaya’s access to the managed and/or monitored devices. You will provide the connectivity via VPN or frame relay between your network and Avaya, or Avaya will purchase a frame relay connection for you for an additional fee. Avaya-owned equipment must be returned to Avaya in working order upon expiration or termination of your service coverage agreement with Avaya. Title to such equipment remains with Avaya at all times.

You will take reasonable steps to prevent delays and ensure that all of the foregoing roles or responsibilities are performed. If services for the data devices does not occur on the Service Assumption Date due to your delays in providing required customer information to Avaya as outlined in the SIP then Avaya may begin invoicing you (and you shall begin to pay Avaya) for both recurring and non-recurring charges.

Avaya and you agree that the PIPS Products installed within your environment may differ from the initial Master Site Grid supplied to Avaya, and agree to implement a network discovery process to properly reflect the actual data. In the event that the actual inventory differs from the initial Master Site Grid, Avaya may adjust charges to reflect the actual data. Data collected in the network discovery process includes, but is not limited to, the actual number of: sites, PIPS Product inventory, software versions, and number of equipped TDM ports, administered IP ports, data devices and type of stations.

## ***Monitoring of IPT Platform and Data Network***

As part of Proactive IP Support, Avaya will provide Monitoring Services as detailed in this section. In order to provide Monitoring Services, Avaya will perform 24x7 Simple Network Management Protocol ("SNMP"), intelligent agent monitoring of alarms for the PIPS Products, polling and syslog monitoring. Avaya will also detect failures and fault conditions for the PIPS Products and correlate events within your network utilizing Avaya's proprietary tools.

As part of the Event Notification and Management under Proactive IP Support, Avaya will notify you of detected major alarms, within 15 minutes of receipt. NOTE: The 15 minute notification is a service level objective target for Avaya. Notification intervals are not commitments for resolution time of reported troubles. Avaya will also answer calls and respond to alarms with qualified technicians trained on PIPS Products. If the alarm is related to an Avaya Server/Media Gateway, Avaya will initiate fault diagnostics by validating events via dial up or network connection and analyzing the system malfunction. For events isolated to an Avaya Server/Media Gateway covered under a direct Avaya Maintenance Agreement, Avaya will case manage resolution of events. For event isolated to an Avaya Server/Media Gateway not covered under a direct Avaya Maintenance Agreement, such as an Avaya Media Gateway located outside of the US but connected to a US-based Server, Avaya will inform Customer's identified point of contact of events but will not be responsible for resolution of events. Disruptive testing will not be initiated unless coordinated with and agreed to by you.

## ***Access***

Avaya will provide a designated telephone number for you to call regarding all operational support and accountability for Proactive IP Support services described in this Appendix B. The Service Desk will be staffed with English-language personnel and will be answered 24 hours per day, 7 days a week, 365 days per year.

Avaya will also provide you with access to a proprietary web portal which will provide trouble summary reports, trouble tickets, contact information and contract details.

## ***Customer Responsibilities***

For the term of your support coverage under Proactive IP Support, your responsibilities include the following:

- Keep PIPS Products at the current Major Release of Avaya Communication Manager Software or maintained to within one Major Release.
- For Avaya Media Gateways located outside of the US but connected to a US-based Server, you must have a maintenance agreement through Avaya.
- When installed on your site, take necessary precautions for the security of the Avaya-owned equipment, including the hardware and software components. You shall restrict access to the Avaya-owned equipment to properly authorized personnel and shall remain responsible for the risk of loss of the equipment while on your premises.
- **Ensure your corporate security reviews and approves planned remote network access architecture. If applicable, you are responsible for ensuring required internal change control or security review processes are approved before the installation date.**
- You are responsible for the distribution and safekeeping of the digital certificates which provide access to your web portal. You are also responsible for notifying Avaya should a digital certificate be compromised, so that Avaya can resolve that digital certification and reissue a new one to you.
- If network design dictates, provide a VPN device to be configured at your location. The Avaya-preferred VPN endpoint is a Juniper NetScreen VPN/Firewall appliance (ScreenOS 5.3 or better). If you do not use NetScreen products and prefer to have the improved stability of brand matched hardware on both ends (hardware of the same brand as the Avaya preferred VPN endpoint Juniper NetScreen), Avaya will provide and jointly manage a suitable NetScreen appliance to terminate the VPN tunnel (by plugging a cable on the NetScreen at your location) for an additional fee. (You must

provide technical support for the physical eyes and hands work required to complete the connection at your location.) Commencement of the delivery of services will not begin until Avaya deems this activity complete. Avaya shall not be responsible for the delivery of these services without this connectivity.

- If network design dictates, provide an out of band access (1 Measured Business line (MB)) for backup purposes.
- Provide own level 1 helpline support to answer your employee's questions and problems for the PIPS Products, with staff sufficiently trained to answer these questions. Only the nominated customer coordinators will contact Avaya for services described in this Appendix B.

## Appendix C: Additional Tools

Avaya offers additional tools to customers who have purchased Avaya Service Agreements.

- **HealthCheck** - (Hardware support offers only) Proactively checking you System's Health. HealthCheck will identify misadministration and provide an easy to understand report that will enable you to make changes to your system to improve your systems reliability and performance. This is available on many of Avaya's applications and hardware and will provide detailed information along with recommendations for administration changes if any are discovered. Requesting a HealthCheck Report: <http://support.avaya.com>, login using your SSO login and click on the HealthCheck link located under "Related Links" on the support landing page.
- **Case Status Alerts** - Provides customers the ability to sign up to receive proactive notifications with up-to-date stats information on trouble tickets and service requests related to your communication solutions. Alerts will be sent via email and other test enable communication devises at no additional cost. To sign up for Case Status Alerts, you will need to have a Single Sign On (SSO) User ID. Your SSO User ID must be associated with the Sold-To Locations in which you wish to receive Case Status Alerts. You can view/add/change Sold To number associations at <http://support.avaya.com>>Sold To Administration. If the Sold To number is already "owned" by another User ID, you should ask that person to add you as a "user".
- **InSite Knowledge Management Technical Guide** - The Avaya InSite Knowledge Management search engine will provide powerful new search capabilities and access to the Avaya knowledge base used by Avaya Global Service Delivery engineers. This tool provides Discussion Forums with Subject matter experts, Resolution Wizards to provide clarity in understanding problems to expedite trouble resolution, and Improved search capabilities. To access Avaya Knowledge Base, Services Customers go to <http://support.avaya.com> , enter your SSO login and a valid Sold-To/Functional Location number.