



STATE & LOCAL GOVERNMENT/ EDUCATION
CUSTOMER AGREEMENT
GENERAL TERMS

APPENDIX D TO DIR-TSO-2654

This Customer Agreement (this "Agreement") is entered into by and between Avaya Inc., with an address of 4655 Great America Parkway, Santa Clara, California 95054-1233 United States ("Avaya") and the undersigned Customer. The terms of DIR Contract, DIR-TSO-2654 and this Agreement govern the Customer's purchase and/or license of hardware, Software in object code form and associated Documentation (as Software and Documentation are defined in Schedule A, Section 1 (collectively, "Products") and related services as described in the relevant Attachment(s) ("Services") in the United States. The "Effective Date" of this Agreement is the date the last party signs it. For purposes of this Agreement, the Customer is an agency or department of a State, County or Municipal Government, or a public educational institution.

Incorporated into this Agreement by reference is Schedule A, Avaya Global Software License Terms and, if applicable, this Agreement also consists of one or more of the following Attachments:

- Attachment 1** – Supply of Generally Available Products
- Attachment 2** – Technical Implementation & Technical Services Terms
- Attachment 3** – Maintenance, Managed Services and Subscription Services Terms

The parties acknowledge that DIR Contract No. DIR-TSO-2654 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 electronic email, at the email address provided by Customer to Avaya from time to time, or other agreed means of electronic communication, or by shipping Products or commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to DIR Contract No. DIR-TSO-2654 and this Agreement. Orders will be governed by the terms of this Agreement even when they lack an express reference to this Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in this Agreement will have no effect. All orders will reference the DIR Contract No. DIR-TSO-2654 and this Agreement and will specify as applicable the quantity, price, location, term, and quotation, proposal, or statement of work number in accordance with the DIR Contract NO. DIR-TSO-2654. "To the extent agreed by the parties, Customer may submit orders to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication. Any electronic order will be binding upon Customer as if submitted in writing.

2. INVOICING AND PAYMENT; TAXES

2.1 Invoicing and Payment. Avaya will invoice Customer Product and Service fees as provided in the applicable Attachment. Unless otherwise requested by Customer in writing, Avaya will invoice to and process payments from Customer via Avaya's electronic bill application. Payment shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 8.J.

2.2 Taxes. Taxes shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 8.E.

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 this 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 data retention and security computing practices. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans or makes available to Customer ("**Avaya Tools**"), such as, but not limited to, the Secure Intelligent Gateway. Customer will be responsible for the custody and care of the Avaya Tools until returned to Avaya. Avaya Tools will 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 this 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: (a) designated as confidential or proprietary at the time of disclosure and summarized in a writing so marked and delivered to the receiving party within 30 days after disclosure, in which case Confidential Information contained in such summary (not information contained solely in the nontangible disclosure) will be subject to the restrictions in this Agreement; or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information, that the information should be treated as confidential. 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; or (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information. Notwithstanding the requirements in this Agreement, Confidential Information that is required to be disclosed by court order or other lawful government action may be disclosed as required to comply with such order or action, but only to the extent so ordered, provided that to the extent allowed by applicable law, the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt, at its expense, to obtain a protective order or other remedy. The receiving party will take reasonable steps to attempt to preserve the confidentiality of the disclosing party's Confidential Information and agrees to provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order or other remedy.

4.2 Confidentiality Obligations. To the extent authorized by the Texas Public Information Act, each party will: (i) protect such 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, (ii) restrict disclosure of such Confidential Information to the receiving party's employees, agents, directors, officers, Technical legal advisers, Affiliates or subcontractors with a need to know and who are bound by confidentiality obligations with the receiving party at least as protective as the terms herein ("Authorized Parties"); (iii) advise such Authorized Parties of the obligations assumed herein; (iv) be responsible for any Authorized Party's noncompliance with the terms of this Agreement; and (v) not disclose any Confidential Information to any third party (other than an Authorized Party). 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 this Agreement. The confidentiality obligations of each party will survive for 3 years following expiration or termination of this Agreement and any orders hereunder, provided trade secrets will remain confidential for so long as they remain trade secrets under applicable law. To the extent authorized by applicable records retention laws and policies, upon termination of this 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, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section. Notwithstanding the foregoing, the receiving party may retain copies of the disclosing party's Confidential Information: (a) as part of the receiving party's archival records (including backup systems) that the receiving party keeps in the ordinary course of its business, but only as required by the receiving party's records retention policies, (b) as may be required by law, or (c) if and only to the extent they are relevant to a dispute between the parties. Such retained Confidential Information may not be used or retained for any purpose other than as set out in subsections (a) through (c), and will be destroyed in the ordinary course of business in compliance with the receiving party's records retention policies. Until such destruction has occurred, Confidential Information so retained will remain subject to the terms of this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

INTELLECTUAL PROPERTY MATTERS SHALL BE IN ACCORDANCE WITH DIR CONTRACT NO. DIR-TSO-2654, APPENDIX A, SECTION 5

6. SOFTWARE LICENSE TERMS AND RESTRICTIONS

Avaya grants Customer a license to use Software and Documentation in accordance with Schedule A, Avaya Global Software License Terms.

7. WARRANTIES AND LIMITATIONS

7.1 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.

7.2 **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 this Agreement or in a manner inconsistent with the Documentation; (ii) normal wear due to Product use, including but not limited to Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iv) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (v) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; or (vi) failure to implement all new updates to Software provided by Avaya. Warranties do not extend to 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. 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 THIS 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 THIS 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-TSO-2654, Appendix A, Section 10.A.

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 impracticable, (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, open source or freeware technology; (iv) Third Party Products, open source or freeware technology; (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 as permitted by the License Portability Policy in Schedule A; (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, or (vii) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. "Third Party Products" means any products made by a party other than Avaya, and may include, without limitation, products ordered by Customer from third parties. However, components of Avaya-branded Products are not Third Party Products if they are both: (y) embedded in Products (i.e., not recognizable as standalone items); and (z) not identified as separate items on Avaya's price list, quotes, order specifications forms or Documentation.

8.4 **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. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT.

8.5 **General Indemnification.** Indemnification shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 10.A.

9. LIMITATION OF LIABILITY

Limitation of Liability shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 10.K.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 **Governing Law.** This Agreement and any disputes, claims, or controversies arising out of or relating to this Agreement ("**Disputes**") including without limitation the formation, interpretation, breach or termination of this Agreement, or any issue regarding whether a Dispute is subject to arbitration under this Agreement will be governed by the laws of the state of Texas. 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** This Agreement will be effective and continue in effect for one year with three (3) one year (1) options to renew, unless terminated earlier in accordance with Appendix A, Section 11.B0 of the DIR Contract No. DIR-TSO-2654. Termination shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 11.B.

12. AUDIT

Audit shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 9.C.

13. MISCELLANEOUS

13.1 Compliance. The parties will observe all applicable laws and regulations when using the Products and work product of any Services. Avaya Products, technology and Services are subject to applicable import and export control laws and regulations of the United States and other countries. Each party, at its own expense, will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export to certain countries, for certain uses, or to certain end-users. Each party agrees to provide the other party the information, support documents and assistance as may be reasonably required in connection with securing necessary authorizations or licenses required for the transactions contemplated by this Agreement or in connection with associated reporting or recordkeeping obligations. Customer certifies that it is not on the U.S. Department of Commerce's Denied Parties List or affiliated lists, the U.S. Department of Treasury's Specially Designated Nationals List or on any other export exclusion list of any other U.S. or non U.S. governmental agency. Customer further certifies that neither the U.S. Bureau of Industry and Security nor any other U.S. or non-U.S. governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's import or export privileges. Additional information relevant to Avaya's compliance with applicable export and import laws and regulations can be obtained by contacting Avaya Global Trade Compliance at globaltrade@avaya.com.

13.2 Assignment & Subcontractors. Assignment shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 4.D.

13.3 Force Majeure. Force Majeure shall be in accordance with DIR Contract No. DIR-TSO-2654, Appendix A, Section 11.C.

13.4 Notices. Except as may be required by an Attachment or Schedule incorporated into this Agreement, any notice required or permitted under this Agreement will be delivered to the facsimile numbers or the addresses of the relevant party set forth below. Such delivery will be affected by facsimile, courier or by first-class mail, postage pre-paid.

FOR CUSTOMER: TO BE COMPLETED

CUSTOMER NAME:
ADDRESS:
CITY, STATE AND POSTAL CODE:
COUNTRY: United States
FASCIMILE:

FOR AVAYA:

ATTENTION: VICE PRESIDENT, LAW
AVAYA INC.
4655 GREAT AMERICA PARKWAY
SANTA CLARA, CA 95054-1233
UNITED STATES
FACSIMILE: 408-562-3749

13.5 Publicity. Avaya may make reference to this Agreement in its marketing materials or otherwise; provided, that such publicity may only disclose the terms of this Agreement or a specific project under this Agreement with the prior consent of Customer. Notwithstanding the foregoing, Avaya will be permitted to disclose the terms hereof or a specific project under this Agreement if such disclosure is required by U.S. or foreign state or federal law, applicable regulatory authorities (including, but not limited to, either party's obligation to disclose such information pursuant to the rules and regulations promulgated by the U.S. Securities and Exchange Commission), court order or other lawful government action; provided that, to the extent disclosure is required by court or governmental order, only to the extent the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt to obtain a protective order.

13.6 Entire Agreement. DIR Contract No. DIR-TSO-2654 and this Agreement constitutes the entire understanding of the parties with respect to the subject matter of this 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. This Agreement may be executed in multiple counterparts, each of which will constitute an original and all of which will constitute but one agreement. This Agreement may be executed by electronic signature, which will be binding between the parties as though handwritten. Electronic signature will include either an electronic symbol adopted by a person with the intent to sign this Agreement or a photostatic copy of a handwritten signature. Any modifications or amendments to this Agreement must be in writing physically or electronically and signed by both parties. In no event will electronic mail constitute a modification or amendment to this Agreement. If any provision of this Agreement is determined to be unenforceable or invalid by court decision, this 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. The failure of either party to assert any of its rights under this Agreement, including, but not limited to, the right to terminate this 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 this Agreement in accordance with its terms. In case of conflict of terms, DIR Contract No. DIR-TSO-2654 will prevail.

13.7 Interpretation. In this Agreement. (i) a reference to the singular includes the plural and vice versa, unless the context otherwise requires; (ii) the headings are inserted for convenience only and will not affect the interpretation of this Agreement; and (iii) whenever the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation".

The parties have caused this 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.

CUSTOMER:

By: _____
Name: _____
Title: _____
Date: _____

AVAYA INC.

By: _____
Name: _____
Title: _____
Date: _____



STATE & LOCAL GOVERNMENT/ EDUCATION

CUSTOMER AGREEMENT SCHEDULE A AVAYA GLOBAL SOFTWARE LICENSE TERMS

These Global Software License Terms are part of this Agreement between Avaya and Customer, which incorporates them by reference. They apply if and to the extent Customer obtains Software from Avaya under this Agreement.

1. LICENSE GRANT. For purposes of this Section and this Agreement: (1) "Documentation" means information published by Avaya in varying mediums which may include product information, operating instructions and performance specifications that Avaya generally makes available to users of its Products. Documentation does not include marketing materials; and (2) "Software" means computer programs in object code, provided by Avaya or an Avaya Channel Partner, whether as stand-alone products or pre-installed on hardware products, and any upgrades, updates, bug fixes, or modified versions thereto. Avaya grants Customer a personal, non-sublicensable, non-exclusive, non-transferable license to use Software and associated Documentation obtained from Avaya and for which applicable fees have been paid for Customer's internal business purposes at the indicated capacity and features and within the scope of the applicable license types described below and at locations where the Software is initially installed. Documentation will be used only in support of the authorized use of the associated Software. Software installed on mobile-devices and clients, such as a laptop or mobile phone, may be used outside of the country where the Software was originally installed, provided that such use is on a temporary basis only.

1.1 Right to Move License Entitlements. Notwithstanding the foregoing limitation permitting use of the Software only at the location where it is initially installed, Customer may move eligible right to use license entitlements (RTU's) for certain specified Software from one location to another in accordance with Avaya's then-current software license move policy ("License Portability Policy"), which License Portability Policy is available upon request, subject to the conditions set forth in this Section A(i):

- i. Customer will provide written notice within 10 days to Avaya of any RTU moves including but not limited to, the number and type of licenses moved, the location of the original Server and the location of the new Server, the date of such RTU moves and any other information that Avaya may reasonably request;
- ii. Customer may only move RTU's to and from Designated Processors or Servers supporting the same Software application;
- iii. Customer must reduce the quantity of the licenses on the original Server by the number of RTU's being moved to the new Server.
- iv. Customer acknowledges that (1) Customer may be charged additional fees when moving RTU's as per Avaya's then-current License Portability Policy, (2) maintenance services do not cover system errors caused by moves not performed by Avaya, (3) Customer is responsible for any programming, administration, design assurance, translation or other activity to make sure the Software will scale and perform as specified as a result of any license moves, and if any such transfer results in a requirement for Avaya system engineering or requires the use of on-site Avaya personnel, Customer will be charged the Time & Materials fees for such activity;
- v. If Customer's maintenance coverage differs on licenses on the same Product instance at the location of the new Server, service updates, recasts and/or fees may apply and any fee adjustments for differences in coverage will only be made on a going forward basis as of the date Avaya receives notice of the RTU move; and
- vi. Customer may also move RTU's from one Affiliate to another Affiliate provided that Customer complies with the conditions of this section, including, without limitation, providing the name and address of the new Affiliate in Customer's written notice under subpart (i) above, and provided such new Affiliate is bound by these Software License Terms.

1.2 Non-Production License Grant. With respect to Software distributed by Avaya to Customer for non-production purposes, the scope of the license granted herein will be to use the Software in a non-production environment solely for testing or other non-commercial purposes on a single computer or as otherwise designated by Avaya ("Non-Production License").

2. ALL RIGHTS RESERVED. Avaya retains title to and ownership of the Software, Documentation, and any modifications or copies thereof. Except for the limited license rights expressly granted in these Software License Terms, Avaya reserves all rights, including without limitation copyright, patent, trade secret, and all other intellectual property rights, in and to the Software and Documentation and any modifications or copies thereof. The Software contains trade secrets of Avaya, its suppliers, or licensors, including but not limited to the specific design, structure and logic of individual Software programs, their interactions with other portions of the Software, both internal and external, and the programming techniques employed.

3. GENERAL LICENSE RESTRICTIONS. To the extent permissible under applicable law, Customer agrees not to: (i) decompile, disassemble, reverse engineer, reverse translate or in any other manner decode the Software; (ii) alter, modify or create any derivative works or enhancements, adaptations, or translations of the Software or Documentation; (iii) sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorized by Avaya in writing, and any attempt to do so is void; (iv) distribute, disclose or allow use of the Software or Documentation in any format, through any timesharing service, service bureau, network or by any other similar means except as expressly authorized by Avaya in writing; (v) allow any service provider or other third party, with the exception of Avaya's authorized maintenance providers who are acting solely on behalf of and for the benefit of Customer, to use or execute any software commands that facilitate the maintenance or repair of any product; (vi) gain access to or the use of any Software or part thereof without authorization from Avaya; (vii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Avaya or Avaya's authorized maintenance providers; (viii) publish the results of any tests run on the Software; (ix) disclose, provide, or otherwise make available to any third party any trade secrets contained in the Software or Documentation; (x) use the Software in a virtualized environment except as expressly authorized by these Software License Terms; or (xi) permit or encourage any third party to do any of the foregoing. Customer agrees not to allow anyone other than its authorized employees, agents or representatives who have a need to use the Software or Documentation to have access to the Software or Documentation. Customer agrees to inform any third party to whom Customer gives access to the Software or Documentation of these Software License Terms and will obligate such third party to comply with such terms and provisions. Customer will be responsible for any third party's failure to comply with these Software License Terms and the acts and omissions of such third party shall be deemed the acts and omissions of Customer for purposes of determining breach hereunder indemnify Avaya for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Avaya as a result of non-compliance with this section.

4. PROPRIETARY RIGHTS NOTICES. Customer agrees to retain, in the same form and location, all proprietary legends and/or logos of Avaya and/or Avaya's suppliers on any permitted copies of the Software or Documentation.

- 5. BACKUP COPIES.** Customer may create a reasonable number of archival and backup copies of the Software and the Documentation.
- 6. UPGRADES.** Customer's right to use any upgrades to the Software will be conditioned upon Customer having a valid license to use the original Software and paying the applicable license fee to Avaya for such upgrade.
- 7. COMPLIANCE.** Upon 45 days written notice, Avaya will have the right to inspect or audit Customer's use of Avaya software by remote polling or other reasonable means. Customer agrees to cooperate with Avaya's audit and provide reasonable assistance and access to information during normal business hours and with reasonable notice, to determine Customer's compliance with these Software License Terms, including but not limited to usage levels. Any such audit shall not unreasonably interfere with Customer normal business operation. In the event such inspection or audit uncovers non-compliance with these Software License Terms, then without prejudice to Avaya's termination rights hereunder, Customer will promptly pay Avaya any applicable license fees in accordance with Appendix A, Section 8.J. Payments. Customer agrees to keep a current record of the location of the Software.
- 8. TERMINATION OF LICENSE; EFFECT OF TERMINATION/ EXPIRATION.** If Customer breaches these Software License Terms and if within 10 business days of Avaya's written request to cure, Customer has not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the licenses granted in these Software License Terms without prejudice to any available rights and remedies Avaya may have at law or in equity. Upon termination or expiration of the license for any reason, Customer must immediately permanently destroy all copies of the Software and any related materials in Customer's possession or control and, upon Avaya's request, certify such destruction in writing. To the extent allowable under DIR Contract No. DIR-TSO-2654, the provisions concerning confidentiality, the protection of trade secrets and proprietary rights, indemnity, license restrictions, export control, and all limitations of liability and disclaimers and restrictions of warranty (as well as any other terms which, by their nature, are intended to survive termination) will survive any termination or expiration of the Software License Terms.
- 9. LICENSE TYPES.** Avaya grants Customer a license within the scope of the license types described below, with the exception of Heritage Nortel Software, for which the scope of the license is detailed in Section L below. Where the order documentation does not expressly identify a license type, the applicable license will be a Designated System License. The applicable number of licenses and units of capacity for which the license is granted will be one (1), unless a different number of licenses or units of capacity is specified in the documentation or other materials available to Customer. "Designated Processor" means a single stand-alone computing device. "Server" means a Designated Processor that hosts a software application to be accessed by multiple users. "Instance" means a single copy of the Software executing at a particular time: a) on one physical machine or b) on one deployed software virtual machine ("VM") or similar deployment.
- 9.1 Designated System(s) License (DS).** Customer may install and use each copy or an Instance 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, Instance, location or other specific designation, or to be provided by Customer to Avaya through electronic means established by Avaya specifically for this purpose.
- 9.2 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 Software that permits one user to interface with the Software. Units may be linked to a specific, identified Server or an Instance of the Software.
- 9.3 Database License (DL).** Customer may install and use each copy or an Instance 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 an Instance of the same database.
- 9.4 CPU License (CP).** Customer may install and use each copy or Instance 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.
- 9.5 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. "Named User," means a user or device that has been expressly authorized by Avaya to access and use the Software. At Avaya's sole discretion, a "Named User" may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Software that permits one user to interface with the Software.
- 9.6 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 "clickthrough" licenses accompanying or applicable to the Software ("Shrinkwrap License").

10. INTENTIONALLY LEFT BLANK

11. THIRD PARTY COMPONENTS. Certain software programs or portions thereof included in the Software may contain software (including open source software) distributed under third party agreements ("Third Party Components"), which contain terms regarding the rights to use certain portions of the Software ("Third Party Terms"). As required, information regarding distributed Linux OS source code (for those Products that have distributed Linux OS source code) and identifying the copyright holders of the Third Party Components and the Third Party Terms that apply is available in the Documentation or on Avaya's website at: [HTTP://SUPPORT.AVAYA.COM/COPYRIGHT](http://SUPPORT.AVAYA.COM/COPYRIGHT) or such successor site as designated by Avaya. Customer agrees to the Third Party Terms for any such Third Party Components.

12. PROTECTION OF SOFTWARE AND DOCUMENTATION. Customer acknowledges that the Software and Documentation contain trade secrets of Avaya and its suppliers and are deemed Avaya Confidential Information, subject to the restrictions and prohibitions of the General Terms, Section 4, of this Agreement.

13. PERSONAL DATA. Customer privacy is important to Avaya. Avaya's data privacy policy can be found at http://investors.avaya.com/governance/data_privacy.asp or such successor site as designated by Avaya. The download or use of the Software may require the processing of personal data (including, but not limited to contact name, company address, company phone or fax, or company email) pertaining to Customer or Customer's personnel. Such data will be used by Avaya for communication, administrative, and operational purposes related to the Software, including but not limited to tracking Software activations, communicating regarding trouble tickets and alarms, and providing Software updates. Personal data required to download or use the Software must be submitted to Avaya. Failing the submission of such data, the download or use of the Software may not be possible. Customer or Customer personnel have a right to access and correct erroneous personal data pertaining to Customer or Customer personnel and to object for legitimate reasons to the processing and transfer of this data. Customer can exercise this right by contacting in writing the Data Privacy Officer of the applicable Avaya Affiliate.

14. HIGH RISK ACTIVITIES. The Software is not fault-tolerant and is not designed, manufactured or intended for any use in any environment that requires fail-safe performance in which the failure of the Software could lead to death, personal injury or significant property damage ("High Risk Activities"). Such environments include, among others, control systems in a nuclear, chemical, biological or other hazardous facility, aircraft navigation and communications, air traffic control, and life support systems in a healthcare facility. Customer assumes the risks for its use of the Software in any such High Risk Activities.

15. EXPORT CONTROL. Customer is advised that the Software is of U.S. origin and subject to the U.S. Export Administration Regulations (EAR). The Software also may be subject to applicable local laws and regulations. Diversion contrary to U.S. and/ or applicable local country law and/ or regulation is prohibited. Customer agree not to directly or indirectly export, re-export, import, download, or transmit the Software to any country, Customer or for any use that is contrary to applicable U.S. and/ or local country regulation or statute (including but not limited to those countries embargoed by the U.S. government). Customer represent that neither the U.S. Bureau of Industry and Security (BIS) nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges. Customer agree not to use or transfer the Software for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. and applicable local government by regulation or specific written license. Additionally, Customer are advised that the Software may contain encryption algorithm or source code that may not be exported to government or military Customers without a license issued by the U.S. BIS and any other country's governmental agencies, where applicable.

16. U.S GOVERNMENT CUSTOMERS. The Software is classified as "commercial computer software" and the Documentation is classified as "commercial computer software documentation" or "commercial items," pursuant to 48 CFR FAR 12.212 or DFAR 227.7202, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the Government of the United States will be governed solely by the terms of these Software License Terms and will be prohibited except to the extent expressly permitted by these Software License Terms, and any use of the Software and/or Documentation by the Government constitutes agreement to such classifications and to these Software License Terms.

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



**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. They apply if and to the extent Customer purchases or receives licenses for Products under this Agreement that are generally available on Avaya's price lists. Products acquired under this 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

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 Product features that are enabled by license files, Software activations or any other electronic means, "**Delivery Date**" means the date when the Product or Product features are enabled in Avaya's license management systems. 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.

2. ORDER OF PRECEDENCE

In the event of a conflict between 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 described in Sections 0 and 0, below. In the event of a permitted cancellation, all preliminary or advance Products that have been delivered to Customer will be returned promptly to Avaya, at Customer's expense, in the original, unopened packaging and in the same condition as delivered. No other changes or cancellations are permitted.

Configured Products:

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

Non-Configured Products

- i. Changes or cancellations prior to Delivery Date – No charge
- ii. Changes or cancellations after Delivery Date, but prior to Installation Start Date – 15% of Product and related installation fees

5. DELIVERY; RISK OF LOSS; TITLE

5.1 Delivery. Unless Avaya provides Customer with express written confirmation of a different delivery term, Products will be shipped to the destination

5.2 Risk. Risk of loss will pass to Customer on the Delivery Date.

5.3 Title. Title to all hardware will pass to Customer on the Delivery Date. Avaya may, at its sole discretion and at any time, waive any requirements of payment prior to passing of title in this Section. Title to Software provided under this Agreement will remain solely with Avaya and its licensors.

6. INVOICING

Invoicing shall be in accordance with Appendix A, Section 8.I of the DIR Contract, DIR-TSO-2654. Unless otherwise provided in a valid Avaya quotation, proposal or Statement of Work, Avaya will invoice Customer for Products as follows: (i) non-Avaya installed Products invoiced 100% on the Delivery Date and (ii) Avaya-installed Product invoiced as described in Attachment 2.

7. WARRANTY

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. Avaya provides Third Party Products (as defined in Section 8 in the General Terms of this Agreement) on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Avaya specifies otherwise. However, such Third Party Products may carry their own warranties and Avaya will pass through to Customer any such warranties to the extent authorized. Exercise of such warranty will be directly between Customer and the third party provider.

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. Avaya offers a lifetime warranty for select Avaya Data Solutions hardware only, as specified at Avaya's support site (<https://support.avaya.com/helpcenter/getGenericDetails?detailId=C20091120112456651010>) or such successor site as designated by Avaya. The lifetime warranty begins on the Delivery Date and ends 5 years after the hardware's end of sale date, as determined by Avaya.

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, Avaya provides access to available Software corrective content and Product support knowledge base on a self-service basis. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent 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. THESE REMEDIES 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 NONCONFORMANCE OF PRODUCTS.

7.4 Warranty Procedures. Products subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions accompanied by evidence that the Products remain under warranty (i.e. a valid invoice, and in some cases this may also require Product registration with Avaya).

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.



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

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

1. SCOPE; ORDER OF PRECEDENCE; CHANGES

1.1 Services Provided. Avaya will provide the implementation and Technical Services described in this paragraph (“**Technical Services**”) as specified in an order and as may be further described in a Statement of Work executed by both parties (“**SOW**”). Technical Services can include installation and configuration of Products, consulting and other Technical Services where Avaya creates and delivers customized Software, documentation, or other work product (“**Deliverables**”) and/or completes other defined objective or defined phase of Technical Services (“**Project Phase**”) on a milestone basis or on a time and material basis. “**T&M Services**” are 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 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. Technical Services do not include maintenance, managed services and subscription services covered under Attachment 2, if applicable.

1.2 Order of Precedence. Unless otherwise provided for in these Technical Services Terms, in the event of conflict among the General Terms, these Technical Services Terms, a SOW and any ancillary attachments to or documents referenced in an SOW, the order of precedence is: (i) these 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 intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.

1.3 Changes. Changes in Technical Services will be made in accordance with Avaya’s change process defined 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**”), Technical Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) Customer signature of an acceptance certificate.

2.3 SOW with Acceptance Procedures. Where the SOW contains Acceptance Procedures, Technical Services or a Project Phase, as applicable, 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 Technical Services or a Project Phase, as applicable, to conform to the criteria in the Acceptance Procedures; or (ii) Customer signature of an acceptance certificate. If the Technical Services or a Project Phase, as applicable, fails to conform to the criteria in the Acceptance Procedures and Avaya has received a timely rejection notice, then Avaya will re-perform the non-conforming Technical Services or a Project Phase, as applicable, and re-submit the Technical Services or a Project Phase, as applicable, for acceptance as described above. If, after resubmission, Customer provides another rejection notice, then Customer’s remedies will be either to: (a) terminate the non-conforming Technical Services or a Project Phase, as applicable, return all non-conforming Deliverables and receive a refund of fees paid under the SOW; or (b) accept the Technical Services or a Project Phase, as applicable, subject to the warranties and remedies described in Section 5.

2.4 Acceptance certificate. Customer will sign and return an acceptance certificate without delay. Acceptance certificates may be provided by Customer to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication.

2.5 Production Use. Unless otherwise provided for in Acceptance Procedures, production use will constitute acceptance for all purposes of this Agreement and Customer agrees to confirm its acceptance by signing an acceptance certificate promptly upon Avaya’s request.

3. TRANSFER OF RISK; LICENSE TO DELIVERABLES

3.1 Transfer of Risk. Risk of loss will pass to Customer when the carrier receives the Deliverable for shipment to Customer or when the Deliverable arrives on Customer’s premises, whichever occurs earlier.

3.2 Customer’s License to Deliverables. Subject to Customer’s payment of fees for the Technical Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicenseable license to use Deliverables created by Avaya and delivered to Customer. Software contained in Deliverables will be licensed subject to the Global Software License Terms contained in Schedule A of this Agreement.

4. INVOICING AND PAYMENT

Unless otherwise agreed in the SOW or in writing and subject to Section 4.1, Avaya will invoice Customer in accordance with Appendix A, Section 8.I of the DIR Contract, DIR-TSO-2654 for:

- i. Products and Technical Services included in a SOW as follows: (i) where the total fees exceed \$250,000, 50% of the total project value invoiced upon shipment of the Products and the remaining fees invoiced on the In-Service Date; or (ii) where the total fees are less than \$250,000, as of the effective date of the SOW, the total project value will be invoiced on the In-Service Date.
- ii. For Technical Services-only orders as follows: (i) for Technical Services other than T&M Services, invoiced on acceptance of the Technical Services in accordance with Section 2, or (ii) for T&M Services, invoiced monthly in arrears.

4.1 Notwithstanding anything in this Agreement to the contrary, Avaya will invoice Customer for any Project Phase including any Products provided within that Project Phase upon acceptance of that Project Phase.

5. WARRANTY

5.1 Warranty Period. The warranty period for Technical Services and Deliverables will be 30 days beginning on the acceptance or deemed acceptance date of the Technical Services or Project Phase, as applicable (the “**Warranty Period**”).

5.2 Warranty. During the Warranty Period, Avaya warrants to Customer that: (i) Technical Services will be carried out in a Technical 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.

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

- ii. **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.
- iii. **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 Technical SERVICES, ANY PROJECT PHASE, AND/OR DELIVERABLES.

5.3 Disclaimer. Technical 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 Technical 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 a 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. 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. Unless otherwise provided in the SOW, either party may terminate Technical Services or any Project Phase that has not been accepted by Customer upon 45 days prior written notice, and Customer will pay for Technical Services performed to the date of termination and all non-refundable or non-terminable out-of-pocket expenses Avaya incurred.



STATE & LOCAL GOVERNMENT/ EDUCATION
CUSTOMER AGREEMENT
ATTACHMENT 3

MAINTENANCE, MANAGED SERVICES AND SUBSCRIPTION SERVICES TERMS

These Maintenance, Managed Services and Subscription Services Terms (“**Services Terms**”) are part of the Customer Agreement between Avaya and Customer, which incorporates these Services Terms by reference. They apply if and to the extent Customer acquires maintenance, managed services and/or subscription services. Customer shall agree to one of the following: i) a multi-year maintenance commitment, which Customer may terminate subject to Appendix A, Section 11. B, purchased concurrent with the applicable Product purchase ii) Avaya customer gallery participation commitment – i.e. the customer’s endorsement / reference activities promoting the Avaya Products covered by the Agreement or iii) purchase of Avaya Support Advantage maintenance Services, concurrent with the Product purchase, if such coverage is available for the Product purchased.

1. ORDER, PROVISION AND SCOPE OF SERVICES

1.1 Order and Provision of Services. In return for the payment of applicable fees and subject to compliance with applicable terms of this Agreement, Avaya will provide the maintenance, managed service and subscription service options for Supported Products at the location(s) covered under this Agreement (“**Supported Sites**”), as described further in this Attachment and the Service Description (for purposes of this Attachment, “**Service**”). “**Service Description**” means (a) the applicable Avaya service agreement supplement (“**Service Agreement Supplement**” or “**SAS**”) or service description document (“**SDD**”) then current as of the date of Avaya’s acceptance of an order for Services and available to Customer upon request; and/or (b) a statement of work (“**SOW**”) executed by the parties describing specific Services to be provided by Avaya, as applicable. In the event of a conflict between the Service Description and this Agreement, this Agreement will govern.

1.2 “Supported Products” are: (i) hardware or Software Products (including Avaya supplied and non-Avaya supplied products) identified in the order or Service Description; and (ii) Added Products (defined in Section 1.9).

1.3 Documents and Order of Precedence. Unless otherwise provided for in these Services Terms, in the event of conflict among the General Terms, these Services Terms, the various Service Description documents, and any ancillary attachments to or documents referenced in the Service Description, the order of precedence is: (i) the terms and conditions of the DIR contract, DIR-TSO-2654; (ii) these Services Terms; (iii) the General Terms; (iv) SOW; (v) SAS and/or SDD; and (vi) ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.

1.4 Monitoring. Avaya may electronically monitor Supported Products 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 Service Description.

1.5 Incident Correction. Some Services options may include correction of Incidents. An “**Incident**” 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.

1.6 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.

1.7 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 (<http://support.avaya.com>), or such successor site as designated by Avaya, 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 applicable SAS, except for the End of Support exceptions listed therein (“**Extended Support**”). If 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, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya’s property. 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

1.9 Added Products. “**Added Products**” means additional Products of the same type and manufacturer as the existing Supported Products that are acquired from Avaya and/or an Avaya authorized reseller and located by Customer with existing Supported Products at a Supported Site. Added Products will be added to the order automatically for the remainder of the term at the applicable rate contained in this Agreement. Customer will inform Avaya without undue delay of any Added Products not acquired from Avaya. Added Products purchased from a party other than the manufacturer or an authorized reseller may be added to or declined from being added to the Support Products at Avaya’s discretion, and are subject to certification by Avaya at Avaya’s then current Services rates.

1.10 General Limitations. Unless the Service Description 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 Service Description 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 Incidents 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

Avaya will invoice Customer for Services in advance unless another payment option is specified in the order or as otherwise specified in the Service Description.

3. CUSTOMER RESPONSIBILITIES

3.1 General. Customer will cooperate with Avaya as reasonably necessary for Avaya’s performance of its obligations, at Customer’s expense, including: (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. If Avaya provides New 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 Service Description, Customer will provide all Supported Products 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. Avaya may charge additional amounts to recover additional costs in providing Services as a result of such move.

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 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 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 containing employee, customer or other individual's personal data (collectively, "**Personal Data**"). Where Customer instructs Avaya to access any Personal Data, or to provide Customer 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) as permitted by local law or regulation 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. 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 "clickthrough" end user license agreement accompanying them.

5. WARRANTY AND LIMITATION OF LIABILITY

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

5.2 Remedy. If Services are not in conformance with the above warranty and Avaya receives Customer's detailed request to cure a non-conformance within 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.

5.3 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.

6. TERM AND TERMINATION

6.1 Term. Unless a different term is set forth in the applicable order or Service Description, Avaya will provide Services for an initial term of one year.. Unless otherwise specified in the Service Description, Customer may terminate Services in whole or in part (i) for maintenance and subscription Services (identified on the order documentation) upon 30 days written notice subject to cancellation fees equal to Services fees for 12 months or the remaining term, whichever is less, or (ii) for managed Services (or "Avaya Operations Services" or equivalent) as identified on the order documentation, upon 90 days advance written notice subject to fees of 85% of the monthly revenue commitment of the Services fees times the remaining months in the term.

6.2 Termination Notice. Customer's written notice of termination must be sent by: (i) letter via certified mail to the following address: Avaya Inc., Customer Care Center, 14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134; Attn: Services Termination; (ii) email to mycontract@avaya.com; or (iii) fax to 800-441-6371.