

**GENERAL CONDITIONS OF MAINTENANCE AND MANAGED SERVICES.** The undersigned Customer agrees that these General Conditions of Maintenance and Managed Services (the “**Agreement**”) will govern the purchase of certain Services (defined below) by Customer from Avaya Inc. (“**Avaya**”).

### 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 services options for Supported Products or Supported Systems at Supported Sites, as described further in this Agreement and the SAS (“**Services**”). In the event of a conflict between the SAS and this Agreement, the terms of this Agreement will control. The “**Service Agreement Supplement**” or “**SAS**” is the 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. As used in this Agreement, “**SAS**” may refer, as applicable, to either the Service Agreement Supplement or, where the parties have executed a statement of work describing specific Services to be provided by Avaya, to the statement of work. “**Supported Products**” are: (i) hardware or software products identified in the order; and (ii) Added Products (defined in Section 1.8). 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. Where Avaya provides hardware or software for Customer’s use as part of the Services but retains ownership of them, including replacement parts for them, these are referred to as “**Avaya Equipment**”. Orders are subject to acceptance by Avaya. Avaya may accept an order by beginning to perform the Services. Terms and conditions contained in Customer purchase orders or other Customer documents will have no effect.

1.2 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.

1.3 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.

1.4 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.

1.5 Updates. Where the selected Services option includes the provision of Updates, Avaya will make Updates available to Customer as the manufacturer makes them generally available to its other customers. An “**Update**” is a change in software that typically provides maintenance correction only. It typically is designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]). 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.

1.6 End of Support. Avaya may discontinue or limit the scope of

Services for Supported Products that Avaya or the third party manufacturer has declared “end of life,” “end of service,” “end of support,” “manufacture discontinue” or similar designation (“**End of Support**”). Customer may access Avaya’s user support website ([www.support.avaya.com](http://www.support.avaya.com)) for End of Support notifications. Avaya targets posting of End of Support notifications for Avaya-manufactured Products at least six (6) months in advance of the End of Support date. End of Support will be effective as of the effective date of the End of Support notice. Avaya also may provide End of Support notices by email to email addresses that Customer has registered with Avaya. If Services are discontinued for a Supported Product, it will be removed from the order and rates will be adjusted accordingly. For certain products subject to End of Support, Avaya may continue to offer a limited set of Services (“**Extended Support**”). Where Avaya has chosen to do this, the description of Extended Support available and related fees will be available at the time of Avaya’s notice. These notices will communicate information such as Extended Support eligibility, extended support alerts related to parts shortages, and end of Services coverage eligibility (including Extended Support).

1.7 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, whether Avaya Equipment or otherwise, will become Avaya’s property.

1.8 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 rates. If Added Products fail certification, Avaya may choose not to add them to the Supported Products.

1.9 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.** Avaya will invoice Customer for Services in advance unless another payment option is specified in the order. Payment of undisputed invoices is due within thirty (30) days from the date of Avaya’s invoice. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with nonstandard methods of invoicing and payment. Overdue payments will be subject to a late payment charge of the lesser of 1.5% per

month or the maximum rate allowed by applicable law. Unless Customer provides Avaya with a tax exemption certificate, Customer is solely responsible for paying all required taxes, (including, but not limited to, property, sales, use or excise taxes with respect to the provision of Avaya Equipment) except for any income tax assessed upon Avaya.

### 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 Equipment or 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. Only Avaya may move Avaya Equipment. Avaya may charge additional amounts to recover additional costs in providing the Services as a result of moved 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 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. Where Customer instructs Avaya to access any employee, customer or other individual’s personal data contained in any Supported Product or Supported System, or to provide Customer or a third party identified by Customer with access, Customer will 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.

3.7 **Avaya Equipment.** Customer will not remove any identification tags or other markings on Avaya Equipment. Customer will keep Avaya Equipment free and clear of all levies, liens and encumbrances arising by or through Customer or arising in connection with the location of Avaya Equipment at a Supported Site, and consents to the filing of informational financing statements by the owner of the Avaya Equipment to give notice of ownership. Customer will, at its own expense, maintain insurance against loss, theft, destruction or damage to Avaya Equipment (each, a "Loss") for the full replacement value of the Avaya Equipment, will provide evidence of this insurance upon request, and will notify Avaya promptly in writing of any Loss. Within thirty (30) days after the termination or expiration of the order or SOW, Customer will: (i) cease all use and return to Avaya all copies of software (including backup copies) provided as part of the Services; and (ii) deliver it at no cost to Avaya all Avaya Equipment located at Supported Site subject to the termination to a location in the United States designated by Avaya, in the same condition as when originally delivered to the Supported Site, reasonable wear and tear excepted.

**4. TITLE AND RISK OF LOSS TO EQUIPMENT.** Title to Avaya Equipment, whether new or replacement Avaya Equipment, will remain with Avaya or its suppliers and will not pass to Customer. Title to other 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. Avaya may, without notice to Customer, assign, pledge, transfer or otherwise convey any or all of Avaya's right, title and interest in Avaya Equipment. Customer will bear the risk of loss, theft, destruction or damage to Avaya Equipment except for losses caused by Avaya.

**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 manufacturers 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. CONFIDENTIAL INFORMATION.** "**Confidential Information**" means either party's business and/or technical information, pricing, discounts and any 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 and 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, but only to the extent so ordered, provided 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. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order. 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. 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 expiration or termination of the Agreement. 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 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.

**7. WARRANTIES.** Avaya warrants to Customer that Services will be carried out in a professional and workmanlike manner by qualified personnel. If the Services have not been so performed 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. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES IN A SUPPORTED PRODUCT, SUPPORTED SYSTEM OR NETWORK WILL BE DETECTED OR THAT SERVICES WILL RENDER THEM SAFE FROM SECURITY BREACHES. 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.

**8. 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, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF 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 WILFULL 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.

**9. GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement and any disputes arising out of or relating to it ("**Disputes**") will be governed by New York State laws applicable to contracts entered into and performed in New York, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods. Except as provided below, all Disputes will be finally resolved by binding arbitration before one arbitrator, selected pursuant to the Commercial Rules of the American Arbitration Association ("**AAA**"). The arbitrator will have the authority to determine issues of arbitrability and to consider and rule on dispositive motions. The arbitrator will have authority only to award compensatory damages within the scope of the limitations of Section 8 and will not award punitive or exemplary damages. The arbitrator will not have the authority to limit, expand or otherwise modify the terms of the Agreement. The parties, their representatives, other participants and the arbitrator will hold the existence, content and result of arbitration in confidence. Nothing in this Section will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights pending arbitration. Actions on Disputes between the parties must be brought in accordance with this Section within two years after the cause of action arises.

**10. TERM AND TERMINATION.** This Agreement will be effective from the date Avaya accepts the order unless terminated earlier in accordance with this Section. Unless a different term is defined in the order, Avaya will provide Services for an initial term of one year. Services will be renewed automatically for successive one year terms applying the then most similar current generally available support plan offering and then current rates, unless either party gives the other written notice of its intent not to renew at least 30 days prior to the expiration of the applicable initial or renewal term. Unless otherwise specified in the SAS, Customer may terminate maintenance Services in whole or in part upon 30 days written notice subject to the cancellation fees equal to maintenance Services fees for 12 months or the remaining term, whichever is less. Upon termination, Customer will return any Avaya Equipment as described in Section 3.7.

Either party may terminate this Agreement by written notice to the other party effective immediately upon receipt if the other party fails to cure any material breach of this Agreement within a thirty (30) day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured.

**11. MISCELLANEOUS.** Avaya may assign this Agreement or any associated order to any of its affiliated entities or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets used in connection with its performance under this Agreement. Avaya may subcontract any or all of its obligations, but



will retain responsibility for them. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities. The failure of either party to assert any of its rights under this Agreement is not a waiver by that party of its right later to enforce this Agreement in accordance with its terms. This Agreement constitutes the entire understanding of the parties with respect to its subject matter and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between them relating to that subject matter. It will not be contradicted or supplemented by any prior course of dealing between the parties. All notices under this Agreement and any modifications or amendments to this Agreement must be in writing.

**CUSTOMER: (Company Name)**

\_\_\_\_\_

**Signature:** \_\_\_\_\_

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

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

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