

## CONTRACT

THIS CONTRACT (also sometimes referred to herein as "the Agreement") is made and entered into as of the date set forth on the City signature page, below (the "Effective Date"), by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, (the "City" or "Customer"), Party of the First Part, and AVAYA INC., a corporation organized and existing under and by virtue of the laws of the State of Delaware (the "Contractor"), Party of the Second Part.

## WITNESSETH

**WHEREAS**, Contractor performed the original installation of the Communications Manager voice system at Denver International Airport ("DIA") and now provides on-call and automated emergency support for the Communications Manager voice system, which provides proactive 24/7/365 system support by way of an embedded application that notifies Contractor in real time of a major event, and which services are critical to 24/7/365 non-emergency and emergency operations at Denver International Airport; and

**WHEREAS**, having maintained the Communications Manager voice system and kept it up to date since installation, Contractor retains expert knowledge of the Communications Manager voice system; and

**WHEREAS**, the City now wishes to upgrade the current Communications Manager voice system to add the latest features and functionality and wishes to utilize Contractor and/or Contractor's Authorized Sales Agents to accomplish this additional work and to perform maintenance of the Avaya Voice System and associated equipment (sometimes referred to herein as "Voice System"); and

**WHEREAS**, the Contractor is willing, able and qualified to perform all of said work in accordance with the Contract Documents.

**NOW, THEREFORE**, for and in consideration of the compensation to be paid the Contractor, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows:

### ARTICLE I - CONTRACT DOCUMENTS; DEFINITIONS:

- 1.1 Contract Documents; Order of Precedence:** It is agreed by the parties hereto that this Agreement consists of Articles I through VIII and the following list of instruments, drawings and documents which are attached hereto and bound herewith or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Contract, and all of said instruments, drawings and documents taken together as a whole constitute the Contract between the parties hereto, and they are as fully a part of this Contract as if they were set out verbatim and in full herein:

- Contract
- Certificate of Insurance
- Federal Requirements
- Exhibit A Standard Federal Assurances
- Exhibit B Standard Federal Assurances

Exhibit C Nondiscrimination in Airport Employment Opportunities

Exhibit D City and County of Denver Insurance Certificate

Exhibit E Current DIA Equipment Listing/Scope of Work

Exhibit F Avaya Customer Agreement for State, Local, and Education Customers.

Notwithstanding any contrary provision in any Exhibit to this Agreement, in the event of an irreconcilable conflict between a provision of Articles I through VIII and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Exhibits A, B and C

Articles I through VIII hereof

Exhibit D

Exhibit E

Exhibit F

- 1.2 Definitions:** Capitalized terms as used herein are to be given the meaning context requires or as defined in this Contract and its attachments.

## **ARTICLE II – SCOPE OF WORK; ADDITIONAL PURCHASES:**

- 2.1 Professional Services:** The Contractor agrees to and shall provide maintenance and support of items called out in Exhibit E. Maintenance and support includes but is not limited to furnish all technical, administrative and professional skill, labor and tools; supplies; equipment; superintendence; materials; printing; vehicles; local travel; office space and facilities; testing and analyses; calculation; other facilities or resources; and everything necessary for and required to diligently and professionally do, perform and complete all of the work described, drawn, set forth, shown and included in this contract in order to maintain and support both existing equipment, both hardware and software, and any future purchased Avaya equipment. The Contractor understands and agrees that this is a "sole source" contract and that Contractor has been chosen by City as the sole vendor and contractor for this project because Contractor is uniquely qualified to support and maintain the Avaya Voice System at Denver International Airport (DIA). Contractor understands and agrees that it is ready, willing and able to provide support and maintenance on the Avaya Voice System at DIA as set forth in the terms of this contract. Both parties recognize that some DIA equipment is slated for "End of Support" by Avaya prior to the term of this contract. Contractor agrees to support all items in Exhibit E for the entire term of this Agreement. This support and maintenance agreement covers "core" hardware and software called out in Exhibit E and does not include coverage of phone sets. Contractor is responsible to maintain enough spare levels of DIA- employed equipment off site in order to warrant repair of failed equipment, and will use best efforts to deliver such spare DIA-employed equipment as necessary within a 24-hour window from report of failure, seven days a week, for the term of the Contract. Contractor agrees to support both hardware and software, as identified on an Order, to the extent that it will perform "as advertised" and agrees to apply repair, new,

or upgrade to both hardware and software, at no additional charge, when it fails to operate as such.

## 2.2 Additional Purchases:

- A. In addition to the support and maintenance services regarding existing equipment in Exhibit E, the Contractor agrees and recognizes the ability of the City to upgrade the Avaya Voice System and add additional items to be covered under the terms of this support and maintenance agreement. The parties agree that this Contract may serve as a Master Agreement for the purchase of additional Hardware, Software and Documentation (“Products”) in any combination and any services offered by Contractor (“Services”) including without limitation Installation Services, Maintenance Services, Management Services, Milestone Services, Time & Materials Services and Training Services (as those capitalized terms may be defined and the terms thereof set out elsewhere in these General Terms or an Attachment). During the term hereof, the City may order Products and Services by placing written, signed orders, by using purchase orders generated via the City’s purchasing process or by using such other documents as may be mutually agreed to by the parties in writing (collectively, “Orders”). These additional purchases, herein referred to as “Additional Work,” are not foreseeable at this time, but may be deemed necessary at some future point in order to support upgrade activity of the Avaya Voice System due to growth, performance stability, end of support issues, or other reason as supported by the Manager of Aviation. For this purpose, the parties agree that the City may issue orders for Additional Work not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000) to Contractor or to Contractor’s Authorized Sales Agents.
- B. The term “Authorized Sales Agents” means the companies identified as an agent authorized to fulfill orders on Contractor’s behalf provided such identification is made in writing by Contractor (“Authorized Agent Letter”). When ordering from Authorized Sales Agents, the City will issue its order to “Avaya Inc. c/o [agent’s name]” and send the order directly to the Authorized Sales Agent at the address designated by Contractor in its Authorized Agent Letter. Authorized Sales Agents that receive orders from the City shall serve as the City’s primary point of contact for all matters related to those orders, including, but not limited to, indemnification, disputes and warranty claims. The City agrees concurrently to send to Contractor copies of all correspondence sent to Authorized Sales Agents. All orders whether issued to Contractor or to Contractor’s Authorized Sales Agents shall be governed by the terms of this Contract and will allow the City to bring new purchased items into the terms of this support and maintenance agreement as they are put into service subject to the terms set out in Exhibit F. Any attempt by the City and/or Contractor’s Authorized Sales Agents to agree to terms or conditions that differ from those in this Agreement shall be considered null and void and shall not be binding upon Contractor.
- C. Orders for Additional Work will describe the Products or Services to be purchased and will serve to document the scope and specific tasks associated with the Additional Work. When applicable, such Orders shall also provide a comprehensive listing of equipment, software and applications to be added to the support and maintenance services provided hereunder. Orders for Additional Work are subject to acceptance by the Contractor or Contractor’s Authorized Sales Agents. Contractor or Contractor’s Authorized Sales Agents may accept an Order by shipping Products or commencing to perform Services. When an Order is accepted the Contractor or Contractor’s Authorized Sales Agents will

notify City of the estimated shipping, delivery and installation dates or service commencement dates applicable to the Order. If the City needs to generate a separate purchase order for its internal accounting or procurement purposes, then City will generate and submit to Contractor or Contractor's Authorized Sales Agents such purchase order as evidence of compliance with its procedural requirements. City will deliver the purchase order either with the signed Order or promptly after City submits the signed Order. Executed Orders for Additional Work will be incorporated into this Agreement by adding them to Exhibit E (i.e. Exhibit E-1, Exhibit E-2, Exhibit E-3, etc.). Collectively, Exhibit E plus attached Orders shall be referred to herein as Exhibit E and the parties agree that Exhibit E may be revised to accomplish this purpose without the requirement of a formal amendment to this Agreement.

### **ARTICLE III - TERM:**

The term of this Contract shall begin on November 1, 2013 and shall expire November 30, 2016, unless sooner terminated in accordance with the terms hereof.

### **ARTICLE IV - TERMS OF PAYMENT:**

- 4.1 Fee:** Except as set forth in Section 4.2, the City agrees to pay to the Contractor, and the Contractor agrees to accept as its sole compensation for its complete services rendered and costs incurred under this Contract, on a unit price basis, a sum not to exceed the Maximum Contract Payment Liability set forth in Article V, below, for the support and maintenance agreement plus any "Additional Work" performed by Contractor or Contractor's Authorized Sales Agents within the terms under this Contract. Both parties recognize that the Maintenance Service Agreement fee may vary on a monthly basis and is based on equipment employed by DIA.
- 4.2 Billing Rate:** Contractor agrees to use reasonable efforts to provide pricing similar to rates set forth in the Federal GSA pricing schedule GS 35F-0156V or GS-35F-4366G . Such pricing shall be referred to herein as "GSA-Like Prices" and billing rate to City shall reflect same discount rate off manufacturer list pricing. In addition, this Contract is subject to the Prevailing Wage Requirements set forth in Section 8.32.
- 4.3 Invoicing:** Invoices shall be submitted by the Contractor to the City in accordance with the provision of this Agreement and Exhibit F, including Attachments 1, 2, and 3 thereto, for given support and maintenance charges for equipment on premises. Authorized Sales Agents shall issue invoices to the City for all orders issued to them. The City will issue payment for such invoices to the Authorized Sales Agents payable to "Avaya Inc. c/o [agent's name] and will forward payments directly to the Authorized Sales Agent at the address designated by Contractor in its Authorized Agent Letter. The cost of preparing and submitting invoices shall not be billed.
- A. Prompt Payment:** Payments under this Agreement will be made to the Contractor in accordance with the City's Prompt Payment Ordinance, D.R.M.C., Section 20-107, et. seq., Denver Revised Municipal Code, subject to the Maximum Contract Liability set forth herein. Payments shall be based upon invoices and receipts submitted by Contractor in accordance with the provisions of this Agreement and Exhibit F, including Attachments 1, 2, and 3 thereto; and that have been audited and approved by the City. The Contractor agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance. For any subcontractor or subconsultant engaged by Contractor under this Agreement,

the Contractor is subject to Section 20-112, D.R.M.C., requiring the Contractor to pay its subconsultants in a timely fashion. A payment is timely if it is mailed to the subcontractor or subconsultant no later than seven days after receipt of any payment from City. Any late payments by Contractor are subject to a late payment penalty as provided for in Section 20-112, D.R.M.C.

All invoices submitted for "Maintenance and Service Agreement" payment shall include the following items:

1. A time frame for which the invoice applies;
  2. A summary page with unique invoice number, current amount due, and any charges in arrears;
  3. A listing of equipment covered; and
  4. Remittance instructions and contact information for disputes.
- B.** The City reserves the right to require such additional documentation that is appropriate and reasonable to support the invoices of Contractor or to the Contractor's Authorized Sales Agents. Any questions regarding the eligibility of an expense not described in this Contract must be resolved in writing by the parties prior to the incurring of such expense by the Contractor or to the Contractor's Authorized Sales Agents.
- C.** The City reserves the right to reject and not pay any invoice or part thereof where the Manager reasonably determines that the amount invoiced to date exceeds the amount which should be paid, based upon his determination of the work which has been completed. The City, however, shall pay any undisputed items contained in the invoice. In the event that an invoice is disputed by the parties, such dispute shall be resolved pursuant to Section VIII (8.32) of this Contract.
- D.** Contractor will invoice City all fees as provided in the applicable Contract Document. All fees are due within thirty (30) days from the date of Contractor's invoice. City will pay all bank charges, taxes, duties, levies and other costs and commissions associated with any bank wire transfer or other means of payment that the City initiates. All fees quoted and payable under this Contract shall reflect all applicable tax exemptions. The City's Federal Registration number is: A-138560 dated 4-5-60, Denver CO., Dept of Internal Revenue. The City's Colorado state sales tax exempt number is: 98-02890.

#### **4.4 Additional Work:**

Upon mutual agreement in writing between the parties, the Contractor or the Contractor's Authorized Sales Agents may also perform additional work that relates to the ability of this Contract to serve as a Master Agreement between both parties. Additional upgrades, equipment, hardware, and software purchases, hereinafter referred to as "Additional Work," may require amendment to the Contract or be served by the City Purchase Order process. Any "Additional Work" will require a mutually agreed upon scope of work and a written notice to proceed from the Manager of Aviation prior to City incurring and being held liable for any compensation from the Contractor. The Contractor or the Contractor's Authorized Sales Agents shall be compensated for such Additional Work only if the work and the amount of fees and reimbursable expenses therefore have been authorized in writing in advance by the Manager of Aviation and mutually agreed to in writing, in accordance with the unit prices that are "GSA-like" or better and per terms of this Contract.



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## **ARTICLE V – MAXIMUM CONTRACT PAYMENT LIABILITY:**

Any other provisions of this Contract notwithstanding, in no event shall the City be liable for payment under this Contract for any amount in excess of One Million Dollars and 00 Cents (\$1,000,000.00). This amount may only be increased by amendment to this Contract. Any work performed under conditions of “Additional Work” terms within this Contract is not foreseeable at this time and funding for such activity will be outlined per terms of the City Purchase Order process, or if necessary, an amendment to this contract.

## **ARTICLE VI – SMALL BUSINESS ENTERPRISE AND MINORITY AND WOMEN BUSINESS ENTERPRISE**

It is the policy of the City to provide equal opportunity to Small Business Enterprises (SBE’s), and Minority and Women Business Enterprises (M/WBE) through the provisions set forth in Article VIII, Division 1 & 2 of Chapter 28 of the Denver Revised Municipal Code (D. R. M. C.) Therefore, it is in the best interest of the City to encourage SBE & M/WBE participation on contract opportunities at Denver International Airport. Participation may be in the form of Joint Ventures, Subcontracting/ Subconsulting and Suppliers.

## **ARTICLE VII - NON DISCRIMINATION IN EMPLOYMENT:**

In connection with the performance of work under this Contract, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

## **ARTICLE VIII – GENERAL CONDITIONS:**

The following provisions of this Contract are sometimes referred to as “General Conditions.”

### **8.1 Insurance**

1. The Contractor shall obtain and keep in force during the entire term of this Contract, insurance policies as described in the City’s form of insurance certificate attached to this Contract as Exhibit D and incorporated herein. The certificate specifies the minimum insurance requirements the Contractor and any subcontractors must satisfy in order to perform work under this Contract.
2. Upon execution of this Contract, the Contractor shall submit to the City a fully completed and executed original of the insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, the Contractor shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.
3. The City’s acceptance of any submitted insurance certificate is subject to the approval of the City’s Risk Management Administrator. All coverage requirements specified in the

certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

4. The Contractor shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage, and all terms and conditions applicable to each such insurance policy, during all periods in which coverage is in effect.
5. Unless specifically excepted in writing by the City's Risk Management Administrator, the Contractor shall include all subcontractors performing services hereunder as insured under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) and receipts of payment of premium, for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and the Contractor shall insure that each subcontractor complies with all of the coverage requirements.
6. The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Contract, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

## **8.2 Defense & Indemnification:**

The Contractor shall defend, release, indemnify, and save harmless the City, its officers, agents and employees from and against any and all loss claims, demands and judgments made or recovered against them by third parties for damages to real or tangible property or injuries to or death of any person or persons, including property and officers, employees or agents of the City and further agrees to defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, including worker's compensation claims, costs, damages, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), demands, suits, actions, or proceedings of any kind or nature whatsoever, to the extent or arising out of, directly or indirectly, the Contractor's performance of this Contract or its occupancy of City-owned property upon which work is performed under this Contract, including operations of subcontractors and suppliers and acts or omissions of officers, employees, or agents of the Contractor or its subcontractors or suppliers; provided however, that the Contractor need not indemnify the City, its officers, agents, and employees from damages resulting from the negligence, reckless or willful misconduct of the City's officers, agents and employees. The Contractor's defense and indemnification obligations under this Section VIII (8.2) shall survive the expiration or termination of this Contract. The City agrees that Contractor shall be notified in writing promptly of any such claim or demand. Upon such notification, Contractor, at its own expense, shall have control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise. The City retains the right to disapprove counsel, if any, selected by Contractor to fulfill the forgoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised. City shall cooperate with Contractor in a reasonable way to facilitate the settlement or defense of such claim or demand. Notwithstanding the foregoing, Contractor shall not compromise or settle any claim in a manner which may subject the City to liability or additional obligations without the City's prior written consent, which shall not be unreasonably withheld, conditioned or

delayed. Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain at its own expense any additional insurance that it deems necessary for the City's protection in the performance of this Contract.

**8.3 Force Majeure:** Except for payment of fees, neither party shall be liable to the other party for any failure, delay or interruption of the performance of its obligations hereunder due to causes or conditions beyond the control of that party, including, without limitation, acts of God, explosions, fire, other accidents, power failures, pest damage, lightning strikes, lockouts and labor disputes, civil disturbances, terrorism, acts of civil or military authorities, inability to secure raw materials, transportation facilities, fuel or energy shortages, unauthorized use of the Products, acts or omissions of communications carriers, or performance or unavailability of communications services or network facilities.

**8.4 Authority of the Contract Administrator:**

- A. The work performed under this Contract is authorized by the Manager of Aviation (or successor in function "Manager of Aviation" or "Manager"). The Manager hereby delegates his authority over the work described herein to the Deputy Manager of Aviation/ Technologies, who shall appoint an employee of the Aviation Department's Voice Services Section to serve as Contract Administrator.
- B. The Contract Administrator shall have access to all operating records and reports for the System and to all of the Contractor's work areas located at the Airport which are related to the Contractor's work under this Contract, for the sole purpose of evaluating the Contractor's performance and administering the Contract, and the Contractor is to afford the Contract Administrator all necessary facilities and assistance for so doing.
- C. The Contract Administrator will consult with the Contractor's Service Manager on any and all questions which may arise as to the quality and acceptability of materials, and equipment furnished and work performed, and as to the manner of performance of the work.
- D. The Contract Administrator's responsibilities shall include monitoring the Contractor's compliance with the Contractor's obligations set forth in this Contract, advising the Contractor of any performance deficiencies and reviewing and commenting on Contractor's plans for correcting any such deficiencies, facilitating and coordinating activities of the City and third parties that are required for the efficient operation of the Avaya Voice System and administering the implementation of policy decisions made by the Manager.
- E. In the event the parties are unable to resolve a dispute within a reasonable period of time, the claim will be resolved through the dispute resolution process provided in Article VIII (Section 8.30) of this Contract.

**8.5 Default, Termination, and Remedies:**

- A. In the event that:
  - 1. the Contractor fails to perform in a material way in accordance with the terms and conditions set forth in this Contract, and such failure continues for a period of more than 30 days after delivery to the Contractor of a written notice of such breach or default; or where such failure cannot be reasonably corrected within 30 days and the Contractor



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- has failed to submit a corrective action plan acceptable to the City within 30 days of a written notice of such breach or default; or
2. the Contractor's occupational or business license is terminated for any reason; or
  3. the Contractor becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal Bankruptcy laws or under any law or statute of the United States or any State hereof, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property, or has a petition under any part of the Federal Bankruptcy laws or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within 30 days after the filing thereof; and if the Contractor has not given any assurances within five (5) days of notice by the Customer of the ability to continue to perform under this Contract, or
  4. the Contractor makes any assignment of this Contract or any of its rights and obligations hereunder which has not been approved in writing by the Manager, pursuant to Section 8.7; then the City shall have the right to terminate this Contract for default, which termination shall be effective ten (10) days after written notice of such termination is given to the Contractor.
- B.** The City shall, at its sole option and discretion, have the right to terminate this Contract for its convenience without there having been any default on the part of the Contractor, by giving written notice to the Contractor at least 30 days prior to the effective date of termination. In the event of such termination, Contractor shall be paid for all costs incurred to the date of termination at the service rates set forth herein. The termination provisions applicable to both parties are set out in Section 11 of Exhibit F.
- 8.6 Title to Materials, Tools and Equipment/Risk of Loss:** All materials and equipment provided under this Contract shall become part of the PBX and title to Contractor-installed Hardware will pass to City on the In Service Date. Title to all other Hardware will pass to City on the Delivery Date. Title to Software will remain solely with Contractor and its licensors, and Contractor will grant one or more of the licenses as more fully described in the attached Exhibits. Risk of loss shall pass to the City on the Delivery Date for Products drop-shipped and not installed by Contractor and on the Installation Date for Products installed by Contractor. The Contractor shall promptly furnish to the City such documents which the Contract Administrator may reasonably request, assuring that title to such materials are in the City and are free of encumbrances, and shall mark or otherwise identify all such materials.
- 8.7 Assignment:** Neither the City nor the Contractor shall assign, pledge or transfer its duties and rights in the Contract, in whole or in part, without first obtaining the written consent respectively of Manager or the Contractor, which will not be unreasonably withheld. Any transfer of 50% or more of the outstanding voting stock of Contractor or of 50% or more of the equity interest in Contractor, including transfer by merger, consolidation or liquidation or other change in ownership of Contractor, shall constitute a transfer by Contractor under this Section; provided, however, that transfers of such stock or equity interest that are approved in advance by the Manager, shall not constitute a transfer in violation of this Section.

## 8.8 Coordination and Liaison:

- A.** The Contractor agrees that during the term of this Contract it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Contract Administrator with any City agency, or any person or firm under contract with the City doing work which affects the Contractor's work. The Contractor agrees to work around minor delays at no additional cost to the City. If major support and maintenance delays are caused by City operational concerns or lack of City Provided Equipment at time of cutover and the Contractor is forced to remobilize resources, such delay may be considered Additional Work the cost of which may be billed to the City by Contractor in accordance with the requirements of Section 4.4. Both the City and the Contractor will do everything in their power to anticipate and coordinate schedules well in advance to alleviate delays. General delivery schedules of the "Additional Work" portion of work will be agreed upon during project kick-off and pre-planning meetings once a Notice To Proceed is issued by the City. Any installation, integration and service outages and cutovers under "Additional Work" portion of Contract or service outages required under general support and maintenance activities will be coordinated and pre-approved with the City. Contractor and Contract Administrator will schedule service outages per Denver International Airport "System Shutdown Request" procedures in which all service interruptions are presented to Airport Maintenance and Operations for review and approval 3 full working days prior to requested shutdown time. Contract Administrator or appointed authority will oversee service interruption activity and coordinate approvals again at night of cutover with DIA Maintenance and Operational staff. The City shall not be held liable for rescheduling of planned maintenance activities due to current operational issues that cause either Maintenance Control or Operations personnel to disapprove work started by City Technologies Division or Contract personnel with regard to planned support and maintenance work activity.
- B.** City will cooperate with Contractor as reasonably necessary for Contractor's delivery of Products and performance of Services in a timely manner. This cooperation may include things such as: (i) providing Contractor with access to all facilities, hardware, software, work space, and office support (telephone, internet access, etc.); (ii) ensuring that the premises are safe, free of any hazardous materials that affect Contractor's performance and have installed necessary power and climate control facilities; (iii) ensuring that City has obtained connection to and all necessary permissions or consents from any public or private telephone network to which the Products are connected and any necessary permissions from government authorities and holders of real property rights; (iv) providing Contractor with designated points of contact; (v) providing necessary telephone numbers and passwords to enable remote access to the Products and notifying Contractor promptly of any changes made to such numbers or passwords; and (vi) items that may be identified in an Attachment or statement of work. City is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good computing practices. All items to be provided by City are at City's expense.
- C.** Where City is to provide Contractor with information or access in relation to any Third Party Products or the integration of Products in City's network (including without limitation specifications and interface information of interoperating hardware and software in City's network), then information or access will be supplied to Contractor in a

timely manner at City's expense. "Third Party Products" means any products manufactured by a party other than Contractor, and may include, without limitation, products ordered by City from third parties pursuant to Contractor's recommendations. However, Third Party Products do not include components of Products that both: (i) are not recognizable as standalone items; and (ii) are not identified as separate items on Contractor's price list, quotes, Order, or Documentation. It will be City's responsibility to obtain any consents and licenses of third parties that may be necessary for the provision of such information or access to Contractor for Contractor's use in its performance of this Contract. Upon delivery of the information or access, City represents and warrants to Contractor that it has obtained all such necessary consents and licenses.

**D.** If City fails to meet its cooperation obligations under this Section or as otherwise provided in this Contract, Contractor may delay or suspend its performance. If the failure continues for thirty (30) days following Contractor's written request to City to meet these obligations, in addition to the remedies above, Contractor may treat the Order as if City cancelled the Order after delivery.

**8.9 City Review of Procedures:** The Contractor agrees that, upon request of the Deputy Manager, at any time during the term of the Contract, it will make full disclosure to the City of the means, methods, and procedures used in performance of Services hereunder, provided that such means, methods, and procedures are not a business trade secret or intellectual property or confidential information as defined in Exhibit F.

**8.10 No Authority to Bind City to Contracts:** The Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and ordinance.

**8.11 Information Furnished by City:** The City will furnish to the Contractor available information concerning DIA and any such other matters that may be necessary or useful in connection with the work to be performed by the Contractor under this Contract. The Contractor shall be responsible for the verification of the information provided to the Contractor.

**8.12 Personnel Assignments:**

**A.** All key professional personnel identified in the Contractor's proposal will be assigned by the Contractor or subcontractors to perform work under this Contract. The Contractor shall submit to the Contract Administrator a list of any additional key professional personnel who will perform work under this Contract within thirty days after this Contract has been executed. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Contract and that the Contractor's and the subcontractor's key professional personnel be retained for the life of this Contract to the extent commercially reasonable, practicable, in accordance with Contractor's policies and to the extent that such services maximize the quality of work performed hereunder.

**B.** If the Contractor decides to replace any of its key professional personnel, it shall notify the Contract Administrator in writing of the changes it desires to make. Except as required by Contractor's policies, no such replacement shall be made until the replacement is approved in writing by the Contract Administrator, which approval shall not be unreasonably withheld. The Contract Administrator shall respond to the Contractor's written notice regarding replacement of key professional personnel fifteen

- (15) days after the receipt of the list of key professional personnel which the Contractor desires to replace. If the Contract Administrator does not respond within that time, the listed personnel shall be deemed to be approved.
- C. If, during the term of this Contract, the Deputy Manager determines that the performance of approved key personnel is not acceptable, he shall notify the Contractor, and he may give the Contractor written notice of the period of time which the Deputy Manager considers reasonable to correct such performance. If the Deputy Manager notifies the Contractor that certain of its key personnel should be reassigned, the Contractor will use commercially reasonable efforts to obtain adequate substitute personnel within twenty (20) days from the date of the Deputy Manager's notice, unless otherwise mutually agreed to in writing by the parties.
- D. While the Contractor may retain and contract with subcontractors, no final contract with any such subcontractor, entered into by contractor specifically in support of this agreement, shall be entered into without the prior written consent of the Manager. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided by the subcontractor, the name, address, the professional experience and qualifications of the subcontractor and any other information which may be requested by the Manager. Approval of the subcontractor shall not relieve the Contractor of any obligations under this Contract. Any final agreement with the approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make a claim of payment against any City property arising out of the performance of the Contract.
- E. Because the Contractor's represented professional qualifications are a consideration to the City in entering into this Contract, the Manager shall have the right to reject any proposed subcontractor deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of subcontractors.
- F. The Contractor shall not retain any subcontractor to perform work under this Contract if the Contractor is aware, after a reasonable written inquiry has been made, that it is engaged in the sale or promotion of equipment or material which is or may be used on work related to or following on from this Contract, or that any other conflict of interest exists.
- 8.13 Subcontracting:** Work covered by this Contract may be subcontracted at Contractor's option. However, Contractor shall remain responsible for the work performed by its subcontractors subject to the terms and restrictions of this contract to subcontractors who have been approved in advance and in writing by the Manager which approval shall not be unreasonably withheld.
- 8.14 Exclusive Performance:** Neither the Contractor nor any of its employees shall perform any work at the Airport other than that work which is defined herein, except when permitted by the Manager in writing.
- 8.15 Reassignment of Contractor's Employees Away from Denver International Airport When Requested by Contract Administrator:** The Contract Administrator may request (in writing) the Contractor to remove any employee from Denver International Airport. The Contractor shall comply with such request and will not reassign such employee to work under this Contract unless approved by the Contract Administrator.

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**8.16 Public Relations and Advertising:** The Contractor and its subcontractors shall not include any reference to this Contract or to work it performs hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager. Such approval shall not be unreasonably withheld.

**8.17 FAA Required Provisions:**

- A. This Contract shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal and state laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any existing contract between the City and the United States of America and to future contracts between the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the transfer of federal rights or property or the expenditure of federal funds for Airport purposes, or as a condition precedent to the use of the Airport, or any part thereof, by the Contractor, the City or otherwise. All provisions hereof shall be subordinate to the right of the United States of America to terminate the right of the Contractor, the City or other, to occupy or to use the Airport, or any part thereof, during the time of war or national emergency.
- B. The City may from time to time be required by the United States Government, its agencies, or the City to adopt additional or amended provisions including non-discrimination provisions, concerning the use and operation of the Airport, and Contractor agrees that it will adopt any such requirements as a part of this Contract.
- C. If the Federal Aviation Administration determines that any right or claim of right in or to the property herein creates an undue risk or interference with the operation of the Airport or the performance of or compliance with any covenants and conditions to which the use of the Airport is subject, said right or claim shall be extinguished or modified in a manner acceptable to the Federal Aviation Administration.
- D. The provisions of attached Exhibits A, B and C are incorporated herein by reference.

**8.18 Safety; Airport Security:**

- A. The Contractor is responsible for the health and safety of its employees, agents, subcontractors, and other persons who perform work under this Contract. The Contractor shall take all necessary and reasonable precautions and actions to protect all such persons. Such actions shall include, but are not limited to:
  - 1. Compliance with all the applicable laws, regulations, ordinances, rules or orders of any public authority having jurisdiction relating to safety of persons or property;
  - 2. Implementation of all practices, communicated and agreed to by the Contractor, procedures and programs customarily implemented by contractors performing work of a similar nature; and
  - 3. Other such actions as may be deemed prudent by the City, and communicated and agreed to by Contractor.
- B. The Contractor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Federal Aviation Administration with respect to Airport security. The Contractor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation. The Contractor shall promptly, after



receipt of this executed Contract, meet with the Assistant Security Manager to establish badging and vehicle permit requirements for Contractor's operations under this Contract. The City will issue a Contractor Airport Security Plan; the document may not be copied and must be returned by the Contractor to the City upon termination of this Contract. Failure of the Contractor to comply with this requirement shall result in forfeiture of the amount of one badge deposit and a requirement that Contractor make a \$500.00 advance deposit to the City in order to obtain a Contractor Airport Security Plan for any future contracts.

- C. The Contractor shall obtain the proper access authorizations for all of its employees, subcontractors and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. Any person who violates such rules may be subject to revocation of his access authorization. The failure of the Contractor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.
  - D. The security status of the Airport is subject to change without notice. Should the security status of the Airport change at any time during the term of this Contract, a written notice shall be issued to the Contractor detailing all applicable security modifications. The Contractor shall take immediate steps to comply with these security modifications.
  - E. The Contractor shall return to the Manager, at the expiration or termination of this Contract, or upon demand by the City, all access keys issued to it for any area of the Airport, whether or not restricted. If the Contractor fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system, and the City may withhold funds in the amount of such costs from any amounts due and payable to the Contractor under this Contract at the expiration or termination of this Contract.
- 8.19 Protection of Property:** The Contractor shall be totally responsible for the design and installation of all temporary structures such as shoring that may be required to perform work under this Contract. The Contractor shall also perform its work under this Contract so as not to load or overload any structural, electrical, communications or HVAC system in any way, which might endanger its present or future integrity or capacity. The City is responsible for notifying the Contractor of the presence of hazardous material known to the City to be located on City property where Contractor is to perform work, and for removal of such hazardous material, prior to the commencement of Contractor's services. The Contractor is responsible for promptly notifying the City of the presence of any hazardous material or hazardous condition existing in any areas of City property on which Contractor's services are performed or to be performed. The Contractor shall not be required to perform services in areas which are not safe on account of the presence of hazardous material or any hazardous condition.
- 8.20 Inspection:** Inspectors, who are employees of the City or are contract inspectors, may be assigned to inspect or observe the work. These inspectors will perform tests and observe the Contractor's work to determine whether or not work performed satisfies the requirements of this Contract. The Contractor shall, therefore, provide these inspectors access to the PBX as needed to perform the inspections, as well as whatever access is

needed to off-site facilities used to store materials and components to be incorporated into the PBX.

**8.21 Applicable Law; Submission to Jurisdiction:** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado and ordinances of the City and County of Denver. The Contractor hereby consents to the exercise by the Courts of the State of Colorado of jurisdiction in personam over it with respect to any matter arising out of or in connection with this Contract and waives any objection to such jurisdiction which it might otherwise have; and the Contractor agrees that mailing of process certified or by registered mail addressed to it at the address of the Contractor indicated herein, shall have the same effect as personal service within the State of Colorado upon a domestic corporation of the State of Colorado.

**8.22 Independent Contractor:** It is agreed and understood by and between the parties hereto that the status of the Contractor shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1(E)(x) of the Charter of the City and County of Denver, and it is not intended, nor shall it be construed, that the Contractor or its personnel are employees or officers of the City under Chapter 18 of the Revised Municipal Code for any purpose whatsoever.

**8.23 Notices:**

**A. Notices, Generally:** Any notice to the Contractor from the City or to the City from the Contractor relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is sent by certified or registered mail to said party or delivered in person to said party or his authorized representative. Notices by the Contractor shall be addressed to the Manager of Aviation, City and County of Denver, Denver International Airport, 9th Floor, Airport Office Building, 8500 Peña Boulevard, Denver, CO 80249-6340, with a copy to City Attorney's Office, Airport Legal Services, Airport Office Building, 8500 Peña Boulevard #9810, Denver, CO 80249-6340; and by the City to Contractor at Vice President-Law, 4655 Great America Parkway, Santa Clara, CA 95054-1233. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

**B. Notices, Termination by the City:** As more fully set forth in Exhibit F, Section 9.2, any notice of termination by the City 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: Maintenance Termination; (ii) e-mail to mycontract@avaya.com; or (iii) fax to 800-441-6371. In case of an Avaya Affiliate the notice of cancellation must be sent to the e-mail or address stated on the relevant order.

**8.24 Taxes:**

**A.** The purchase by the Contractor of any parts or materials for use in the performance of this Contract are not exempt from State of Colorado, RTD, and any other applicable sales and use taxes. Such materials will also be subject to sales and use taxes imposed by the City. The Contractor and subcontractors should apply to the Colorado Department of Revenue for a certificate, or certificates, of exemption indicating that their

purchase of parts and materials is for a public project. Upon request by the Contract Administrator, completed copies of applications for Exemption Certificates with the approval of the Colorado Department of Revenue noted thereon shall be delivered to the City. The Contractor agrees to secure from each subcontractor copies of their approval applications and upon request by the Contract Administrator shall provide copies of such applications to the Contract Administrator. The purchase cost or value of tools or equipment used by the Contractor at the Airport is subject to sales and use tax.

- B. Any employee working for the Contractor, or a subcontractor, who earns over \$500 working in the City and County of Denver during a calendar month, is subject to the payment of the Employee Occupational Privilege Tax. Any contractor or subcontractor who has any employee working in Denver, as defined above, must pay the Business Occupational Privilege Tax for such employee.

**8.25 No Third Party Beneficiaries:** The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the City and Contractor, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person on such Contract. It is the express intention of the City and the Contractor that contractors and any other person other than the City or the Contractor receiving any benefits from this Contract shall be deemed to be an incidental beneficiary only.

**8.26 Inspection of Books:**

- A. The Contractor shall keep and maintain and shall require its subcontractors to maintain invoices, receipts, accounts, correspondence, notes and other records required to establish the cost of any claims against the City for additional compensation.
- B. All such records shall be kept in accordance with generally accepted accounting principles. Contractor's records shall also be maintained in the Denver metropolitan area to the extent reasonably possible, however, the Contractor may maintain such records in its home office when Contractor's standard operating procedures require processing such records at such location. The City, its representatives and any firm of auditors appointed by the City shall have access, upon reasonable advance notice in writing, to audit all such directly relevant records maintained by the Contractor and its subcontractors, solely for the purposes of determining Contractor's compliance with this Contract or to establish the cost of any claims for additional compensation submitted by the Contractor. In the event of an audit, Contractor shall identify any records or information it considers confidential and the City shall not disclose such information or records to others, except if ordered to do so by a court of competent jurisdiction. The Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act, § 24-72-201 et. seq., C.R.S., and agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act, for the disclosure of any materials or information which Contractor asserts is confidential and exempt from disclosure. The City shall have the right to reproduce any such records, and Contractor and its subcontractors shall keep and preserve all such records either in the Denver metropolitan area or at its main office for a period of at least three (3) years from and after completion or termination of the Contract.
- C. In connection with any work performed hereunder, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents,

papers and records of the Contractor which are directly pertinent to a specific federal grant program for the purpose of making audits, examinations, excerpts and transcriptions of such records. The Contractor further agrees that such records will contain information concerning the personnel who performed the work, the specific tasks they performed and the hours they worked, along with the applicable federal project number.

- D.** Subject to the terms of Exhibit F, and in particular Section 4 thereof, the Contractor shall inform any persons who obtain access to records under this Section, if any of such records constitute or contain proprietary information, confidential commercial information, or trade secrets, in order to protect any rights of confidentiality in such records.
- 8.27 No Waiver of Rights:** No assent, expressed or implied, to any breach of any one or more of the terms and conditions of this Contract shall be deemed to be or taken to be by the City or Contractor as a waiver of any subsequent breach of such terms and conditions or of any right the City or Contractor may have for damages.
- 8.28 Compliance with Laws:** The parties shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations and orders which would affect this Contract and the performance thereof and those engaged therein. This includes obtaining all applicable permits and licenses that may be required for Contractor to perform its work under this Contract. In the event any changes in such laws, ordinances, rules and regulations or orders occur after the date of this Contract resulting in actual significant increased costs to the Contractor, the Contractor may be entitled to an equitable adjustment for such costs. If needed, the City's Voice Services Manager will provide the Contractor with reasonable assistance in obtaining any required City licenses or permits. However, the Contractor shall not apply for any permits or licenses in the name of, or on behalf of, the City.
- 8.29 Severability:** If any part, portion or provision of this Contract shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having authority there over, only such part, portion, or provision shall be affected thereby and all other parts, portions and provisions of this Contract shall remain in full force and effect.
- 8.30 Dispute Resolution; Administrative Hearing:** Disputes arising under or related to this Contract or the work which is the subject of this Contract shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver, which provides that if the Contractor does not agree with the Manager's decision, then it may, within 30 days after the date of any such decision, submit a written request to the Manager for a hearing pursuant to Section VIII (8.30) of this Contract. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to Contractor's right to appeal the determination under Colorado Rule of Civil Procedure 106.
- 8.31 Headings:** The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract.

- 8.32 Prevailing Wage:** The Contractor or his subcontractor shall comply with D.R.M.C., Sections 20-76 through 20-79, regarding payment of prevailing wages. The Contractor or his subcontractor shall pay mechanics, laborers and workers employed directly upon the site of the work the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the specifications, and any addenda thereto, on the actual date of bid opening, or in effect on the date of grant of permit for performance of such work under D.R.M.C., Section 49-171, et seq., or on the date of the written Purchase Order for contracts let by information procedure under D.R.M.C., Section 20-63(b), regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers, mechanics and workers. Information as to forms and other requirements concerning prevailing wages may be obtained from the City Auditor's Office, Prevailing Wage Section, Denver International Airport, 8500 Peña Blvd, Concourse A, Denver, Colorado 80249-6340, telephone number (303)342-2710.
- 8.33 Provision of Training Services:** Contractor may make training courses available to City to train City's representatives on the use and operation of Products ("Training Services"). The specific form and content of Training Services will be set out in Contractor's then current standard training course syllabus. Contractor may cancel any course. Contractor will provide at least fourteen (14) days notice of such cancellation and will refund prepaid amounts. Unless otherwise provided in the course syllabus, City may cancel an Order for Training Services subject to payment of Contractor's then current course cancellation policies, available on request. Course Fees will be per course or per day or as otherwise indicated in the applicable Order. City will be solely responsible for all expenses incurred by or on behalf of City or its representatives attending training. If City enrolls one or more individuals for Training Services for which the course syllabus identifies specific prerequisites, City may substitute other individuals only if the substituted individuals meet the same pre-requisite/qualifications as the original enrollee. While on Contractor's premises, City representatives will comply with Contractor's rules and regulations.
- 8.34 Non-exclusivity:** Nothing in this Contract will prevent or restrict either party from entering into agreements for the provision of products and services of the same or similar nature as those provided under this Contract with any third party.
- 8.35 Survival:** The provisions of these general terms will survive any termination or expiration of this Contract and any Order, except that after the termination or expiration of this Contract becomes effective, City may no longer order products or services under this Contract.
- 8.36 City Smoking Policy:** Contractor acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Contractor and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.



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**8.37 Use, Possession or Sale of Alcohol or Drugs:** The Contractor and Contractor's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Contractor and Contractor's agents from City facilities or participating in City operations.

**8.38 No Employment of Illegal Aliens to Perform Work Under the Agreement:**

- (a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Den. Rev. Mun. Code 20-90 and the Contractor is liable for any violations as provided in said statute and ordinance.
- (b) The Contractor certifies that:
  - (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  - (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (c) The Contractor also agrees and represents that:
  - (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
  - (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
  - (4) It is not prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.
  - (5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Contractor will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.
  - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-

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17.5-102(5), C.R.S. or the City Auditor under authority of Den. Rev. Mun. Code 20-90.3..

- 8.39 Entire Agreement:** The parties acknowledge and agree that the provisions contained herein constitute the entire agreement between the parties and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Contract shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Contract.
- 8.40 Electronic Signatures and Electronic Records:** Contractor and City consent to the use of electronic signatures by the Parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner mutually agreed to by the Parties. The Parties agree not to deny the legal effect, admissibility or enforceability of the Agreement, and any other documents requiring a signature hereunder, solely because they contain a signature that is electronic form or because an electronic record was used in their formation.
- 8.41 City Execution of Contract:** This Contract is expressly subject to, and shall not become effective or binding on either party until it is approved by the City Council of the City and County of Denver, if required by law, and is fully executed by all signatories of the City and County of Denver and the Contractor.

**SIGNATURE PAGE FOLLOWS**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PLANE-201206342-00

Contractor Name: AVAYA INC

By: *Edward A. Saludes*

Name: Edward A. Saludes  
(please print)

Title: Director Intermountain Region  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



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## EXHIBIT A

### STANDARD FEDERAL ASSURANCES

**NOTE:** As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the Contract until the contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.



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6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 4 in every subcontract entered into by contractor specifically in support of this agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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## EXHIBIT B

### STANDARD FEDERAL ASSURANCES

**NOTE:** As used below, the term "DOT" means the United States Department of Transportation.

1. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Contract for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Party of the Second Part shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
2. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Party of the Second Part shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

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## EXHIBIT C

### NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or an interest herein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.



**Exhibit D**

**CITY AND COUNTY OF DENVER  
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI       Advice of Renewal       Change

Party to Whom this Certificate is Issued:

CITY AND COUNTY OF DENVER  
Attn: Risk Management of International  
Denver 8500 Peña Boulevard,  
Denver CO 80249

Name and Address of Insured:

OF DENVER  
Suite 8810  
Aviation  
Room Airport  
8810

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201206342 -  
Telephone System Maintenance & Upgrades

**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability Coverage**

**Coverage:** COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

**Any Policy issued under this section must contain, include or provide for the following:**

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**Commercial General Liability Coverage**

**Coverage:** Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire	\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required

### **Business Automobile Liability Coverage**

**Coverage:** Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands):                      Combined Single Limit    \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

## **II. ADDITIONAL COVERAGE**

### **Umbrella Liability**

**Coverage:**

Minimum Limits of Liability (In Thousands)

Umbrella Liability Restricted Area    Each Occurrence and aggregate        \$9,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

### **Professional Liability only as applicable Information Technology Contracts**

**Coverage:** Professional Liability including Cyber Liability for Errors and Omissions

(If contract involves software development, computer consulting, website design/programming, multi-media designers, integrated computer system design, data management, and other computer service providers.)



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Minimum Limits of Liability (In Thousands)	Per Claim	\$1,000
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Any Policy issued under this section must contain, include or provide for the following:

1. The insurance shall provide coverage for the following risks:
  - a. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form
  - b. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
  - c. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.
2. Policies written on a claims-made basis must remain in full force and effect in accordance with CRS 13-80-104. The Insured warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Contract is completed.
3. Any cancellation notice required herein may be provided by either certified or regular mail.
4. The policy shall be endorsed to include the City, its elected officials, officers and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Insured
5. Coverage must include advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

### III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.

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- Advice of renewal is required.
  - All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
  - Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
  - No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

## **NOTICE OF CANCELLATION**

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

## EXHIBIT E

### Avaya CM 5.2 S8800 Telephone System & Adjuncts Maintenance & Technical Support, & Software Upgrade Support

#### Statement of Work

See attached Order form and Service Agreement Supplements / Service Description:

- Exhibit E-1 = Order form (Avaya Account Team to provide)
- Exhibit E-1.a = Avaya Service Description / Service Agreement Supplement – Full Coverage (vs. 9.0 Mar 2011)
- Exhibit E-1.b = Avaya Service Description / Service Agreement Supplement / For Avaya Support Advantage - Parts and Onsite Support - Version 1.10 (November 15, 2012)
- Exhibit E-1.c = Avaya Service Description / Service Agreement Supplement / Software Support - Version 12.0 (Oct 2011)
- Exhibit E-1.d = Avaya Service Description / Service Agreement Supplement / Hardware Support - Version 8.1 (December 2012)
- Exhibit E-1.e = Avaya Service Description / Service Agreement Supplement / For Avaya Support Advantage - Essential and Preferred Support - Version 1.7 (November 15, 2012)
- 



Full Coverage



SAS - Hardware



SAS - SA Essential



SAS - SA Parts and



SAS - Software

Service Agreement Support Service Agreement Preferred Support Onsite Support Service Support Service Agreement

## Exhibit F



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

This Customer Agreement (the “**Agreement**”) is entered into by and between Avaya Inc., with an address of 211 Mt. Airy Road, Basking Ridge, New Jersey 07920 United States (“**Avaya**”) and the undersigned Customer. The terms of this Agreement govern the Customer’s purchase and/or license of hardware, Software and associated Documentation (as defined in Schedule A, Section 1), (“**Products**”) and related services as described in the relevant Attachment(s) (“**Services**”). The “**Effective Date**” of this Agreement is the date last signed below. 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, the Agreement also consists of one or more of the following Attachments:

- Attachment 1** – Supply of Generally Available Products
- Attachment 2** – Implementation & Professional Services Terms
- Attachment 3** – Maintenance/Managed Services Terms

#### 1. ORDERS

Orders are subject to acceptance by Avaya. Avaya may accept an order by shipping Products or commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to the Agreement. Orders will be governed by the terms of the Agreement even when they lack an express reference to the Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in the Agreement will have no effect. All orders shall reference this Agreement or Agreement number and shall specify the quantity, price, delivery location, Avaya quotation, and proposal number. “**Affiliate**” means, with respect to either party, any direct or indirect subsidiary or an entity, present or future, controlling, controlled by, or under common control with a signatory of this Agreement. For purposes of this definition, “**control**” means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing. Any Affiliate of Customer shall be permitted to place orders hereunder; however, such Affiliates are subject to credit approval by Avaya. Each order placed and accepted hereunder shall be deemed to constitute a separate agreement, incorporating the terms and conditions hereof, between Avaya and Customer or the Affiliate entity placing the order, with such entity being deemed “**Customer**” for purposes of this Agreement. Customer and Avaya will cause their Affiliate(s) to comply with the provisions of this Section.

#### 2. INVOICING AND PAYMENT

**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. Unless otherwise governed by local statute or regulation, payment of invoices is due within 30 days from the date of Avaya’s invoice. Customer will inform Avaya in writing of any disputed portion of an invoice within 15 days from the date of Avaya’s invoice. Customer will pay all bank charges, taxes, duties, levies and other costs associated with other methods of invoicing and payment. Avaya may suspend licenses and performance of orders for which payment is overdue until the overdue amount is paid in full. Overdue payments will be subject to a late payment charge of the lesser of one and one half percent (1.5%) per month or the maximum rate allowed by applicable law. Subject to local statute or regulation, Customer will reimburse Avaya for reasonable attorneys’ fees and any other costs associated with collecting delinquent undisputed payments.

**2.2 Taxes.** Unless Customer provides Avaya with a current tax exemption certificate or otherwise furnishes written evidence of Customer’s tax exempt status, Customer is solely responsible for paying all legally required taxes, including without limitation any sales, excise or other taxes and fees which may be levied upon the sale, transfer of ownership, license, installation or use of the Products, except for any income tax assessed upon Avaya.

#### 3. CUSTOMER RESPONSIBILITIES

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

#### 4. CONFIDENTIAL INFORMATION

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

**4.2 Obligations.** To the extent permitted by law, each party will 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. Neither party will use or disclose the other party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under the Agreement. The confidentiality obligations of each party will survive expiration or termination of the Agreement. Upon expiration or termination of the Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request destroy, all Confidential Information, including any copies, in tangible form in that party's possession or under its control, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section.

## **5. INTELLECTUAL PROPERTY RIGHTS**

**5.1 Customer Owns Customer IP.** Customer reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively "**Intellectual Property**" or "**IP**") that Customer owns and makes available to Avaya (collectively "**Customer IP**") under this Agreement.

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

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

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

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

## **7. WARRANTIES AND LIMITATIONS**

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

**7.1 Exclusions and Disclaimers.** The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under the Agreement or in a manner inconsistent with the Documentation; (ii) 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 under the Agreement. 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 THE AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS OR THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THE AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

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

**8.1 Defense and Indemnity.** Avaya will defend Customer, at Avaya's expense, against any Claim, as defined below, and will indemnify Customer as provided for in this Section for any judgments, settlements and court awarded attorney's fees resulting from a Claim. Avaya's obligations under this Section are conditioned on the following: (i) Customer promptly notifies Avaya of the Claim in writing upon Customer being made aware of the Claim; (ii) Customer gives Avaya sole authority and control of the defense and (if applicable) settlement of the Claim, provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense, and (iii) Customer provides all information and assistance reasonably requested by Avaya to handle the defense or settlement of the Claim. For purposes of this Section, "**Claim**" means any cause of action in a third party action, suit or proceeding against Customer alleging that a Product as of its delivery date under this Agreement infringes a valid U.S. patent, copyright or trademark.

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

**8.3 Exceptions.** Avaya will have no defense or indemnity obligation for any Claim based on: (i) a Product that has been modified by someone other than Avaya; (ii) a Product that has been modified by Avaya in accordance with Customer-provided specifications or instructions; (iii) use or combination of a Product with Third Party Products, 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; (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: (i) embedded in Products (i.e., not recognizable as standalone items); and (ii) 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.

**8.5 General Indemnification.** Avaya shall indemnify and hold harmless Customer, Customer's agents, servants and employees against all claims, demands and judgments made or recovered against them by third parties for damages to real or tangible personal property or for bodily injury or death to any person arising out of, or in connection with this Agreement ("**Claim**"), to the extent such damage, injury or death was proximately caused by the negligence of Avaya, any subcontractor of Avaya or their employees, servants or agents while performing under this Agreement; provided, however, that such indemnification and save harmless obligation shall apply only to direct damages which are proven and shall not apply to the extent such damages, injury or death was caused by Customer's act or omission or the act or omission of Customer's agents, servants, employees or others; and, provided, further, that such indemnification and save harmless obligation is expressly conditioned on the following: (a) that Avaya shall be notified in writing promptly of any such Claim, (b) that Avaya shall have sole control of the defense of any action or such Claim and of all negotiations for its settlement or compromise



provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense; and that (c) Customer shall cooperate with Avaya in a reasonable way to facilitate the settlement or defense of such Claim.

## 9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, OR TOLL FRAUD. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO TWICE THE TOTAL CONTRACT PRICE (OR IN THE ABSENCE OF A CONTRACT PRICE, TWICE THE AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THE AGREEMENT IN THE 24 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM), UP TO \$5,000,000. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS. THE LIMITATIONS OF AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THE AGREEMENT.

## 10. GOVERNING LAW AND DISPUTE RESOLUTION

**10.1 Governing Law.** The Agreement and any disputes arising out of or relating to the Agreement ("**Disputes**") will be governed by the laws of the state where the Customer is located, excluding choice of law principles.

## 11. TERM AND TERMINATION

**11.1 General Terms.** The Agreement will be effective and continue in effect for three years from the Effective Date unless terminated earlier in accordance with this Section. Either party may terminate the Agreement or any order placed hereunder, subject to the termination or cancellation fees specified in the Agreement, if any, by written notice to the other party if the other party fails to cure any material breach of the Agreement within a 30 day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach be cured. Customer may terminate the Agreement for convenience upon 30 days written notice and subject to termination or cancellation fees, if any. If Customer terminates this Agreement for convenience, Avaya shall submit to Customer a termination settlement claim containing any charges up to the effective date of termination and any applicable termination fees, in the form of an invoice, within ninety (90) days from the effective date of the termination. Notwithstanding the foregoing, except for Customer's termination for non-appropriation of funds as set forth in subsection 11.2 below, termination of Maintenance/Managed Services shall be as set forth in Attachment 3. The provisions concerning confidentiality, license grant, license restrictions, indemnity, export control, all limitations of liability, disclaimers and restrictions of warranty, and any other terms which, by their nature, are intended to survive termination or expiration of this Agreement will survive any termination or expiration of the Agreement and any order. Except as expressly provided otherwise in the Agreement and termination for uncured breach, any termination of the Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of the Agreement became effective. The imposition and/or payment of cancellation or termination fees in connection with a termination of the Agreement or an order for breach shall be without prejudice to the non-breaching party's other remedies available at law or in equity.

**11.2 Availability of Funds.** Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of the Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to Customer for any fiscal period following its current fiscal year ("subsequent fiscal period") for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under the Agreement was acquired, (ii) such non-appropriation has not resulted from Customer's act or failure to act, and (iii) Customer has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to Avaya, then Customer may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving Avaya sixty (60) days prior written notice of termination citing the unavailability of funds to continue. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to Avaya for all Services performed, as well as for all Products delivered and accepted.

## 12. AUDIT

Customer may inspect Avaya's records and work-papers directly related to the Agreement to determine the validity of billings for work performed under order(s) place by Customer. Such records shall be made available for inspection during Avaya's normal business hours at Avaya's business location(s) where such records are kept upon at least 30 days prior written notice. Such records and work-papers must be retained by Avaya for review for at least two (2) years after final payment is made for the order(s) subject to audit.

## 13. MISCELLANEOUS

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

**13.2 Assignment & Subcontractors.** Subject to local law or regulation, Avaya may assign the Agreement and any order under the Agreement 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 or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement or any rights or obligations under the Agreement without the express written consent of the other party will be invalid. Avaya may subcontract any or all of its obligations under the Agreement, but will retain responsibility for the work.

**13.3 Force Majeure.** 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 ("**Force Majeure**").

**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 shall be delivered to the facsimile numbers or the addresses of the relevant party set forth below. Such delivery shall be affected by facsimile, courier or by first-class mail, postage pre-paid.



FOR CUSTOMER: [TO BE COMPLETED]

FOR AVAYA:

Contact Name: Manager of Aviation  
Company Name: City and County of Denver, Denver International Airport,  
Street Address: 9th Floor, Airport Office Building, 8500 Pena Blvd,  
City, State, and Zip Code: Denver, CO 80249-6340  
United States  
FACSIMILE:

ATTENTION: VICE PRESIDENT, LAW  
AVAYA INC.  
211 MT. AIRY ROAD,  
BASKING RIDGE, NEW JERSEY 07920  
UNITED STATES  
FACSIMILE: 908-953-8006

**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 shall 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.** The Agreement constitutes the entire understanding of the parties with respect to the subject matter of the Agreement and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. Any modifications or amendments to this Agreement must be in writing physically or electronically and signed by both parties. In no event shall electronic mail constitute a modification or amendment to this Agreement. If any provision of the Agreement is determined to be unenforceable or invalid by court decision, the Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate the Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms.

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

**CUSTOMER:**

**AVAYA INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Date Signed)



**CUSTOMER AGREEMENT (UNITED STATES)  
SCHEDULE A  
AVAYA GLOBAL SOFTWARE LICENSE TERMS**

These Global Software License Terms are part of the Customer 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.** 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, (i) for Products not covered by the License Portability Policy (defined below), at locations where the software is initially installed or (ii) for Products covered by the License Portability Policy, subject to the Right to Move License Entitlements subsection below. "**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. Software installed on mobile-devices, 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, Customer may move right to use license entitlements ("**RTU's**") for certain specified types of software from one location to another in accordance with Avaya's then-current software license move policy for that software ("**License Portability Policy**") which is available upon request subject to the following conditions:

**1.1.1** Customer shall provide written notice within ten (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.

**1.1.2** Customer may only move RTU's to and from Designated Processors or Servers supporting the same software application.

**1.1.3** Customer must reduce the quantity of the licenses on the original Server by the number of RTU's being moved to the new Server.

**1.1.4** 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, and (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.

**1.1.5** 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.

**1.1.6** Customer may move RTU's from one Affiliate to another Affiliate provided that Customer includes the name and address of the new Affiliate in Customer's written notice under 1.1.1 above, and provided such new Affiliate agrees to be bound by these Global 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 shall be to use the software in a non-production environment solely for testing or other non-commercial purposes on a single computer ("**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 Global 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, or reverse engineer the software; (ii) alter, modify or create any derivative works based on the software or Documentation; (iii) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the software or Documentation except as expressly authorized by the Agreement with a Avaya; (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 means; (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 ("**Authorized Providers**"), 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 Authorized Providers; or (viii) permit or encourage any third party to do any of the activities detailed in subsection (i) – (vii) of this sentence. Customer shall provide Authorized Providers the terms and provisions of these Global Software License Terms and shall indemnify Avaya for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Avaya as a result of non-compliance with this section. Notwithstanding the foregoing, if the software is rightfully located in a member state of the European Union and Customer needs information about the software in order to achieve interoperability of an independently created software program with the software, Customer will first request such information from Avaya. Avaya may charge Customer a reasonable fee for the provision of such information. If Avaya refuses to make such information available, then Customer may take steps, such as reverse assembly or reverse compilation, to the extent necessary solely in order to achieve interoperability of the software with an independently created software program. To the extent that the Customer is expressly permitted by applicable mandatory law to undertake any of the activities listed in this section Customer will not exercise those rights until Customer has given Avaya twenty (20) days written notice of its intent to exercise any such rights.

**4. BACKUP COPIES.** Customer may create a reasonable number of archival and backup copies of the software and the Documentation, provided all proprietary rights notices, names and logos of Avaya and its suppliers are duplicated on each copy.

**5. COMPLIANCE.** Avaya will have the right to inspect Customer's compliance with these Global Software License Terms.

**6. TERMINATION OF LICENSE.** If Customer breaches these Global Software License Terms and if within ten (10) business days of Customer's receipt of a reasonably detailed written request to cure, Customer has not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the software licenses granted in these Global 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 shall immediately return the software and any copies to Avaya, or at Avaya's discretion and written notice to Customer, Customer shall permanently destroy all copies of the software and any related materials in Customer's

possession or control. Inadvertent copies of the software and any related materials remaining in the possession of the Customer subsequent to termination or expiration shall not be implied or construed as Avaya consenting to transfer ownership of the software and any related materials to Customer.

**7. 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 8 below. Where the order documentation for Avaya software 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. “**Software**” means the computer programs in object code, originally provided by Avaya and ultimately utilized by Customer, whether as stand-alone products or pre-installed on hardware products, originally sold by Avaya and ultimately utilized by Customer.

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

**7.2 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.

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

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

**7.5 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.

**7.6 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” license accompanying or applicable to the software (“**Shrinkwrap License**”).

**8. HERITAGE NORTEL SOFTWARE.** “**Heritage Nortel Software**” means the software that was acquired by Avaya as part of its purchase of the Nortel Enterprise Solutions Business in December 2009. The Heritage Nortel Software currently available for license from Avaya is the software contained within the list of Heritage Nortel Products located at <http://support.avaya.com/licenseinfo> under the link “**Heritage Nortel Products**.” For Heritage Nortel Software, Avaya grants Customer a license to use Heritage Nortel Software provided under the Agreement solely to the extent of the authorized activation or authorized usage level and solely for the purpose specified in the Documentation. Charges for Heritage Nortel Software may be based on extent of activation or use authorized as specified in an order or invoice. Customer agrees to pay the charges applicable for any activation or usage beyond the authorized level.

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

**10. PROTECTION OF SOFTWARE AND DOCUMENTATION.** Customer acknowledges that the Software and Documentation are Confidential Information of Avaya and its suppliers, and contains trade secrets of Avaya and its suppliers, and Customer agrees at all times to protect and preserve in strict confidence the Software and Documentation.

**11. 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.

**12. 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 applicable local country law and regulation is prohibited. Customer agrees not to directly or indirectly export, re-export, import, download, or transmit the Software to any country, end user or for any use that is prohibited by applicable U.S. and local country regulation or statute (including but not limited to those countries embargoed by the U.S. government). Customer represents 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 agrees 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 is advised that the Software may contain encryption algorithm or source code that may be limited for export to government or military end users without a license issued by the U.S. BIS and any other country’s governmental agencies, where applicable. Lastly, Customer agrees not to directly or indirectly export, re-export, import, or transmit the Software contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission, or use.

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

**14. 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 the Agreement that are generally available on Avaya's price lists. Products acquired under the Agreement are for use in the ordinary course of Customer's business and are not for resale by Customer.

## 1. DELIVERY AND IN-SERVICE DATES

**1.1** The "**Delivery Date**" means the date on which Avaya delivers: (i) Avaya-installed Products to Customer's premises; or (ii) other Products to a carrier for shipment. In the case of Software features that 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 informs Customer that the Avaya-installed Products are installed in good working order in accordance with applicable Documentation. "**Installation Start Date**" means the date on which Avaya's personnel arrive at Customer's premises to install Products.

**1.2 Acceptance.** For Customer-installed Products, acceptance shall occur no later than 30 days following the Delivery Date. For Avaya-installed Products, acceptance shall occur no later than 30 days following the In-Service Date. In the event that Customer has not provided Avaya with either (a) written acceptance, or (b) a written rejection of the Avaya-installed Products with a reasonably detailed explanation of the basis for such rejection within 30 days following the In-Service Date, then formal acceptance of Avaya-installed Products is deemed to occur on such 30th day. Acceptance shall not be deemed a waiver of any warranties, or any other rights under the Agreement.

## 2. ORDER OF PRECEDENCE

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

## 3. PRODUCT CHANGES

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

## 4. ORDER CHANGES AND CANCELLATIONS

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

Configured Products:

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

Non-Configured Products

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

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

## 5. 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 specified in the order. Shipping and handling charges may be reflected as a separate line item on Avaya's invoice.

**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 Acceptance date, provided Customer maintains all delivered hardware in a secure environment with controlled access. 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 the Agreement will remain solely with Avaya and its licensors.

## 6. INVOICING

Unless otherwise provided in a valid Avaya quotation, proposal or Statement of Work, Avaya will invoice Customer one hundred percent (100%) of the price of the Products upon shipment of the Products.

## 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 shall pass through to Customer any such warranties to the extent authorized. Exercise of such warranty shall be directly between Customer and the third party provider.

**7.2 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/css/appmanager/public/support?nfpb=true&\\_pageLabel=WNContent\\_Public&contentid=C20091120112456651010](https://support.avaya.com/css/appmanager/public/support?nfpb=true&_pageLabel=WNContent_Public&contentid=C20091120112456651010)). The lifetime warranty begins on the Delivery Date and ends five (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.

**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  
IMPLEMENTATION & PROFESSIONAL SERVICES TERMS**

These Implementation & Professional 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 Implementation & Professional Services.

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

**1.1 Services Provided.** Avaya will provide the Services described in this paragraph ("**Implementation & Professional Services**") as specified in an order and as may be further described in a Statement of Work executed by both parties ("**SOW**"). Implementation & Professional Services can include installation and configuration of Products, consulting and other services where Avaya creates and delivers customized Software, hardware, documentation, or other work product ("**Deliverables**") and/or completes other defined objectives ("**Defined Objectives**") on a milestone basis or on a time and material basis ("**T&M Services**", as further defined below). T&M Services are Implementation & Professional 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. Implementation & Professional Services do not include Maintenance Services or Managed Services.

**1.2 Order of Precedence.** Unless otherwise provided for in these Implementation & Professional Services Terms, in the event of conflict among the General Terms, these Implementation Services Terms, an SOW and any ancillary attachments to or documents referenced in an SOW, the order of precedence is: (i) these Implementation & Professional 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 Implementation & Professional Services will be made in accordance with Avaya's standard change control procedures or procedures agreed to in writing by both parties in the SOW.

## **2. ACCEPTANCE**

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

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

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

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

**3.1 Transfer of Risk and Title.** Title to hardware components of Deliverables will pass to Customer upon acceptance. 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 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 the Agreement.

## **4. INVOICING AND PAYMENT**

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

## **5. WARRANTY**

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

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

### **5.3 Remedies.**

**5.3.1 Implementation & Professional Services.** To the extent that Avaya has not performed Implementation & Professional 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 and requests Avaya cure the Non-Conformity, Avaya will re-

perform the applicable Services or if Avaya determines that re-performance is not commercially reasonable, either (i) Avaya will refund to Customer the fees for the Non-Conforming Implementation & Professional Services; or in the case of T&M Services, (ii) Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed.

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

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

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

## **6. TERM AND TERMINATION**

**6.1 Term.** The term of an SOW will begin on the date specified in the SOW or order if any, or on the date executed by the last party to sign the SOW. 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 Implementation & Professional Services upon 45 days prior written notice, and Customer will pay for 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 TERMS

These Maintenance/Managed 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.

## 1. ORDER, PROVISION AND SCOPE OF SERVICES

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

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

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

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

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

**1.6 End of Support.** Periodically, Avaya or a third party manufacturer may declare “end of life,” “end of service,” “end of support,” “manufacture discontinue” or similar designation (“**End of Support**”) for certain Supported Products. Customer may access Avaya’s user support website ([www.support.avaya.com](http://www.support.avaya.com)) for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide the support described in the applicable SAS or Service Description, except for the End of Support exceptions listed therein (“**Extended Support**”). If the SAS or Service Description 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.

**1.7 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 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.

**1.8 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 Services 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 or as otherwise specified in the SAS or Service Description.

## 3. CUSTOMER RESPONSIBILITIES

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

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

**3.3 Moves of Supported Products.** Customer will notify Avaya in advance before moving Supported Products. 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 a form reasonably satisfactory to Avaya, permitting Avaya to perform the Vendor Management. Where the third party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

**3.5 Third Party Hosting.** In the event one or more network address(es) to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third party service provider ("**Host**"), Customer will: (i) notify Avaya of the Host prior to commencement of the Services; (ii) obtain the Host's advance written consent for Avaya to perform the Services on the Host's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the Host in connection with the Services.

**3.6 Access to Personal Data.** From time to time, Customer may require Avaya to access a Supported Product or Supported System containing employee, customer or other individual's personal data (collectively, "**Personal Data**"). Where Customer instructs Avaya to access any Personal Data or 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 "clickwrap" 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 professional 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 mandated in the applicable SAS or Service Description, Avaya will provide Services for an initial term of one year. Unless otherwise specified in the SAS or Service Description, Customer may terminate Services in whole or in part upon 30 days written notice subject to cancellation fees equal to Service fees for 12 months or the remaining term, whichever is less.

**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: Maintenance Termination; (ii) email to mycontract@avaya.com; or (iii) fax to 800-444-6371.