

## Appendix D to DIR-SDD-1513

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

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

1.1 Order and Provision of Services. In return for the payment of the fees specified in the order, Avaya will provide the Maintenance/Managed Services options for Supported Products or Supported Systems at Supported Sites, as described further in this Agreement and the SAS or Service Description ("Services"). In the event of a conflict between DIR Contract No. DIR-SDD-1513, the SAS/Service Description and this Agreement, the terms of DIR Contract No. DIR-SDD-1513 will control. The "Service Agreement Supplement" ("SAS") or the "Service Description" is the Avaya Service Agreement Supplement or Service Description then current as of the date of Avaya's acceptance of an order for Services and available to Customer upon request. As used in this Agreement, "SAS" or "Service Description" may refer, as applicable, to either the Service Agreement Supplement or Service Description or, where the parties have executed a statement of work describing specific Services to be provided by Avaya, to the statement of work. "Supported Products" are: (i) hardware or software products identified in the order; and (ii) Added Products (defined in Section 1.8). Supported Products may include non-Avaya products to the extent they are specified in the order. "Supported Systems" are a group of products or networks specified in the order. "Supported Sites" are locations specified in the order. Orders are subject to acceptance by Avaya. Avaya may accept an order by beginning to perform the Services. Terms and conditions contained in Customer purchase orders or other Customer documents will have no effect.

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

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

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

Customer has selected.

1.5 Updates. Where the selected Services option includes the provision of Updates, Avaya will make Updates available to Customer as the manufacturer makes them generally available to its other customers. An "Update" is a change in software that typically provides maintenance correction only. It typically is designated as a change in the digit to the right of the second decimal point (e.g. n.y.z]). Avaya will provide Updates via a website, email or post mail, at Avaya's option. Updates may be remotely installed by Avaya or delivered to Customer for self-installation.

1.6 End of Support. 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 register an email address to receive email 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 Service Description, except for the End of Support exceptions listed therein ("Extended Support"). If the 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, remanufactured 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.

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

1.9 General Limitations. Unless the SAS provides otherwise, Avaya will provide software Services only for the unaltered current release of the software and the prior release. The following items are included in the Services only if the SAS specifically includes them:

(i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed Updates provided by the

manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures or surges); and (vii) Services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or that have had their serial numbers altered, defaced or deleted.

### 2. INVOICING AND PAYMENT.

Invoicing and payment will be handled in accordance to DIR Contract No. DIR-SDD-1513, Appendix A, Section 7.

### 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. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans to Customer ("Avaya Tools") for the purpose of providing Services under this Agreement, such as, but not limited to, the Secure Intelligent Gateway. Avaya Tools shall not be considered Products.

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 form reasonably satisfactory to Avaya, permitting Avaya to

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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) to the extent authorized by Texas Law and Constitution, indemnify Avaya and its officers, directors, employees, subcontractors and affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

4. TITLE AND RISK OF LOSS TO EQUIPMENT. Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer when it arrives at the Supported Site.

5. SOFTWARE LICENSE. Where Services include provision of patches, Updates or feature upgrades for Supported Products ("New Software"), they will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original software from Avaya. Where there is no existing license from Avaya, New Software will be provided subject to the manufacturers then current license terms and restrictions for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the "shrink-wrap" or "click-wrap" end user license agreement accompanying them. Note: All software procured under this contract must be bundled with equipment. Purchase of stand-alone software is not within the scope of this contract.

6. CONFIDENTIAL INFORMATION. "Confidential Information" means either party's business and/or technical information, pricing, discounts and any other information or data, regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within 30 days after disclosure. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination and disclosure; (iii) was known by the receiving party prior to its receipt and was not received from a third party in breach of that third party's confidentiality obligations; (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, provided the receiving party provides prompt written notification to the disclosing party of the pending disclosure. To the extent allowable under the Texas Public Information Act, each party will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. If authorized by applicable records retention laws and policies, neither party will use or disclose the other party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under this Agreement. The confidentiality obligations of each party will survive expiration or termination of the Agreement. Upon termination of the Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or if authorized by applicable records retention laws and policies, at the other party's request destroy, all Confidential Information, including copies, in tangible form in that party's possession or under its control, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section.

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

DETECTED OR THAT SERVICES WILL RENDER THEM SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILFULL MISCONDUCT, PERSONAL INJURY OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

9. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement and any disputes arising out of or relating to it ("Disputes") will be governed by Texas laws, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods. All Disputes will be handled in accordance to DIR Contract No. DIR-SDD-1513, Appendix A, Section 10A.

10. TERM AND TERMINATION. This Agreement will be effective from the date Avaya accepts the order unless terminated earlier in accordance with this Section. Unless a different term is defined in the order or mandated in the applicable Service Description, Avaya will provide Services for an initial term of one year. Services may be renewed with a thirty day written notice, for three successive one year terms (unless a longer period is mandated by the applicable Service Description). Unless otherwise specified in the Service Description, Customer may terminate Services in

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accordance with DIR Contract No. DIR-SDD- 1513, Appendix A, Section 10. .

11. MISCELLANEOUS. Assignments will be handled in accordance to DIR Contract No. DIR-SDD- 1513, Section 4D. Force Majeure will be handled in accordance to DIR Contract No. DIR-SDD- 1513, Appendix A, Section 10C. The failure of either party to assert any of its rights under this Agreement is not a waiver by that party of its right later to enforce this Agreement in accordance with its terms. DIR Contract No. DIR-SDD- 1513 and this Agreement constitutes the entire understanding of the parties with respect to its subject matter and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between them relating to that subject matter. All notices will be handled in accordance to DIR Contract No. DIR-SDD- 1513, Section 6.

**CUSTOMER: (Company Name):**

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

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

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

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

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AVA-020  
November-07

# Channel Service Agreement Order Form

(Utility Version)

Customer Name:		Contract #:	Page 1 of <span style="float: right;">total pages</span>
Sold To number:			
Equipment Location Address:		Customer Contact:	Installation Date: <input type="checkbox"/> Actual OR <input type="checkbox"/> Estimated
City	State	Zip	Customer Contact Telephone Number:
			Services start date*: For new maintenance services orders, Avaya will determine the services start date upon Avaya's acceptance of the order. For maintenance renewal or recast orders, the services start date will be the first billing cycle date following Avaya's acceptance of the order.

This Order Form is subject to the terms and conditions of DIR-SDD-1513 and the attached General Conditions of Maintenance and Managed Services.

Customer authorizes Avaya to release information related to inventory and billing for this customer location to the authorized Avaya Business Partner/Distributor. This information will enable the Avaya Business Partner/Distributor to accurately quote to Customer future Avaya products and services. Unless otherwise specified, this authorization shall remain in effect until the earlier of written notification by the Customer or the termination/expiration of maintenance by the original Business Partner whose name appears on this Order Form.

The Maintenance service unit price associated with Call Center Administered Agents and Administered Voice Mail Boxes will remain fixed based on the number of units located at the site at commencement of Maintenance services for that site. Such per unit charge will remain unchanged for the contracted term of maintenance support, independent of quantity changes recorded during true-ups.

\*The Maintenance Services ordered hereunder and the associated billing may commence, in some cases, during the Avaya Product warranty period. Avaya will, at its discretion, perform a true up on no more than a quarterly basis to reconcile future billing on any items which have been added (activated) or removed (deactivated) during the previous period. No credits or cash payments will be issued against previously paid amounts. Service charges for IP ports and certain Communication Manager applications (including but not limited to Wan Spare Processor, Local Spare Processor, Survivable Remote Processor & IP Agents) located at remote customer sites that are priced under the utility pricing methodology will be invoiced at customer's main/media server location. These service charges will be invoiced based on the coverage option and pricing reflected at the main site or location.

Material Codes	Qty	Description	Term in months	Coverage	Monthly or Prepaid	Unit Price	Total Price
<b>Total Payment Due</b>							

Customer signature below indicates customer has read and agrees to the terms and conditions of the applicable agreement.

Customer	Avaya Inc.
By: (Authorized Signature)	Accepted By:
Typed Name On: (Date)	Typed Name On: (Date)
Address	Address
City                      State                      Zip	City                      State                      Zip

Business Partner Co. Name:	Business Partner Sales Associate (Preparer):
Business Partner HQ Address:	Phone Number:
Main Telephone #:	email:

Avaya Siebel Parent ID: **Please e-mail electronic copy of this CSA Order form to [bpccmtc@avaya.com](mailto:bpccmtc@avaya.com) with format of subject line : BP Name/Customer Name/Sold to**

Distribute to: Original (BPCC) Copy 2 (Customer) Copy 3 (Avaya Authorized BusinessPartner)