

GENERAL CONDITIONS OF MAINTENANCE AND MANAGED SERVICES FOR STATE, LOCAL AND EDUCATION CUSTOMERS. 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 (Services Agreement Supplement or Services Description) ("Services"). In the event of a conflict between the SAS and this Agreement, the terms of this Agreement will control. The "Service Agreement Supplement" or "SAS" is the Avaya Service Agreement Supplement then current as of the date of Avaya's acceptance of an order for Services and available to Customer upon request and may also be referred to as the Service Description. As used in this Agreement, "SAS" may refer, as applicable, to either the Service Agreement Supplement or, where the parties have executed a statement of work describing specific Services to be provided by Avaya, to the statement of work. "Supported Products" are: (i) hardware or software products identified in the order; and (ii) Added Products (defined in Section **Error! Reference source not found.**). 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) for End of Support notifications and 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 Service Description, except for the End of Support exceptions listed therein ("Extended Support"). If the SAS does not include Extended Support information, Avaya will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly.

1.7 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.

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; (v) correction of Errors arising from causes external to the Supported Products (such as power failures or surges); and (vi) 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 SAS. Unless otherwise governed by State law, payment of undisputed invoices is due within thirty (30) days from the date of Avaya's invoice. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with nonstandard methods of invoicing and payment. Overdue payments will be subject to a late payment charge of the lesser of 1.5% per month or the maximum rate allowed by applicable law. Unless Customer provides Avaya with a tax exemption certificate, Customer is solely responsible for paying all required taxes, (including, but not limited to, property, sales, use or excise taxes) except for any income tax assessed upon Avaya.

3. CUSTOMER RESPONSIBILITIES

3.1 General. Customer will cooperate with Avaya as reasonably necessary for Avaya's performance of its obligations, such as: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; and (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them. All items will be provided by Customer at Customer's expense. If Avaya provides an Update or other new release of software as part of the Services, Customer will implement it promptly. Customer will reasonably use, safeguard and return to Avaya any items that Avaya loans to Customer ("Avaya Tools") for the purpose of providing Services under this Agreement, such as, but not limited to, the Secure Intelligent Gateway. Customer will bear risk of loss and damage to Avaya Tools until returned to Avaya. Avaya Tools shall not be considered Products as that term is defined in these General Terms.

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 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) and subject to law, 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 "shrinkwrap" or "clickwrap" end user license agreement accompanying them.

6. CONFIDENTIAL INFORMATION. "Confidential Information" means either party's business and/or technical information, pricing, discounts and any other information or data, regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within 30 days after disclosure. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination and disclosure; (iii) was known by the receiving party prior to its receipt and was not received from a third party in breach of that third party's confidentiality obligations; (iv) was independently developed by the receiving party without use of the disclosing party's Confidential Information; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, provided the receiving party provides prompt written notification to the disclosing party of the pending disclosure so the disclosing party may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party should the disclosing party attempt to obtain a protective order. To the extent permitted by law, each party will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Neither party will use or disclose the other party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under this Agreement. The confidentiality obligations of each party will survive expiration or

termination of the Agreement. Upon termination of the Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request destroy, all Confidential Information, including copies, in tangible form in that party's possession or under its control, including Confidential Information stored on any medium. Upon request, a party will certify in writing its compliance with this Section.

Nothing in Section 6 shall prevent Customer from complying with the Public Records Act to the extent required by law.

7. WARRANTIES. Avaya warrants to Customer that Services will be carried out in a professional and workmanlike manner by qualified personnel. If the Services have not been so performed and Avaya receives Customer's detailed request to cure a non-conformance within 30 days of its occurrence, Avaya will re-perform those Services. This remedy will be Customer's sole and exclusive remedy and will be in lieu of any other rights or remedies Customer may have against Avaya with respect to the non-conformance of Services. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES IN A SUPPORTED PRODUCT, SUPPORTED SYSTEM OR NETWORK WILL BE DETECTED OR THAT SERVICES WILL RENDER THEM SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND

ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY WILL NOT APPLY IN CASES OF WILFULL MISCONDUCT, PERSONAL INJURY OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

9. GOVERNING LAW AND DISPUTE RESOLUTION. 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 resides, excluding conflict of law principles.

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 mandated in the applicable SAS or Order, Avaya will provide Services for an initial term of one year. Services will be renewed automatically for successive one year terms applying the then most similar current generally available support plan offering and then current rates, unless either party gives the other written notice of its intent not to renew at least 30 days prior to the expiration of the applicable initial or renewal term. Customer may terminate maintenance Services in whole or in part upon 30 days written notice subject to the cancellation fees equal to maintenance Services fees for 12 months or the remaining term, whichever is less.

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

10.1 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 as of the last day for which funds were appropriated or otherwise made available by giving sixty (60) days prior written notice of termination to Avaya. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to Avaya for all work completed and accepted, as well as for all Products delivered and accepted.

11. MISCELLANEOUS. Avaya may assign this Agreement or any associated order to any of its affiliated entities or to any entity to

which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets used in connection with its performance under this Agreement. Avaya may subcontract any or all of its obligations, but will retain responsibility for them. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials or transportation facilities. The failure of either party to assert any of its rights under this Agreement is not a waiver by that party of its right later to enforce this Agreement in accordance with its terms. This Agreement constitutes the entire understanding of the parties with respect to its subject matter and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between them relating to that subject matter. It will not be contradicted or supplemented by any prior course of dealing between the parties. All notices under this Agreement and any modifications or amendments to this Agreement must be in writing which in no event shall include any form of electronic communication (such as e-mail).

The County officer or employee responsible for administering this contract is Kelly Webb, Acting Director, Information Technologies, or successor.

CUSTOMER: (Company Name)

El Dorado County

Signature: _____

Name: _____

Title: _____

Date: _____

AVAYA INC.

Signature: _____

Name: _____

Title: _____

Date: _____