



Verizon Northwest Inc.

P.O. Box 1003
Everett, WA 98206-1003
Fax: 425-261-5262

August 3, 2009

Washington Utilities and
Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-7250

Subject: AFFILIATED INTEREST AGREEMENT – ADVICE NO. 406
Ref. UT-051247

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To whom it may concern:

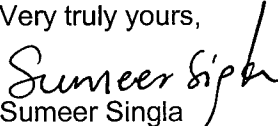
Enclosed for the Commission's file is a verified copy of Amendment 50 to a Telecommunications Service Agreement between Verizon Services Organization Inc., on behalf of Verizon telephone operating companies, including Verizon Northwest Inc., and MCI Communications, Inc.

Amendment 50 adds new sections which include voice and data equipment and related services. The amendment also adds Avaya equipment, maintenance and professional services, and end user license and warranty.

The footer notwithstanding, the companies are not seeking confidential treatment of this document.

Please call me at 360-536-5062 if you have any questions.

Very truly yours,


Sumeer Singla
Director
Public Affairs, Policy & Communications

Enclosure

VERIFICATION OF AFFILIATED INTEREST AGREEMENT

I verify that the enclosed is a true copy of Amendment 50 to a Telecommunications Service Agreement between Verizon Services Organization Inc., on behalf of Verizon telephone operating companies, including Verizon Northwest Inc., and MCI Communications, Inc.

Sumeer Singla Date: 8/3/09

Sumeer Singla
Director
Verizon Northwest Inc.

AMENDMENT 50
TO THE
TELECOMMUNICATIONS SERVICES AGREEMENT
BETWEEN
VERIZON SERVICES ORGANIZATION INC.
AND
MCI COMMUNICATIONS SERVICES, INC.

This Amendment 50 to the Telecommunications Services Agreement (Contract No. TSA010302-1) (Agreement) by and between MCI Communications Services, Inc. d/b/a Verizon Business Services, a Delaware corporation, with offices at 6929 N. Lakewood Avenue, Tulsa, Oklahoma 74117 ("Provider"), and Verizon Services Organization Inc., a Delaware corporation, with offices at 6665 N. MacArthur Boulevard, Irving, Texas 75039 ("Customer") shall be effective on the date set forth below.

1. EFFECTIVE DATE

This Amendment 50 shall be effective upon full execution by both parties. Notwithstanding anything to the contrary contained in this Agreement, the term of this Agreement and the other terms and conditions hereof, are subject to applicable law and regulatory approval. Accordingly, although this Amendment is executed by both Parties, to the extent that any state statute, order, rule or regulation or any regulatory agency having competent jurisdiction over one or both parties to this Agreement, shall require that this Amendment or any subsequent amendment be filed with or approved by such regulatory agency before the amendment may be effective, the Amendment shall not be effective in such state until the first business day after such approval or filing shall have occurred.

2. REGULATORY APPROVAL

This Agreement is subject at all times to any statute, order, rule, or regulation or any state or regulatory agency having competent jurisdiction over one or both of the parties hereto or the services provide hereby. Verizon and Customer agree to cooperate with each other and with any applicable regulatory agency so that any and all necessary approvals may be obtained. During the term of this Agreement, the parties agree to continue to cooperate with each other in any review of this Agreement including subsequent amendments by a regulatory agency so that the benefits of this Agreement or such amendment may be achieved. If any such agency accepts this Agreement or any amendment in part and rejects it in part, or makes a material modification to the Agreement or amendment as a condition of its approval, either party may terminate the Agreement or Amendment in its entirety without penalty or liability.

3. AGREEMENT MODIFICATION

3.1 ADD a new Section 54, VOICE AND DATA EQUIPMENT AND RELATED SERVICES; a new Section 55, AVAYA EQUIPMENT, MAINTENANCE AND PROFESSIONAL SERVICES; and, a new Section 56, END USER LICENSE AND WARRANTY, to Exhibit C as set forth in Attachment 1.

4. OTHER TERMS AND CONDITIONS

Except as specifically amended herein, the terms and conditions of the Agreement, including any Amendments thereto, shall remain in full force and effect during the term of the Agreement.

IN WITNESS WHEREOF the parties have entered into this Amendment 50 as of the date set forth above.

MCI COMMUNICATIONS SERVICES, INC.

VERIZON SERVICES ORGANIZATION INC.

Catherine Hopiard
Signature

Dan Yong
Signature

Catherine Hopiard
Print Name

Dan Yong
Print Name

Mgr. Wholesale Contract Mgmt.
Title

Senior Cst - Sourcing
Title

7/28/09
Date

7/22/09
Date

ATTACHMENT 1

(ADD NEW SECTIONS 54, 55 AND 56 TO EXHIBIT C AS SET FORTH BELOW)

54 VOICE AND DATA EQUIPMENT AND RELATED SERVICES

54.1 General Terms and Conditions.

54.1.1 Scope of Services. The provisions of the Agreement, this Section 54, any statement of work ("**SOW**"), any applicable schedule attached hereto from time to time and incorporated herein (a "**Schedule**"), and the Guide General Terms and Conditions for Internet, Enhanced and other Non-telecommunications Products and Services (the "**Guide**"), will apply to any order placed by Customer for the purchase of customer premises equipment, including without limitation, cables, handsets and other related materials ("**CPE**") and software (collectively the "**System**"), as well as CPE Deployment Services, maintenance, CPE Related Assessment Services as further defined below, and other services pursuant to a Schedule (collectively, "**Services**"). Services will be provided by the entity noted in the relevant quote or order confirmation. This Section 54 supersedes and replaces any previous terms and conditions for services covered by this Section 54 and such services will continue under the terms and conditions provided for Services contained herein.

54.1.2 Rates and Charges. Customer will pay all charges for the System and Services as set forth on the applicable quote, subject to additions and deductions made by written Change Order(s). System and Services rates and charges do not contribute to any minimum purchase requirement otherwise set forth in the Agreement.

54.1.3 Termination.

54.1.3.1 Either party may terminate an Order (as defined below) or a SOW for convenience, in whole or in part, upon thirty (30) days prior written notice to the other party. If a SOW is terminated by Customer pursuant to this Section 54.1.3, Provider has no further responsibility under the SOW and Customer will promptly pay Provider: (i) for all System elements and Services provided up to the date of termination or cancellation, as applicable; (ii) for all expenses incurred up to the date of termination or cancellation, as applicable, including but not limited to the costs of terminating purchase orders, return of System elements, if permitted by Provider, removal of System elements and other contractual obligations made by Provider to meet its obligations under this Section 54 or SOW, and (iii) a restocking fee of 25% of the price, as shown on the applicable quote, for any System elements cancelled or returned as authorized by Provider. Where multiple SOWs are associated with this Section 54, the termination of one or fewer than all of the SOWs will only affect the terminated SOWs, and any additional SOWs will remain in effect.

54.1.3.2 If either party fails to perform material terms of this Section 54 and (i) such failure is not cured within thirty (30) calendar days following receipt of a default notice in writing from the other party; or (ii) if such failure cannot reasonably be cured within such thirty (30) calendar days, and the defaulting party fails to use commercially reasonable efforts to cure such breach as soon as practicable, but in any event within

ninety (90) calendar days following written notice, then the non-defaulting party may suspend its performance of and/or terminate the affected Services or System order to which the default pertains. Upon termination of such Service or System order, Customer is liable for any unpaid charges for the terminated Service incurred up to the time of termination of such Service and for any System element provided up to such termination. This Section 54 will not be terminated, and will continue in effect, with respect to all other Services and Systems that are not the subject of such default. Termination of any Service or System will be in addition to and not in substitution of any other rights and remedies available to the non-defaulting party under this Section 54, applicable law, or otherwise.

54.1.4 Leasing Option. Customer may finance a System or Service or any portion thereof in a separate transaction through a third party leasing company ("Lessor") approved by Provider, assign its rights and obligations with respect to payment under this Attachment to the Lessor, and/or cause the Lessor to issue a purchase order in a form acceptable to Provider. Notwithstanding such transaction and/or assignment, Customer will remain responsible for performance of all of its obligations under this Section 54, including payment in full.

54.1.5 Risk of Loss. If Provider installs the System, risk of loss or damage to such System passes to Customer upon delivery of the System (including portions thereof) to Customer's site. If Provider does not install the System, risk of loss or damage to the System (or portions thereof) passes to Customer upon delivery to the shipper.

54.1.6 Title and Security Interest. Until full payment has been rendered, Customer grants Provider a purchase money security interest in the System and agrees that Provider may file all documents necessary to perfect that interest. Upon final payment, title will pass to Customer and Provider will release its security interest. Customer will not grant or convey to any other person or entity a security interest in, or permit placement of a lien on, the System unless and until Customer has paid Provider in full for such System.

54.1.7 Customer Responsibilities. Customer will:

54.1.7.1 Allow Provider access for Services (e.g. CPE Deployment Services, inspection, testing, maintenance and repair of the System) and performance of any required activity. Customer will notify Provider of any site-specific requirements that might impact Provider's ability to access such site, e.g. safety or security training ("Training"). Provider will comply with such Training requirements however Provider reserves the right to bill Customer for the time required for Training at Provider's then current labor rate. Customer will provide necessary badges, escorts, etc. required for site access per Customer's security and safety policies.

54.1.7.2 Provide suitable building facilities for the System in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and

walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes.

54.1.7.3 Provide necessary power conditioning, heating, cooling, humidity and dust control, and accessibility for the System as required by manufacturer specifications.

54.1.7.4 Remove existing equipment or cables that interfere with CPE Deployment Services.

54.1.7.5 Identify and disclose to Provider concealed Customer equipment, wiring or conditions that might be affected by or might affect CPE Deployment Services. Customer will defend and hold Provider harmless from any claim, damage or liability resulting from a failure to disclose this information.

54.1.7.6 Authorize Provider, at Customer's expense, to make service requests upon third parties for System interconnection requirements, including obtaining telephone service for testing where necessary.

54.1.7.7 Designate trash deposit points on each floor on which the System is to be installed where Provider will place waste for removal by Customer.

54.1.7.8 Cooperate with Provider's requests for assistance in testing or CPE Deployment Services.

54.1.7.9 Be responsible for providing adequate back-up of data and software and for restoring data and software to a repaired System.

54.1.7.10 Be solely responsible for selection, implementation and maintenance of security features for defense against unauthorized long distance calling, and for payment of long distance, toll and other telecommunications charges incurred through use of the System, if connected to the public network

54.1.7.11 When ordering Cisco products or services, acknowledge having read and understood the applicable End User Obligations and service descriptions found at www.cisco.com/go/servicedescriptions/ or other URL as may be provided by Cisco from time to time. Further, Customer agrees to the terms and conditions of Cisco's Software License Agreement.

54.1.7.12 Be responsible for the accuracy and completeness of all information it provides. If information is incomplete or incorrect, or if information is discovered during the course of the performance of Services that could not be reasonably anticipated by Provider, any additional work required will be treated as a change to the scope of the System or Services. Such changes are subject to the Change Order

procedure set forth below, to cover all costs, including but not limited to labor, System, materials and tools necessary to carry out the change. If during CPE Deployment Services, Provider encounters any concealed or unknown condition not expressly set forth in the applicable SOW, and such condition affects the price or schedule for CPE Deployment Services, the price and/or the schedule will be equitably adjusted by Change Order to cover all costs, including but not limited to labor, System, materials and tools necessary to carry out the change.

54.1.7.13 Designate a single point of contact (“**SPOC**”) who will be responsible and authorized to (i) make all decisions and give all approvals which Provider may need from Customer, and (ii) provide Provider’s personnel on a timely basis with all information, data, access and support reasonably required for its performance under this Section 54 or the applicable SOW, including but not limited to making available appropriate personnel to work with Provider as Provider may reasonably request.

54.1.7.14 Immediately notify Provider of any anticipated delay in building availability or inability to meet any of the above listed requirements.

54.1.8 Orders/Changes In/Additions to System.

54.1.8.1 Customer will pay the rate stated on Provider’s documentation of an order for a System or Services provided that the rate is current – i.e., was first quoted within 45 days of the order’s submission.

Customer may order Services or a System, or a change to an order for Services or a System orally, by an unsigned writing, or by a signed writing as specified below, each, an “**Order**”. For purposes of this Section 54, writings include email and other electronic forms. An Order or Change Order (defined below) is deemed confirmed if (a) Provider sends to Customer written documentation of each specific item of the Service or a System ordered, its current price, and the Customer location, and (b) Customer does not promptly notify Provider that the documentation is not correct. For Services requiring an SOW, the SOW will show the project description, responsibilities and deliverables with the price being shown on Provider’s order documentation.

54.1.8.1.1 *Signed orders:* Customers may order Services or a System through a signed writing. Provider may accept electronic writings and electronic signatures at its discretion.

54.1.8.1.2 *Unsigned orders:* Customers may order Services or a System orally or through unsigned writings if the Order is confirmed. Customer is bound by Provider documentation of an Order that has been confirmed the same as it would be to an Order the Customer has signed. SOWs and related Change Orders require signature.

A Customer purchase order or similar document is evidence only of Customer's intention to purchase Services or a System. Except for provisions evidencing an intent to be bound by the terms and conditions of an agreement between Customer and Provider, the terms and conditions of a Customer purchase order or similar document will be disregarded and have no force or effect; instead, the terms and conditions of the Agreement between Customer and Provider will govern.

54.1.8.2 In addition to the Section entitled Orders above:

54.1.8.2.1 Provider will comply, to the extent it deems feasible and reasonable, with any proposed changes in the System or Services under this Attachment and any SOW ("Change Orders"). No Change Order will become effective, and no changes in the System or Services will be initiated, until the Change Order is accepted by Provider.

54.1.8.2.2 If changes result in an increase or decrease in price or time needed for performance, such adjustments will be reflected in a written Change Order.

54.1.8.2.3 Provider will not be obligated to consider or accept any Change Order that results in a decrease of more than 20% in the total price of the System or Services.

54.1.9 Confidentiality. Notwithstanding any contrary term in the Agreement and consistent with applicable law, Provider may disclose the terms of this Section 54, in whole or in part, to: (a) Provider's affiliates; (b) Provider or Provider affiliate suppliers and/or subcontractors that offer (including new offers or renewal offers), provide, repair, maintain, bill, collect, or perform other functions in connection with Provider or Provider affiliate products or services under or in connection with this Section 54; (c) successors in interest to Provider (by merger or otherwise); and/or (d) persons to whom Provider or Provider may sell all or part of their respective businesses or assets.

54.1.10 Warranty. Provider warrants that it will perform the Services provided under this Section 54 in a good and workmanlike manner. Unless otherwise set forth herein, all manufacturers'/publishers' end user warranties for the System provided hereunder are passed through to Customer and warranty claims will be presented by Customer directly to the manufacturer/publisher. THE WARRANTIES SET FORTH IN THIS SUBSECTION 54.10 ARE IN LIEU OF ALL OTHER WARRANTIES FROM PROVIDER. IN ADDITION TO DISCLAIMERS IN THE AGREEMENT, PROVIDER WILL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO PROVIDER'S OR CUSTOMER'S TRANSMISSION FACILITIES OR EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.

54.1.11 Limitation of Liability. EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 54.12 BELOW, PROVIDER'S ENTIRE LIABILITY FOR ANY OTHER DAMAGE WHICH MAY ARISE HEREUNDER, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING PROVIDER'S NEGLIGENCE, OR OTHERWISE, WILL BE LIMITED TO THE PURCHASE PRICE OF THE SPECIFIC SYSTEM OR SERVICES GIVING RISE TO THE CLAIM. PROVIDER WILL BEAR NO LIABILITY FOR USE OF THE SYSTEM OR SERVICES PROVIDED UNDER THIS SECTION 54 IN CONNECTION WITH LIFE SUPPORT SYSTEMS OR DEVICES OR PUBLIC SAFETY SYSTEMS. EXCEPT AS EXPRESSLY STATED OTHERWISE HEREIN, PROVIDER WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY OR COMPATIBILITY OF THE SYSTEM WITH THIRD-PARTY PRODUCTS OR SYSTEMS THAT CUSTOMER MAY UTILIZE IN CONJUNCTION WITH THE SYSTEM OR TO WHICH CUSTOMER MAY CONNECT EQUIPMENT.

54.1.12 Indemnification and Defense.

54.1.12.1 Except as provided below, Provider will defend Customer against any claim, suit, action or proceeding alleging that a System or Services (collectively, "**Provider supplied system**") infringes a valid U.S. patent or copyright ("**Claim**"), and Provider will indemnify and hold harmless Customer against any and all finally awarded costs and expenses, including attorneys' fees, in connection with any such Claim.

54.1.12.2 If the use of any Provider supplied system is enjoined or subject to a Claim as described above, Provider may, at its option and expense, either procure for Customer the right to continue to use the Provider supplied system, replace the Provider supplied system, or relevant component, with substantially equivalent, non-infringing equipment or service, or relevant component, or modify the Provider supplied system, or relevant component, so that it becomes non-infringing. In the event that none of the foregoing options is commercially reasonable to Provider, Provider will remove the infringing Provider supplied system and refund to Customer the purchase price for the equipment less depreciation for its use or terminate the service, as applicable. Depreciation will be calculated on a straight-line basis, assuming a useful life of 5 years.

54.1.12.3 Provider will have no obligation for (a) any costs, fees or expenses incurred by Customer without Provider's prior written consent; (b) any allegation, assertion, or claims of intellectual property infringement, including contributory infringement or inducement to infringe arising out of or related to any Claim involving: (i) automated call processing, automated voice service, automated customer service or combined live operator/automated systems processing used in processing or completing calls, (ii) automated bridging of more than two callers utilizing some form of "listen only" (unilateral) communication combined with some form of interactive communication, (iii) prepaid calling products or services, (iv) wireless telecommunications services or

support therefor, or (v) "music on hold," service; or (c) any indirect, special, consequential or incidental damages arising out of any Claim.

54.1.12.4 Any obligation on the part of Provider to defend and indemnify will not apply to any Claim or portion thereof that arises from (i) any negligent or willful act or omission by or attributable to Customer; (ii) use or operation of the Provider supplied system in combination with equipment or services provided by Customer or any third party; (iii) any addition to or modification of the Provider supplied system by Customer, any third party or Provider at Customer's request; (iv) use of other than the then current unaltered release of any software used in the Provider supplied system; or (v) any equipment, system, product, process, method or service of Customer which otherwise infringed the U.S. patent or copyright asserted against Customer prior to the supply of the Provider supplied system to Customer by Provider under this Section 54; (vi) functionality provided by Provider at the direction of Customer, its agents, employees, or other contractors (including the provision of functionality in accordance with technical specifications provided by Customer); or (vii) use or operation, by Customer, its agents, employees or other contractors, of services other than as specified in this Section 54.

54.1.12.5 The foregoing states the entire obligation of Provider to Customer and is Customer's sole and exclusive remedy with respect to any Claim of infringement of any intellectual property right of any kind, and Provider disclaims all other warranties and obligations with respect to any such Claims.

54.1.12.6 Customer will defend, indemnify and hold harmless Provider, its employees, officers, directors, agents and affiliates for damages, costs and attorneys fees in connection with any claim arising out of (a) Customer's use of the Provider supplied system other than as expressly indemnified by Provider pursuant to Subsection 54.12.1, (b) combination of the Provider supplied system with other equipment, software, products or services not provided by Provider under this Section 54, (c) modification of the Provider supplied system, or (d) arising out of the content of communications transmitted by or on behalf of Customer in the use of the Provider supplied system, including but not limited to libel, slander, and invasion of privacy.

54.1.12.7 Each party (the "indemnitor") will defend, indemnify, and hold harmless the other party (the "indemnitee") against all claims and liabilities for direct damages imposed on the indemnitee for bodily injuries, including death, and for damages to real or tangible personal property to the extent caused by the negligent or otherwise tortious acts or omissions of the indemnitor, its agents or employees in the course of performance of this Section 54.

54.1.12.8 The defense and indemnification obligations set forth in this Section 54.12 are contingent upon (1) the indemnitee providing the indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification, (2) the

indemnitee granting the indemnitor the right to control the defense of the same, and (3) the indemnitee's full cooperation with the indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein, however, will restrict the indemnitee from participating, on a non-interfering basis, in the defense of the claim, demand, and/or cause of action at its own cost and expense with counsel of its own choosing. No settlement may be entered into by the indemnitor on behalf of the indemnitee that includes obligations to be performed by the indemnitee (other than payment of money that will be fully paid by the indemnitor under Sections 1.12.1- 7 above) without indemnitee's prior written approval.

54.1.13 Hazardous Substances. Except as disclosed to and acknowledged in writing by Provider, Customer certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Provider is to perform Services under this Section 54. If during such performance Provider employees or agents encounter any such substance, Customer agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lowest exposure limit for the protection of workers. Provider may suspend performance under this Section 54 until the removal or containment has been completed and approved by the appropriate governmental agency and Provider. Performance obligations under this Section 54 will be extended for the period of delay caused by said cleanup or removal. Customer's failure to remove or contain hazardous substances will entitle Provider to terminate this Section 54 without further liability, in which event Customer will permit Provider to remove any System that has not been accepted, will reimburse Provider for expenses incurred in performing this Section 54 until termination (including but not limited to expenses associated with such termination, such as removing a System, terminating leases, demobilization, etc.), and will complete payment for any portion of a System or Services that has been accepted.

54.1.14 Force Majeure. Neither party will be liable for any delay or failure in performance under this Section 54 arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, fire, flood, explosion, riot, embargo, acts of the Government in its sovereign capacity, labor disputes, unavailability of equipment, software or parts from vendors, or changes requested by Customer. The affected party will provide prompt notice to the other party and will be excused from performance to the extent of such caused delays or failures, provided that the party so affected will use reasonable efforts to remove such causes of such delays or failures and both parties will proceed whenever such causes are removed or cease. If performance of either party is prevented or delayed by circumstances as described in this Subsection 54.14 for more than ninety (90) days, either party may terminate the affected Order or SOW. Notwithstanding the foregoing, Customer will not be relieved of its obligation to make any payments, including any late payment charges as provided in the Agreement, that are due to Provider hereunder.

54.1.15 Export and Legal Compliance. Customer acknowledges that certain equipment, software and technical data which may be provided under this Section 54 may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the U.S. or any other country. Customer shall not export, re-export, transfer, retransfer, release or otherwise divert any such equipment, software, technical data or any direct product thereof in violation of any such laws. Customer shall comply with all laws and regulations, including but not limited to import and custom laws and regulations.

54.1.16 Order of Precedence. In the event of conflicts among the terms of the Agreement, this Section 54, a SOW and any schedule, the following order of precedence will apply: (i) the schedule; (ii) this Section 54; (iii) the Agreement; and (iv) the SOW.

54.2 CPE Deployment Services

54.2.1 General Terms.

54.2.1.1 Provider has four levels of CPE Deployment Services; "Staging", "Installation", "Integration", and "Custom" each as further described in this section (collectively, "CPE Deployment Services"). Provider will provide CPE Deployment Services in accordance with this Section 54, the Guide and, if applicable, one or more SOWs, which are incorporated herein by reference. Provider will furnish all supervision, labor, equipment, materials and supplies required to complete a CPE Deployment Services.

54.2.1.2 CPE Deployment Services are available within the 48 contiguous United States. CPE Deployment Services are available in Alaska and Hawaii provided each order has been specifically pre-approved by Provider.

54.2.1.3 CPE Deployment Services are performed between the hours of 8:00 a.m. and 5:00 p.m. local time, Monday through Friday, excluding Provider observed and United States Federal holidays ("Office Hours"). Work extending beyond Office Hours and work on Saturday is considered "Overtime" work. All other periods of work is "Sunday and Holiday Hours" work. If Customer requests that CPE Deployment Services be performed during Overtime or Sunday and Holiday Hours, Customer will pay Provider its then current time and material labor rate. Unless Customer otherwise requests in writing Provider will, at Customer's expense, apply for permits necessary for CPE Deployment Services. Provider will provide Customer written notice indicating the date CPE Deployment Services are complete (the "**In-Service Date**"). Should Customer request delay of CPE Deployment Services, or should CPE Deployment Services be delayed as a result of Customer's action or inaction, Provider may store the System, or any portion thereof, at Customer's risk and expense. Wait time in excess of 30 minutes at Customer's site may result in an additional charge at Provider's current time and material rate.

54.2.1.4 Provider will attempt to meet Customer's requested In-Service Dates, however Provider can not guarantee any In-Service Date. In-Service Dates are subject to the availability of materials and resources.

54.2.1.5 Provider will use reasonable efforts to avoid interruption of Customer's network service during Office Hours. If it is necessary to interrupt network service during Office Hours, Provider will notify the SPOC at least 48 hours in advance.

54.2.1.6 Customer will have five business days after the In-Service Date to test the System (the "Test Period"). Customer may indicate their approval of the System by its signature on the Provider-provided acceptance document or other mutually agreed upon means. Customer will document any issues with the System in writing to Provider and provide those issues to Provider within the Test Period. Upon receipt of the issues list, Provider will have ten business days to respond and remediate any issues, as required. Customer's use of the System for any other purpose than testing will be deemed to constitute acceptance by Customer. The System will be deemed accepted if the Test Period passes with out notification of issue or acceptance by Customer.

54.2.2 CPE Deployment Services Options.

54.2.2.1 Provider will stage and ship a System to Customer designated locations as shown in the applicable quote. Provider will work remotely with the SPOC to coordinate Staging and delivery the System and activation of Provider maintenance, if applicable. Staging occurs within a Provider-designated facility. Provider will, as applicable, unpack and verify CPE with package documentation, record serial numbers, load operating system and incremental operating system changes, install Customer-provided configurations, apply Customer-provided asset tags, power-up test, repackage, and ship.

54.2.2.2 In addition to Staging services, Provider will provide configuration of a System for connectivity to Provider provided transport or, for transport provided via a third party, configuration of a System with a Customer provided configuration. Provider will deliver the System to the Customer designated locations as shown in the applicable quote and install the System on Customer-provided racks. Provider will verify System power-up, operation of network interfaces and run internal diagnostics. No demarc extension is provided with Installation. Remote activation of the System and transport connectivity will be provided with Provider transport services only. Local area network configuration or activation is not included with Installation.

54.2.2.3 In addition to Installation services, Integration provides the services defined herein and detailed in the project description within the applicable quote. All System configurations are engineered by Provider and may include configurations provided by the Customer. Provider defines a full network configuration for each device. After installation is complete, Provider validates access connectivity (if applicable), wide area

network link connectivity (if applicable) and local area network connectivity (if applicable).

54.2.2.4 Custom Services are provided pursuant to an SOW for System implementations beyond or different than provided by Staging, Installation, or Integration.

54.2.3 Customer Responsibilities. Customer is responsible to:

- Provide configuration(s), and asset tags as required;
- Provide at least one analog (voice) telephone line no more than 15 feet from the System;
- Perform back up of any involved device, including drivers, applications, and operating systems as required prior to Provider's on site activities;
- Provide licensed copies of operating system and applications software, as applicable;
- Install or re-install software not provided by Provider;
- Control all activities associated with the existing customer equipment, including without limitation changes, additions or deletions of devices made by any non-Provider provided technicians.
- Ensure equipment room meets the environmental recommendations, power and ground requirements of the equipment manufacturer(s) as provided by Provider from time to time;
- Ensure appropriate electrical power service is installed and accessible no more than three (3) feet from the devices or six (6) feet for racks to be installed;
- Ensure a minimum of one (1) 120 VAC / 20AMP duplex receptacle per device to be installed; (note: dual power supplies will require two such receptacles, separately fused)
- Ensure that any and all carrier circuit facilities (demarcs) have been extended so that their termination is within six (6) feet of the designated equipment installation area;
- Provide sufficient rack space or other appropriate installation location for the System;
- Ensure that any and all main or intermediate distribution frames ("MDF/IDF") are of sufficient size to accommodate System being installed;
- Ensure conformance with any applicable codes, regulations, and laws, including but not limited to electrical, building, safety, and health;
- Verify that non-Provider transport is installed and available; and
- Dispose of all decommissioned equipment.

54.2.4 Warranty.

54.2.4.1 For voice Systems installed by Provider, the warranty period begins on the In-Service Date and continues for 12 months. If Provider does not install the voice System, warranties will be as provided by the manufacturer and are passed through to Customer, and Customer shall present any warranty claims directly to the manufacturer.

54.2.4.2 For data Systems, manufacturers' warranties provided hereunder are passed through to Customer and warranty claims will be presented by Customer directly to the manufacturer.

54.2.4.3 These warranties do not cover damage to or malfunction of the System caused in whole or in part by Customer or third parties through other than normal use of the System or caused by an event external to the System.

54.2.4.4 Provider warrants that any cables and connectors between the System and any other equipment on Customer's premises that are provided by Provider will be in good working order for a period of thirty (30) days after installation unless the failure of such cables and connectors is caused by Customer's misuse or abuse.

54.3 Maintenance Terms and Conditions

54.3.1 General Terms.

54.3.1.1 Provider will provide voice System maintenance services ("VM Service" or "Maintenance Service") in accordance with this Attachment and the service descriptions found on the Guide. In addition to the terms of the Agreement and the Guide, third party maintenance will be provided in accordance with (i) the service descriptions of the respective third party maintenance service providers (generally available on their respective websites) and (ii) the relevant terms and conditions of this Section 54, specifically excluding Section 54.1.3.

54.3.1.2 Support

54.3.1.2.1 If, i) Provider did not install the equipment or software intended to be covered by maintenance, ii) the equipment or software is out of warranty, or iii) Provider has not provided Maintenance Service on the equipment or software for more than 90 days, then the equipment or software must be accepted by Provider prior to being eligible for Maintenance Service. Customer warrants that such equipment or software is in good working order and meets all applicable manufacturer specifications. Provider may recommend corrections or improvements to operating environments or configuration to be performed at Customer's cost and expense. Failure to comply with Provider's recommended corrections or improvements may cause Provider to reject the specific part or equipment or software and remove it from the Maintenance Service. If the equipment or

software is found not to be in good working order and/or not in compliance with all applicable manufacturer specifications, Provider will be under no obligation to provide Maintenance Service; provided however, Customer may, upon written notice, request Provider to upgrade and/or repair such equipment or software at Provider's then current time and material rate.

54.3.1.2.2 In the event the manufacturer of the System covered by maintenance, discontinues a piece of the System, and/or the associated support of such System, Provider will only be obligated to provide the Maintenance Services on the affected System for the period of time that the manufacturer continues to support such System. At the end of such period Provider will cease to support such System in accordance with the service description, but will use commercially reasonable efforts to provide Maintenance Service on the affected System until Customer upgrades or replaces such System.

54.3.1.2.3 Maintenance Services that include repair or replacement of System components will be provided with new or like new parts, as applicable, to restore the System to the level of working condition existing prior to the fault or problem.

54.3.1.2.4 If Provider determines that the trouble identified is a Customer network condition instead of the System covered under Maintenance Service, Provider will charge its then prevailing labor rate to coordinate the resolution of the trouble.

54.3.1.2.5 Maintenance Service is available for Systems located within a specified service area related to a Provider facility or an authorized Provider service provider's facility. Provider reserves the right to charge Customer its then prevailing labor rate for travel to Customer locations that outside of the specified service area.

54.3.1.3 Customer Responsibilities.

54.3.1.3.1 Remote connectivity for diagnostic purposes is a prerequisite for all applicable Systems covered by a Maintenance Service. Customer must provide connectivity, as specified and approved by Provider, to the maintained System or Maintenance Service response times will be void. Customer further agrees that if Customer does not provide remote connectivity into the applicable System the following applies:

54.3.1.3.1.1 If Provider is required to dispatch an engineer to Customer's site to troubleshoot an outage, Customer may incur a time and material charge at Provider's then current rate.

54.3.1.3.1.2 Any remote diagnosis service level will be void.

54.3.1.3.2 Customer will notify Provider in writing in the event that any substantial or material modifications are made to Customer's network, and shall provide Provider with such information as it may reasonably request, in order for Provider to perform the Maintenance Service. In the event such modifications to Customer's network or any of its component parts, causes Provider to incur any increased burden in its performance of the Maintenance Service, Customer acknowledges and agrees that Provider may increase the fees, at any time during the term, upon prior written notice to Customer.

54.3.1.3.3 In the event Provider or the manufacturer ships a replacement part to Customer, Customer is responsible for returning the defective part, in accordance with the instructions contained in the replacement part packaging, to Provider within ten (10) days of receipt of the replacement part. If Provider does not receive the defective part within ten (10) days, Customer may be billed for the list price of the replacement part.

54.3.1.4 Maintenance Service does not include:

54.3.1.4.1 Additions, changes, relocations, removals, operating supplies or accessories.

54.3.1.4.2 Services necessitated by accident, casualty, neglect, misuse, intentional acts or any cause other than normal use of the System.

54.3.1.4.3 Repairs or replacements necessitated by lightning, radio frequency interference, power disturbances, fire, flood, earthquake, excessive moisture, Harmful Code or any event occurring external to the System that directly or indirectly causes a malfunction in the System, a private network to which the System is connected, or in telephone lines, cable or other equipment connecting the System to the public telephone network. Harmful Code means any virus or machine-readable instructions and data designed to intentionally disrupt the operation of the System or intentionally destroy or damage System or data contained therein.

54.3.1.4.4 Services necessitated by use of the System with any other device or system not supplied or approved as to such combined use by Provider, or use of any part of the System in a manner not specified by Provider.

54.3.1.4.5 Repair or maintenance or increase in normal service time resulting from Customer's failure to provide a suitable environment for the System or any other failure of Customer to perform its responsibilities.

54.3.1.4.6 Loss or recovery of Customer data.

54.3.1.4.7 Upgrades, enhancements or new releases of software or firmware, except as specifically indicated in the Agreement, this Section 54 and any service description.

54.3.1.4.8 Operator, system administrator and end user training except as specifically identified.

54.3.1.4.9 Repair or replacement of Customer-owned outside plant cable unless specifically set forth in the Agreement or the applicable SOW.

54.3.1.4.10 Service resulting from Customer installation or changes to device software.

54.3.1.5 Provider reserves the right to change the rates, terms and conditions of Maintenance Service under this Section 54 to be effective upon the commencement of any renewal term and without formal amendment of such Sections by providing Customer written notice thereof prior to the expiration of the then-current term. If Customer is unwilling to accept such amended rates, terms and conditions, Customer will provide Provider written notice thereof prior to the expiration of the then-current term, in which event the maintenance service will terminate upon expiration of the then-current term. Provider may terminate the Maintenance Service upon sixty (60) days written notice prior to the end of the then current term. If Customer has pre-paid the Maintenance Service and terminates prior to the end of the term, Customer will be reimbursed for the unused portion of the Maintenance Service, less any discount received.

54.3.2 Voice Maintenance Terms.

54.3.2.1 Term and Termination

54.3.2.1.1 VM Service, for Systems sold and installed by Provider with a warranty, begins at the end of the warranty period. VM Service, for Systems sold and installed by Provider without a warranty, begins on the date the System becomes operational. VM Service for equipment or software not sold or installed by Provider upon activation of the VM Service. VM Service shall remain in effect for the period set forth in the quote ("**VM Service Period**"). After the VM Service Period, Provider or Customer may terminate the VM Service upon not less than sixty (60) days prior written notice and the VM Service will be provided at the then current undiscounted rate, unless terminated in accordance with this Section 54. If Customer has pre-paid the VM Service and terminates the VM Service (in whole or in part) prior to the end of the applicable VM Service Period, Customer will be reimbursed for the unused portion of the terminated VM Service, less any discount received.

54.3.2.1.2 VM Service includes maintenance for additions to the System, which are purchased from and installed by Provider during the term of the agreement. The warranty, if any, for such addition(s) shall run until the first VM Service renewal date, so that the warranty period for the addition(s) will be coterminous with the VM Service.

54.3.2.2 Software Subscription Service (“VM Software Service”) Requirements

54.3.2.2.1 Customer’s System must be at release level as identified and supported by the manufacturer to be eligible for VM Software Service. If the System is not at the appropriate release, Provider will charge it’s then current labor rate, as well as the cost for any software and/or hardware that may be required to bring the System to level eligible for VM Software Service.

54.3.2.2.2 Customer must have a current Provider maintenance plan on all hardware associated with the manufacturer’s operational and/or application software products covered under a VM Software Service plan, and the hardware platform must be an approved manufacturer product.

54.3.2.2.3 Customer is responsible for contacting Provider to request a major or minor software release based on manufacturer’s Technical Bulletin or notification from Customer’s Provider account team.

54.3.2.2.4 Customer is responsible for maintaining non-covered software and hardware products.

54.3.2.2.5 Customer may not copy application and/or operational software or any associated documentation.

54.3.2.2.6 New software releases loaded without prior approval from Provider will void the VM Software Service.

54.3.2.2.7 Non-manufacturer proprietary operating systems or other software applications used in conjunction with the covered software or co-resident with the covered software on the hardware platform on which the covered software resides will void the VM Software Service.

54.3.2.2.8 Hardware upgrades required to support new application and/or operational software is excluded from the VM Software Service.

54.3.2.2.9 Remote or on-site installation of major and minor releases is excluded from the VM Software Service.

54.4 CPE Related Assessment Services

54.4.1 Provider will provide on site assessment services in accordance with the Guide and one or more Statements of Work, which are incorporated herein by reference (hereinafter “CPE Related Assessment Services”).

54.4.2 Rates and Payment. Customer will pay Provider for the CPE Related Assessment Services upon the basis of and in the amounts set forth in the SOW, subject to additions and deductions made by written Change Order(s).

54.4.3 Term of Services. The CPE Related Assessment Services will commence as set forth in the applicable SOW and will continue in effect for the period of time required for Provider to provide such CPE Related Assessment Services, or otherwise as specified in such SOW.

54.4.4 Warranty. Provider warrants that it will perform the CPE Related Assessment Services hereunder substantially in conformity with the applicable SOW. PROVIDER PROVIDES AND/OR LICENSES ALL DELIVERABLES TO CUSTOMER "AS IS". PROVIDER'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF SUCH WARRANTY WILL BE REPERFORMANCE BY PROVIDER OF ANY NON-CONFORMING CPE RELATED ASSESSMENT SERVICES.

54.4.4 Customer Responsibilities. Customer will provide, at no charge to Provider, office space and equipment, including but not limited to copy machines, fax machines and modems, as Provider reasonably requires to perform the CPE Related Assessment Services.

54.4.5 Developed Information. Unless otherwise set forth in a SOW, the parties acknowledge and agree that Provider will at all times retain and have sole and exclusive title to and ownership of all (i) deliverables, documentation and information provided by Provider to Customer under or in connection with a SOW, whether provided in hard-copy or electronic form, including, without limitation, all methodologies, processes, programs, tools/templates, software, templates, specifications, techniques, data, presentations, studies, compositions, marketing collateral, training programs and materials, analyses and assessments, and (ii) works of authorship, inventions, discoveries, concepts, ideas, designs, methods and information, whether or not patentable or copyrightable, developed, acquired, made, conceived or worked on by Provider or any of its employees and agents, either solely or jointly with others, in connection with the performance of services under or in connection with a SOW.

55 AVAYA EQUIPMENT, MAINTENANCE AND PROFESSIONAL SERVICES

55.1 Scope. Equipment ("**Avaya Products**"), maintenance ("**Avaya Maintenance**"), and services ("**Professional Services**") from Avaya Inc. ("**Avaya**") provided hereunder (collectively "**Avaya Services**") are subject to the Agreement, Section 54 above, this Section 55 and Statements of Work created from time to time each of which are incorporated herein by reference. Avaya Services are available only in the United States.

55.2 Avaya Products.

55.2.1 Term and Termination. Customer may change or cancel an order for Avaya Products subject to the following cancellation charges:

55.2.1.1 Prior to Delivery Date – Cancellations: 15% of the canceled Avaya Product order and applicable installation charges.

55.2.1.2 After Delivery Date – No cancellation or change permitted,

55.2.2 Avaya Product Orders. Customer must order installation from Provider in conjunction with its order for Avaya Product.

55.2.3 Moves of Avaya Products. Customer must provide Provider no less than five (5) business day advance notice of any plan to move an Avaya Product, including, without limitation, Supported Products as defined below. Following the completion of such move, Customer will provide Provider with timely information related to the changes made to the Avaya Product(s). Additional charges may apply if Provider incurs additional costs in providing Maintenance Services as a result of Customer's or any third party's move of Supported Products.

55.2.4 End User License and Warranty. At all times during the provision and use of Avaya Products, Customer and Customer's end users will be bound by and subject to the End User License and Warranty described in Section 56 below. Customer will receive notice of the license type applicable to the Avaya Product ordered in the documentation delivered with such Avaya Product order.

55.3 Avaya Maintenance.

55.3.1 For the purposes of this Section 55, the following definitions will apply:

55.3.1.1 **"Error"** means any failure of Supported Products to conform in all material respects to the specifications delivered with the Supported Products.

55.3.1.2 **"Maintenance Services"** means the correction of Errors and other maintenance and support services options with respect to Supported Products identified in the order as described further in this Schedule and the SAS as defined below. In the event of a conflict between the SAS and this Schedule, the terms of this Schedule will control.

55.3.1.3 **"Services Agreement Supplement"** or **"SAS"** means the Avaya Service Agreement Supplement then current as of the date of acceptance of an order for Maintenance Services which has been provided to Customer.

55.3.1.4 **"Supported Products"** means: (i) products identified in an order under this Schedule that has been accepted by Provider; and (ii) Added Products (as defined in Subsection 55.3.3 below). Supported Products include third party products to the extent specific third party products are identified in the order.

55.3.2 Provision and Scope of Maintenance Services.

55.3.2.1 Updates. As part of Maintenance Services for software, Provider will make updates available as Avaya or the third party manufacturer makes them generally available to its other customers.

55.3.2.2 Support of Current and Prior Software Releases. Provider will provide software Maintenance Services only for the current release of the software and the prior release, and only if the software has not been altered by non-Avaya or Provider personnel in such a way that would cause Provider to incur additional expense to maintain.

55.3.2.3 End of Support. Provider may discontinue or limit the scope of Maintenance Services for Supported Products that Avaya or the third party manufacturer has provided notice of "end of life," "end of service," "end of support," "manufacture discontinue" or similar designation ("**End of Support**") from time to time. Provider will provide Customer with no less than sixty (60) days notice of End of Support; provided that Provider has received notification from the manufacturer with enough advance notice to do so. End of Support will be effective at the next anniversary date of the Maintenance Services or such later date as specified in Provider's notice, and if discontinued, the applicable Supported Products will be removed from the list of Supported Products and rates may be adjusted accordingly. To the extent Provider makes available Maintenance Services for End of Support Products ("**Extended Support**"), the description of specific Maintenance Services included in Extended Support and the applicable fees will be available at the time of Provider's notice.

55.3.2.4 Replacement Hardware. Replacement Hardware provided as part of Maintenance Services may be new, factory reconditioned, refurbished, remanufactured or functionally equivalent and will be furnished only on an exchange basis. Hardware that has been replaced by Provider becomes Provider's property immediately when replaced.

55.3.2.5 Software License Terms. Updates that may be provided as part of the Maintenance Services will be provided subject to the license grant and restrictions contained in the original agreement under which the applicable software was licensed to Customer. If no such license exists, then the License Terms included in this Section 55 will apply.

55.3.2.6 Software Permissions. "Software Permissions" allows Provider to (1) maintain Customer stations and trunks, and (2) maintain Customer processors and systems. Upon termination of Maintenance Services, Customer will allow Provider either remote access to the applicable system(s), or access to Customer's premises if remote access lines have been disconnected, to deactivate the Avaya Software Permissions to maintain stations and trunks, and/or processors and systems

55.3.2.7 Monitoring. Provider may electronically monitor Supported Products: (i) for remote diagnostics and corrective actions; (ii) to

determine applicable charges; and (iii) to verify compliance with applicable software license terms and restrictions.

55.3.2.8 **General Limitations.** Except to the extent expressly stated to the contrary in the SAS, none of the following are included in Maintenance Services:

55.3.2.8.1 Diagnosis or support of equipment or software other than Supported Products, including without limitation, systems interfacing with Supported Products;

55.3.2.8.2 Support of user-defined applications;

55.3.2.8.3 Making corrections to user-defined reports;

55.3.2.8.4 Data recovery services;

55.3.2.8.5 Services associated with relocation of Supported Products;

55.3.2.8.6 Support of Supported Products used in breach of applicable license restrictions or contrary to capacity and other use limitations under which the product was licensed by the manufacturer;

55.3.2.8.7 Support of Supported Products that have had their serial numbers altered, defaced or deleted;

55.3.2.8.8 Maintenance or repair resulting from any of the following: (i) neglect, misuse, power failures or surges, fault or negligence of persons other than Provider, or causes external to the Supported Products; (ii) Customer's failure to remain within one generation of the current releases of Software provided as part of the Maintenances Services; (iii) the combination or integration of non-Avaya furnished equipment, software, or facilities with Supported Products (except as provided in the Avaya documentation); (iv) Supported Products that have been changed, modified or altered if such changes, modifications or alterations are not performed or directed by Provider in writing; (v) changes to the environment in which the Supported Products were installed; (vi) any failure to follow Provider's or the manufacturer's installation, operation or maintenance instructions, including the failure to permit Provider timely remote access to the Supported Products; (vii) actions of non-Provider personnel; or (viii) force majeure conditions.

55.3.3 **Added Products.** If Customer subsequently acquires Avaya products, or third party products to be used with Avaya Services as approved by Provider from time to time, from Avaya or a third party ("**Added Products**") and co-locates Added Products with Supported Products, such Added Products will be covered under these Maintenance Services Terms automatically for the

remainder of the term of these Maintenance Services Terms at Provider's then current fee. Such fees will commence accruing as of the effective date of the collocation of the Added Products. Customer will notify Provider of Added Products in writing.

55.3.4 Defect Reports. Customer will document and report malfunctions of the Supported Products to Provider in a reasonably detailed manner promptly after discovery ("**Defect Reports**"). The Defect Reports may be manual and will provide the information specified in the SAS and all of the following information:

- caller's name, location and company;
- call-back telephone number;
- the system type and configuration, including the Supported Products and interfacing products;
- a brief description and history of the malfunctions and any efforts to solve it by Customer;
- remote dial-in or VPN access to the Supported Products.

55.3.5 Maintenance Services Payment Terms. Avaya will invoice the applicable fees specified in the quote for the Maintenance Services monthly in advance unless a prepayment option is specified in the order.

55.3.6 Warranty and Limitation of Liability.

55.3.6.1 Warranty. Provider warrants to Customer that Maintenance Services will be carried out in a professional and workmanlike manner.

55.3.6.2 Remedies. If Maintenance Services are not in conformance with the above warranty and Provider receives Customer's written notice of such non-conformance within fifteen (15) days of its occurrence, and Provider fails to achieve such conformance within thirty (30) days of receiving Customer's written notice, Customer may cancel the applicable order with respect to future Maintenance Services. Upon cancellation, Customer will be entitled to receive a proportionate refund of any prepaid fees applicable to future Maintenance Services. Cancellation will not affect; (i) Customer's obligation to pay for Maintenance Services already performed prior to the date of cancellation; or (ii) other obligations of Customer under this Schedule. 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 PROVIDER OR AVAYA WITH RESPECT TO THE NONCONFORMANCE OF MAINTENANCE SERVICES.

55.3.6.3 Disclaimer. EXCEPT AS PROVIDED IN THIS SUBSECTION 55.3.6, NEITHER PROVIDER, AVAYA NOR THEIR LICENSORS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MAINTENANCE SERVICES.

55.3.7 Term and Termination.

55.3.7.1 Term. Provider will provide Maintenance Services for an initial service commitment period (“**Period**”) of one (1) year, unless a different Period is expressly defined in the applicable order. The Maintenance Services may be renewed by mutual agreement of the parties prior to the expiration of the Period. Maintenance Services may be terminated in accordance with Section G.2.

55.3.7.2 Termination for Convenience. Prior to the start of Maintenance Services, Customer may cancel any order for Maintenance Services in whole or in part and receive a refund of any applicable prepaid amount. Within sixty (60) days after the start of Maintenance Services, Customer may terminate any order for Maintenance Services in whole or in part effective immediately subject to payment of a proportionate amount of maintenance fees for sixty (60) days of coverage. Customer may terminate an order in whole or in part at any time during the current Period upon fifteen (15) days written notice to Provider, subject to payment of a cancellation fee to Provider equal to the lesser of: (i) an amount equal to the Maintenance Services charges for three (3) months for a one-year Period; six (6) months for a two-year Period; or nine (9) months for a three-year Period; or (ii) the Maintenance Services charges of the remainder of the current Period. The cancellation fees above do not apply to an order cancelled by Customer due to Provider’s uncured breach.

55.4 Professional Services. In addition to standard Statements of Work, Provider and Customer may agree to have Statements of Work with milestone or time and material payments as provided below.

55.4.1 Rates and Payment. Unless otherwise specified herein, Customer will pay Provider for Professional Services as provided in an SOW from time to time and in the amounts set forth in the quote associated with such SOW and a Provider-accepted Customer order, according to Provider’s records, subject to additions and deductions made by written Change Order(s).

55.4.2 Term of Services. Professional Services will commence as set forth in the applicable Statement of Work and will continue in effect for the period of time required to provide such Professional Services, or otherwise as specified in such Statement of Work.

55.4.3 Warranty. Provider warrants that the performance of Professional Services hereunder will be substantially in conformity with the applicable Statement of Work. Provider warrants that it will perform the Professional Services in a workmanlike manner. Provider makes no warranty that any readiness, assessment, vulnerability or other report provided pursuant to this SOW will discover all deficiencies, vulnerable areas, or other issues. Additionally, Provider makes no warranty that testing of any design will discover all issues related to such design. PROVIDER PROVIDES AND/OR LICENSES ALL DELIVERABLES TO CUSTOMER “AS IS”. PROVIDER’S SOLE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY FOR BREACH OF SUCH

WARRANTY WILL BE RE-PERFORMANCE OF ANY NON-CONFORMING SERVICES.

55.4.4 Customer Responsibilities.

55.4.4.1 Customer is responsible for the accuracy and completeness of all data, materials and information it provides and will provide such data, materials and information to Provider in a timely manner. If information is incomplete or incorrect or if additional or different information is discovered during the course of the engagement covered by this Schedule and the applicable Statement of Work which could not be reasonably anticipated by Provider, any additional work required thereby will be treated as a Customer requested change to the scope of the Services and subject to the Change Order procedure set forth in the Section 54.

55.4.4.2 Customer will provide, at no charge to Provider, office space and equipment, including but not limited to copy machines, fax machines and modems, as reasonably required to perform the Professional Services.

55.4.5 Developed Information. Unless otherwise set forth in a Statement of Work, the parties acknowledge and agree that Provider will at all times retain and have sole and exclusive title to and ownership of all (i) deliverables, documentation and information provided by Provider to Customer under or in connection with a Statement of Work, whether provided in hard-copy or electronic form, including, without limitation, all methodologies, processes, programs, tools/templates, software, templates, specifications, techniques, data, presentations, studies, compositions, marketing collateral, training programs and materials, analyses and assessments, and (ii) works of authorship, inventions, discoveries, concepts, ideas, designs, methods and information, whether or not patentable or copyrightable, developed, acquired, made, conceived or worked on by Provider or any of its employees and agents, either solely or jointly with others, in connection with the performance of services under or in connection with a Statement of Work.

55.4.6 Cancellation or Rescheduling of Installation Services.

55.4.6.1 Cancellation requests received less than 10 business days prior to an installation start date are subject to a cancellation charge of 25% of the installation services fees described in the applicable quote for the affected installation(s).

55.4.6.2 Cancellation requests received after installation start date, but before Professional Services cutover, are subject to a cancellation charge of 65% of the installation services fees described in the applicable quote.

55.4.6.3 Rescheduling requests received 10 business days or less prior to the installation start date and unless otherwise

mutually agreed to are subject to a rescheduling charge of 10% of the installation services fees described in the applicable quote for the affected installation(s) up to a maximum charge of \$5,000.

55.4.6.4 Rescheduling requests received after the installation start date on the Customer premises, but before Professional Services cutover, and unless otherwise mutually agreed to are subject to a rescheduling charge of 25% of the installation services fees described in the applicable quote for the affected installation(s) up to a maximum charge of \$5,000.

55.4.6.5 Rescheduling and cancellation fees are not cumulative for the same event unless the installation service is rescheduled and then subsequently cancelled by Customer, and are not applicable to rescheduling or cancellations attributable to Force Majeure events.

55.4.7 Milestone Service Terms. These Milestone Services Terms apply if and to the extent the parties agree expressly on Professional Services to be performed on a Milestone basis.

55.4.7.1 End User Deliverables. Customer and Provider may agree that Provider will perform a Project with certain milestones as noted in a Statement of Work ("**Milestone Statement of Work**") that Provider will create and deliver to Customer certain customized software, hardware, documentation, or other work product ("**Deliverables**") or such other defined objectives ("**Milestone Objectives**") (any such services, the "**Milestone Services**") in exchange for installment payments (the "**Installment Fees**") as further specified in the quote. Deliverables do not include generally available hardware and software. If there is a conflict between the provisions of the Milestone Statement of Work and the provisions of this section 55, the provisions of this Section 55 will govern.

55.4.7.2 Acceptance.

55.4.7.2.1 Acceptance and Rejection Notice. When Provider makes a Deliverable available to Customer or indicates the completion of a Milestone Objective, the Deliverable or Milestone Objective will be deemed accepted unless Provider receives from Customer a rejection notice within five (5) business days indicating in reasonable detail the failure of the Deliverable or Milestone Objective to conform to the specifications contained in the Milestone Statement of Work ("**Rejection Notice**"). Customer will sign and return a certificate or other document evidencing acceptance ("**Acceptance Certificate**") of Milestone Deliverables and project completion upon Provider's request.

55.4.7.2.2 Acceptance Tests. Deliverables may be subject to acceptance testing as described in the Milestone Statement of Work or developed and agreed between the parties pursuant to the procedure outlined in the Milestone Statement of Work

("Acceptance Tests") and such Acceptance Tests will be performed on a mutually agreed-upon date.

55.4.7.2.3 **Non-Conformance Exclusive Remedies.** If any Deliverable or other Milestone Objective fails to conform to the specifications contained in the Milestone Statement of Work and Provider cannot satisfactorily re-perform the respective Milestone Services then Customer's remedies will be either: (i) terminate the applicable Milestone Statement of Work, return all Deliverables and receive a refund of fees paid under the Milestone Statement of Work; or (ii) accept the Deliverable or Milestone Objective subject to a warranty claim.

55.4.7.2.4 **Minor Shortcomings Do Not Affect Acceptance.** Customer will accept all Deliverables unless the non-conformance materially affects the operational use of Deliverable.

55.4.7.2.5 **Customer Use.** Notwithstanding anything in this schedule or Milestone SOW to the contrary, Customer's use of any items provided for any purpose other than testing will be deemed to constitute acceptance by Customer.

55.4.7.3. **Milestone Services Payment Terms.** Customer will pay the Installment Fees invoiced by Provider in accordance with the schedule set forth in the quote.

55.4.8 **Time and Materials (T&M) Services Terms.** These T&M Services Terms apply if and to the extent Customer acquires T&M Services on a Time & Materials basis.

55.4.8.1 **Scope of T&M Services.** Provider will provide to Customer consulting and other services on a Time & Materials basis ("**T&M Services**") as specified in a Statement of Work executed by authorized representatives of each party, which will be in a mutually agreeable format ("**T&M Statement of Work**") in exchange for hourly, daily, weekly or monthly fees and expense reimbursements calculated on the basis of Services Records ("**T&M Fees**"). T&M Services provided by Provider under these T&M Services Terms are unrelated to any Maintenance Services and licenses to software. If there is a conflict between the provisions of the T&M Statement of Work and the provisions of this Schedule, the provisions of this Schedule will govern.

55.4.8.2 **Services Records.** Provider will keep service records of all T&M Services performed describing the type of T&M Services performed and time spent ("**Services Records**").

55.4.8.3 **T&M Services Payment Terms.** Customer will pay T&M Fees calculated on the basis of the Services Records and hourly or daily rates specified in the T&M quote. Unless indicated otherwise in the T&M Statement of Work, Provider will invoice for T&M Services monthly in arrears.

56 END USER LICENSE AND WARRANTY

56.1 THIS END USER LICENSE AND WARRANTY AGREEMENT (“**AGREEMENT**”) SETS FORTH THE WARRANTY OF AVAYA’S PRODUCTS AND GOVERNS THE USE OF AVAYA’S PROPRIETARY SOFTWARE. READ THIS AGREEMENT CAREFULLY, IN ITS ENTIRETY, BEFORE INSTALLING OR USING THE AVAYA PRODUCT(S) (AS DEFINED BELOW). BY INSTALLING OR USING THE AVAYA PRODUCT(S), OR AUTHORIZING OTHERS TO DO SO, YOU, ON BEHALF OF YOURSELF AND THE ENTITY INSTALLING OR USING THE PRODUCT(S) ON YOUR BEHALF (HEREINAFTER REFERRED TO INTERCHANGEABLY AS “YOU” AND “END USER”), AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND CREATE A BINDING CONTRACT BETWEEN YOU AND AVAYA INC. (“**AVAYA**”). ANY USE OF THE PRODUCT(S) WILL CONSTITUTE YOUR ASSENT TO THE TERMS OF THIS AGREEMENT (OR RATIFICATION OF ANY PREVIOUS CONSENT).

56.2 Scope. Avaya grants the warranty and software license described in this Agreement to the End User who purchases or licenses new and unused Avaya products, meaning any combination of Hardware, Software and Documentation (the “**Products**”) from Avaya or an authorized Avaya reseller (the “**Reseller**”). This Agreement does not apply to any customized software resulting from professional services performed by Avaya. In the event of any conflict between the warranty set forth below and any warranty accompanying a Product, the warranty below shall prevail.

56.3 Avaya Warranty.

56.3.1 Avaya Warranty. Avaya warrants to End User that during the applicable warranty period, the Products will conform to and operate in accordance with the applicable “Documentation” in all material respects. The term “**Documentation**” means Avaya’s information manuals in printed or electronic form containing operating instructions and performance specifications that Avaya or its suppliers generally makes available to users of its products and Avaya delivers to End User with the Products. Documentation includes statements of work delivered by Avaya to End User with respect to services. Documentation does not include marketing materials.

56.3.2 Warranty Period. The warranty periods for Products are as follows:

56.3.2.1 Registration Program Products: with regard to Products that have an Avaya registration program available, the warranty period is the Specified Warranty Period (as defined below) beginning on the installation or enablement date, not to exceed 18 months from the Shipment Date. The term “**Shipment Date**” refers to (a) the date when Avaya delivers possession of the Product to a carrier for shipment, or (b) in the case of Software features that can be enabled by Avaya remotely or delivered via electronic means, the date when the features are enabled or the Software is downloaded to the target processor;

56.3.2.2 Other Products: with regard to Products that do not have an Avaya registration program available, the warranty period is the

greater of (a) the Specified Warranty Period (as defined below) plus 3 months from the Shipment Date (as defined above), or (b) the Specified Warranty Period beginning on the proof of purchase date from the authorized Avaya distributor (the "**Distributor**") from which Reseller purchased the Product, not to exceed 18 months from the Shipment Date.

56.3.2.3 **Specified Warranty Period.** The "**Specified Warranty Period**" is (i) 12 months for Hardware, beginning on the In-Service Date for Avaya-installed Hardware and on the delivery date for all other Hardware and (ii) 90 days for Software, beginning on the In-Service Date for Avaya-installed Software and on the delivery date for all other Software. "**In-Service Date**" means the date on which Avaya's employees, independent contractors and/or subcontractors install the Products at the End User's premises. "**Hardware**" means the standard Avaya-supplied hardware products that End User orders or Avaya delivers pursuant to End User's Agreement with Reseller. "**Software**" means the Avaya-supplied computer programs in object code form that End User orders or Avaya delivers under End User's Agreement with Reseller, whether as stand-alone products or pre-installed on Hardware. Hardware or Software does not include any customized deliverables that Avaya creates specifically for End User.

56.3.3 **Warranty Exclusions.** The warranties do not extend to any damages, malfunctions, or non-conformities caused by (i) use of the Products in violation of the license granted by Avaya or in a manner inconsistent with the Documentation; (ii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iii) any failure to follow installation, operation or maintenance instructions; (iv) failure to permit Avaya or its suppliers timely access, remote or otherwise, to Products; (v) failure to implement all new Updates to Software; (vi) Products that have had their original manufacturer's serial numbers altered, defaced or deleted; (vii) Products that have been serviced or modified by a party other than Avaya or a Reseller. For purposes of this Agreement, "**Update**" means changes in the Software that Avaya makes generally available to subscribers to Avaya's maintenance services. Updates are changes in the Software that typically provide maintenance correction only. An Update is typically designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]) representing a re-release of the corrected Software version, or an issue(s)-specific correction provided in the form of a patch, service pack, etc.

56.3.4 **Products from Third Parties.** End User's decision to acquire or use products from third parties (including non-Avaya products purchased from a Reseller) is End User's sole responsibility, even if Avaya or an authorized Reseller helps End User identify, evaluate or select them. AVAYA IS NOT RESPONSIBLE FOR, AND WILL NOT BE LIABLE FOR, THE QUALITY OR PERFORMANCE OF SUCH THIRD PARTY PRODUCTS.

56.3.5 **Toll Fraud.** Avaya does not warrant that Products or services will prevent Toll Fraud. Prevention of Toll Fraud is the responsibility of End User. The term "**Toll Fraud**" refers to the unauthorized use of telecommunications services or facilities accessed through or connected to the Products.

56.3.6 Geographic Scope. The warranty in this Subsection 56.3 shall apply only within the Territory, which refers to the geographic area within which Reseller is authorized to resell and market Avaya Products.

56.3.7 Disclaimers. EXCEPT AS SET FORTH IN THIS SUBSECTION 56.3, NEITHER AVAYA NOR ITS SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS AND AVAYA DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. AVAYA AND ITS SUPPLIERS DO NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS.

56.3.8 Warranty Procedures and Remedies. If a Product does not conform with the warranty above, End User shall notify Reseller in writing within the applicable warranty period, describing in reasonable detail how the Product failed to be in conformance and including evidence that the Product is under warranty. Avaya at its option will (i) repair or replace the nonconforming Product, or (ii) refund to the authorized Avaya distributor (“**Distributor**”) the purchase price and/or license fee paid to Avaya by Distributor upon the return of the nonconforming Product to Avaya and require Distributor to reimburse Reseller the purchase price and/or license fee paid by Reseller. Under no event will Avaya be obligated to refund any amounts in excess of the purchase price and/or license fee paid to Avaya for the nonconforming Product. If Avaya elects to replace the nonconforming Product, End User shall return the nonconforming Product to Reseller (rather than directly to Avaya) so as to permit Reseller to follow Avaya’s standard product return procedures. Replacement Products 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.

56.3.9 Exclusive Remedies. THE REMEDIES ABOVE ARE END USER’S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES END USER MAY HAVE AGAINST AVAYA OR ITS SUPPLIERS WITH RESPECT TO THE NONCONFORMANCE OF PRODUCTS.

56.4 Software License.

56.4.1 License Grant. Avaya grants to End User a non-sublicenseable, nonexclusive, nontransferable license to use the Software and Documentation provided under the Agreement for End User’s internal business purposes at the intended capacity levels and at locations within the Territory.

56.4.2 All Rights Reserved. Except for the limited license rights granted in this Subsection 56.4, Avaya and its suppliers reserves all rights in the Software and Documentation and any modifications thereto, including title, ownership rights, intellectual property rights and any other rights and interests. End User

will own only the hardware or physical media on which the Software and Documentation are stored, if any.

56.4.3 License Exclusions. End User agrees not to: (i) decompile, disassemble, or reverse engineer the Software; (ii) modify or create any derivative works (including, without limitation, translations, transformations, adaptations or other recast or altered versions) based on the Software or Documentation; (iii) merge the Software with any other software except as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorized by this Subsection 56.4; (v) 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, to or by any third parties; (vi) enable any Software features or capacity (e.g., additional storage hours, agents, ports or mailboxes) which Avaya licenses as separate products without Avaya's prior written consent; (vii) violate any obligations with regard to Avaya's Confidential Information (as defined below) or (viii) permit or encourage any third party to do any of the foregoing.

56.4.4 Backup Copies. End User may create a reasonable number of archival backup copies of the Software and Documentation on the condition that and as long as End User (i) stores backup copies separately from any actively used computer programs; (ii) keeps a written record of all backup copies indicating the location of their storage; and (iii) provides such record to Avaya upon request. End User will not remove any product identification, trademark, copyright or other proprietary rights notices from the Software or Documentation and will duplicate and display all names, logos and notices of Avaya and its licensors on each copy of the Software and Documentation made by End User.

56.4.5 User-Defined Applications. To the extent that any Software contains modules or development tools that permit End User to create user-defined applications, workflows or processes for use with the applicable Software ("**User-Defined Applications**"), End User agrees to indemnify Avaya, its officers, directors, employees, agents, affiliates and suppliers against and hold each of them harmless from any and all costs, expenses, liabilities and claims arising from End User's use or distribution, either directly or indirectly, of any User-Defined Applications.

56.4.6 Termination of License. Avaya may terminate the license granted under this Subsection 56.4, and exercise all available rights by giving written notice, effective immediately, if, within ten (10) business days of End User's receipt of a reasonably detailed written request to cure, End User has not cured all breaches of license limitations or restrictions. Upon such termination, End User will immediately pay all outstanding license fees (including applicable termination charges), cease use of all Software, return or delete, at Avaya's request, all copies of the Software in End User's possession, and certify compliance with all of the obligations in this paragraph to Avaya in writing.

56.4.7 Audit and Remote Access. At Avaya's request and upon reasonable notice, Avaya will have the right to inspect and audit End User's compliance with these license terms during normal business hours, but no more

than once annually. End User will cooperate with the audit and will grant assistance and access to applicable records, materials, equipment, and personnel. In addition, End User will provide remote access to its systems to Avaya to enable Avaya to electronically audit End User's compliance with the license terms. If an audit reveals that the End User possesses or at any time possessed unlicensed copies of the Software or use of the Software beyond the licensed features or capacity restrictions, End User will pay Avaya the applicable license fees immediately upon request.

56.4.8 License Types. Avaya grants End User a license within the scope of one of the license types described below. The applicable license will be a Designated System License unless a different license is specified in the Documentation or other materials available to End User. The applicable number of licenses and units of capacity for which the license is granted will be 1, unless a different number of licenses or units of capacity is specified in the Documentation or other materials available to End User. For purposes of this list of license types: (i) "**Designated Processor**" means a single stand-alone computing device; and (ii) "**Server**" means a Designated Processor that hosts a software application to be accessed by multiple users.

56.4.8.1 Designated System(s) License (DS). End User may install and use each copy of the Software on only one Designated Processor, unless a different number of Designated Processors is indicated in the Documentation or other materials available to End User. Avaya may require the Designated Processor(s) to be identified by type, serial number, feature key, location or other specific designation, or to be provided by End User to Avaya through electronic means established by Avaya specifically for this purpose.

56.4.8.2 Concurrent User License (CU). End User may install and use the Software on multiple Designated Processors or one Server, 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 Product that permits one user to interface with the Software. Units may be linked to a specific, identified Server.

56.4.8.3 Database License (DL). End User 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 communicate with no more than a single instance of the same database.

56.4.8.4 CPU License (CP). End User may install and use each copy of the Software on a number of Servers up to the number indicated by Avaya provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the Software. End User 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.

56.4.8.5 **Named User License (NU).** End User 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 Product that permits one user to interface with the Product.

56.4.8.6 **Shrinkwrap License (SR).** With respect to Software that contains elements provided by third party suppliers, End User may install and use the Software in accordance with the terms and conditions of the "shrinkwrap" or "clickwrap" license accompanying the Software ("Shrinkwrap License"). The text of the Shrinkwrap License will be available from Avaya upon End User's request.

56.5 **Limitation of Liability.** EXCEPT FOR PERSONAL INJURY CLAIMS, WILLFUL MISCONDUCT AND END USER'S VIOLATION OF AVAYA'S OR ITS SUPPLIERS INTELLECTUAL PROPERTY RIGHTS, INCLUDING THROUGH A BREACH OF THE SOFTWARE LICENSE TERMS AND CONDITIONS, NEITHER AVAYA, ITS SUPPLIERS NOR END USER SHALL BE LIABLE FOR (i) ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER AND (ii) DIRECT DAMAGES ARISING UNDER THIS AGREEMENT IN EXCESS OF THE PURCHASE PRICE AND FEES PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM.

56.6 **Miscellaneous.**

56.6.1 **Acknowledgement.** End User acknowledges that certain Software may contain programming that when enabled or activated: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the End User 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.

56.6.2 **Third Party Beneficiaries.** End User acknowledges that third party software may be included with the Software and that such third parties are beneficiaries to this Agreement and are entitled to enforce their respective rights.

56.6.3 **Export Control.** End User agrees not to export or re-export the Software or Documentation in any form in violation of the export control laws of the United States of America and any other applicable country.

56.6.4 Protection of Confidential Software and Documentation. End User acknowledges that the Software and Documentation are regarded as confidential by Avaya and its suppliers and End User agrees at all times to protect and preserve in strict confidence the Software and Documentation. The End User agrees not to permit or authorize access to, or disclosure of the Software and Documentation to any person or entity other than employees of End User who have agreed in writing to be bound by the terms of this Agreement and have a need to access the Software and Documentation for the benefit of the End User.