

TIPS VENDOR AGREEMENT

Between Avaya Inc. and _____
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS), a Department of Texas Education Service Center Region 8 for **TIPS RFP 210101 Technology Solutions, Products and Services**

General Information

The Vendor Agreement (“Agreement”) made and entered into by and between The Interlocal Purchasing System (hereinafter “TIPS”) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686 and the TIPS Vendor. This Agreement consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order (“PO”), Agreement or Contract is the TIPS Member’s approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the possible addendums.

Terms and Conditions

Freight

All quotes to Members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating “No Charge”, “\$0”, “included in price” or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

Warranty Conditions

All new supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal (“RFP”) category. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used upon mutual agreement of the TIPS Member and the Vendor.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of this Agreement may be made without the prior notification of the other party. Written approval of the assignment shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

- Vendor and TIPS affirm that he/she, or any authorized employees or agents, has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Term of Agreement and Renewals

The Agreement with TIPS is for approximately five (5) years with an option for renewal for an additional one (1) consecutive year. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base five-year term. Whether or not to offer the extension is at the sole discretion of TIPS.

“Start Date” for Term Calculation Purposes Only: Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “start date” is the last day of the month that Award Notifications are anticipated as published in the Solicitation

Example: *If the anticipated award date published in the Solicitation is May 22, but extended negotiations delay award until June 27, The end date of the resulting initial “five-year” term Agreement, (which is subject to an extension(s)) will still be May 31, 2025.*

“Termination Date”: The scheduled Agreement “termination date” shall be the last day of the month of the month of the Original Solicitation’s Anticipated Award Date plus five years.

Example: *If the original term is approximately five years, and the solicitation provides an anticipated award date of May 22, 2020, the expiration date of the original five-year term shall be May 31, 2025.*

Extensions: Any extensions of the original term shall begin on the next day after the day the original term expires.

Example Following the Previous Example: *If TIPS offers a one-year extension, the expiration of the extended term shall be May 31, 2026.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties in accordance with Section 2 of the attached State & Local Government/Public Education Customer Agreement, General Terms, appended hereto as Schedule 1 for reference if accepted by the TIPS Member Customer in accordance with the "Supplemental Agreements" section below.

Invoices

Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor, the Vendor Assigned Dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

Participation Fees and Reporting of Sales to TIPS by Vendor

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned

Dealer. Vendor, Reseller or Vendor Assigned Dealer agrees that the participation fee is due to TIPS for all Agreement sales immediately upon receipt of payment including partial payment, from the Member Entity and must be paid to TIPS at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently, or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is immediately due to TIPS from the Vendor and fees due to TIPS should be paid at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently.

Reporting of Sales to TIPS by Vendor

Vendor is required to report all sales under the TIPS contract to TIPS. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract number on any communications and related sales documents exchanged with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at https://www.tips-usa.com/vendors_form.cfm and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

Avaya shall defend the TIPS or TIPS Member, TIPS's or TIPS Members' agents, servants and employees against all third party actions, suits or proceedings (as used in this section, "Claim") for damages to real or tangible personal property or for bodily injury or death to any person arising out of, or in connection with this Agreement, to the extent such damage, injury or death was caused by the negligence of Avaya, any subcontractor of Avaya or their employees, servants or agents while performing under this Agreement, and shall indemnify Customer for any judgments, settlements and reasonable attorney fees resulting from a Claim as provided in this Section; provided, however, that such indemnification and save harmless obligation shall apply only to direct damages which are proven and shall not apply to the extent such damages, injury or death was caused by TIPS's or TIPS Members' act or omission or the act or omission of TIPS's or TIPS Members' agents, servants, employees or others; and, provided, further, that such indemnification and save harmless obligation is expressly conditioned on the following: (a) that Avaya shall be notified in writing promptly of any such Claim, (b) that Avaya shall have sole control of the defense of any action or such Claim and of all negotiations for its settlement or compromise provided that TIPS's or TIPS Members' legal counsel may participate in such defense and settlement, at TIPS's or TIPS Members' expense; and that (c) TIPS or TIPS Member provides all information and assistance reasonable requested by Avaya to handle the

settlement or defense of the Claim. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per

Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a Purchase Order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement Number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.
- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

Licenses

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s)

required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded Vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within thirty (30) days of the transfer of assets or rights.

Site Requirements (*only when applicable to service or job*)

Cleanup: When performing work on site at a TIPS Member's property, awarded Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded Vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded Vendor agrees that no employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Awarded Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Safety Measures

Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded Vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.

Supplemental Agreements

The TIPS Member entity participating in the TIPS Agreement and awarded Vendor will enter into a separate Supplemental Agreement, appended hereto as Schedule 1 for reference: State & Local Government/Public Education Customer Agreement to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Such Supplemental Agreement agreed between the TIPS Member Entity and awarded Vendor is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, and shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. The Supplemental Agreement between Vendor and TIPS Member shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS' Agreement with Vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate such additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm who shall be required to execute Vendor's standard Non-Disclosure Agreement, to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided electronically where feasible or at the Vendor's business location, during normal business hours. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the

TIPS Member.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. For avoidance of doubt, "Force Majeure" shall mean a delay or failure caused by events beyond the party's reasonable control, including fire, flood, Act of God, explosion, terroristic acts, hacking, malware, ransomware, business interruption or data loss caused by malicious or criminal act, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, or civil or military authority

Choice of Law

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Venue, Jurisdiction and Service of Process

Any Proceeding involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded Vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded Vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers ("Resellers") under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized

Vendor's Resellers under this Agreement are the responsibility of the awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures

and shall be billed for the fees. The awarded Vendor may then recover the fees from their named reseller.

Support Requirements

If there is a dispute between the awarded Vendor and TIPS Member, TIPS or its representatives may, at TIPS sole discretion, assist in conflict resolution if requested by either party. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

STATUTORY REQUIREMENTS

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)
4845 Highway 271 North
Pittsburg, TX, 75686
And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders:

General Liability \$1,000,000 each Occurrence/ Aggregate

Automobile Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
Umbrella Liability	\$1,000,000

When the Vendor or its subcontractors are liable for any damages or claims, the Vendor's policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the Member. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Orders:** All Vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
- **Order Confirmation:** All TIPS Member Agreement orders are approved daily by TIPS and sent to the Vendor. The Vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS Member by the Vendor, the Member is to be notified within 3 business days and appropriate action taken based on customer request.

The TIPS Vendor Agreement Signature Page is inserted here.

TIPS Vendor Agreement Signature Form

RFP 210101 Technology Solutions, Products and Services

Company Name Avaya Inc.

Address 2605 Meridian Parkway. Suite 200

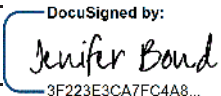
City Durham State NC Zip 27713

Phone 908-953-7504 Fax _____

Email of Authorized Representative jeniferbond@avaya.com

Name of Authorized Representative Jenifer Bond

Title ASL

Signature of Authorized Representative 

Date June 10, 2021 | 3:43 PM EDT

TIPS Authorized Representative Name David Fitts

Title Executive Director

TIPS Authorized Representative Signature David Wayne Fitts

Approved by ESC Region 8 David Wayne Fitts

Date 6/11/2021

SCHEDULE 1

STATE & LOCAL GOVERNMENT/PUBLIC EDUCATION Customer Agreement General Terms

This State & Local Government/Public Education Customer Agreement (the "Agreement"), dated and effective the date last signed below ("Effective Date"), consisting of these general terms ("General Terms") and Schedules, is a master agreement between Avaya Inc. ("Avaya") and the undersigned Customer. The terms of this Agreement govern Customer's purchase of Products and Services from Avaya. For purposes of this Agreement, Customer represents that it is an agency or department of a State, County or Municipal Government, or a public educational institution.

1. DEFINITIONS

Defined terms are identified by capitalized letters and have the meaning given in Schedule A (Glossary of Defined Terms) or elsewhere in this Agreement.

2. SCOPE, ORDERS AND APPLICABLE SCHEDULES

2.1 Scope. This Agreement describes the terms and conditions under which Customer and its Affiliates may purchase Products and Services from Avaya.

2.2 Orders. Each Order which Customer or its Affiliate places on the corresponding Avaya Affiliate will be a separate contract between those parties under this Agreement. Customer Affiliates may be subject to credit approval by Avaya. Customer will ensure that Orders mirror the relevant Avaya quote for such Order(s) and are subject to the terms and conditions of the Agreement, even without an express reference to the Agreement. Any pre-printed or other terms and conditions contained in the Order and not expressly referenced in this Agreement will have no effect.

2.3 Electronic Ordering. The parties may agree on ordering by electronic mail, at the email address provided by Avaya to Customer from time to time, or on other means of electronic communication. Any electronic Order will be binding upon Customer as if submitted in writing.

2.4 Product Changes. Avaya may, prior to delivery of a Product: make changes to the Product; modify the drawings and specifications relating to the Product; or substitute the Product for a Product of later design; provided that the changes do not have a materially adverse effect on the function of the Product.

2.5 Cancellation of Product Orders. Customer may cancel a Product Order prior to shipping by written notice to Avaya as follows:

2.5.1 within 72 hours of Order placement: subject to a cancellation fee of five percent of the purchase price; or

2.5.2 more than 72 hours after Order placement: subject to a cancellation fee of 10% of the purchase price.

2.5.3 Avaya may invoice for cancellation fees immediately.

2.5.4 Customer may not cancel an Order once the relevant Products have been shipped.

2.6 Changes to Product Orders. The parties may agree to change an Order after Customer has placed it. Such changes may be subject to additional charges.

2.7 Delays to Product Orders. Customer may request that the Delivery Date for Products be delayed by up to 75 days from the original Delivery Date. Any request for delay by Customer in excess of 75 days from the Delivery Date will entitle Avaya to cancel the Order for Products that have not yet been delivered, subject to a cancellation fee of 10% of the Product price for such cancelled Products, payable by Customer upon cancellation by Avaya. The remainder of the Order will remain in full force.

2.8 Services Orders. Charges for cancellation or delays for any Services are set out in Schedule B.

2.9 Applicable Schedules. The following Schedules are incorporated in this Agreement by reference: Schedule A: Glossary of Defined Terms; Schedule B: Services; Schedule C: Master Cloud Terms.

3. INVOICING, PAYMENT AND TAXES

3.1 Invoices.

3.1.1 Payment Term. Unless otherwise governed by applicable law, Customer will pay all invoiced amounts within 30 days of the date of the invoice.

3.1.2 Electronic Billing. Avaya invoices and Customer payments will be processed via Avaya's electronic bill application. Customer shall inform Avaya in writing of any disputed portion of an invoice within 15 days from the date of Avaya's invoice.

3.1.3 Charges. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with other methods of invoicing and payment. Avaya may suspend licenses and performance of Orders for which payment is overdue until the overdue amount is paid in full. If Customer is late in making payment, Avaya may charge the lesser of one and one-half percent per month of the value of the invoice or the maximum rate allowed by applicable law for overdue payments. Customer will reimburse Avaya for reasonable attorneys' fees and any other costs associated with collecting late payments.

3.1.4 Products Invoicing. Avaya will invoice Customer for Products on the Delivery Date, unless otherwise agreed in writing or specified in the Agreement or Subscription Licensing Supplement.

3.1.5 Services Invoicing. Avaya will invoice Customer for Services in advance, unless otherwise agreed in writing or specified in the quote, Service Description, SLS or SOW.

3.2 Price Adjustment. For Services purchased for a Service Term of two years or more, Avaya may, upon prior written notice, adjust the charges for the Services prospectively every year of the Service Term in line with any increase in the government-published inflation rate for the country in which the Services are to be provided.

3.3 Taxes. Unless Customer provides Avaya with a current tax exemption certificate or otherwise furnishes written evidence of Customer's tax exempt status, Customer is solely responsible for paying all legally required taxes, including any withholding, sales, excise, value-added, or other taxes and fees which may be levied upon Avaya based on the sale, movement, transfer of ownership, license, installation or use of Products or Services, except for taxes based on Avaya's income. If Customer is required to pay a tax pursuant to this Section or make any withholding, then Customer will pay such tax and any additional amounts as are necessary to ensure that the net amounts received by Avaya, after all such payments or withholdings are made, equal the amounts to which Avaya is entitled under this Agreement as if such tax or withholding did not exist.

4. CUSTOMER RESPONSIBILITIES

4.1 Responsibilities. Customer will cooperate with Avaya as reasonably necessary for Avaya's delivery of Products and performance of Services in a timely manner. Customer will provide Avaya with interface and other information regarding access to third party products or services in Customer's network and necessary third party consents and licenses to enable Avaya's performance under this Agreement. Customer will adequately secure its networks and systems against unauthorized intrusion or attack and will regularly back up its data and files in accordance with good computing practices. Customer will properly use, safeguard and return to Avaya any Avaya Tools. Customer will bear risk of loss and damage to Avaya Tools until they are returned to Avaya.

4.2 Consequences. Customer's failure to meet its obligations under this Section or as otherwise provided in this Agreement, an Order, a Service Description or SOW may result in delays or Avaya's suspension of delivery of Products or performance of Services relating to the failure.

5. DELIVERY, TITLE, AND RISK OF LOSS

5.1 Delivery and Risk of Loss. Unless otherwise specified or agreed in an order, all deliveries of Products will be CIP (INCOTERMS 2020). If no destination has been specified, the delivery will be to Customer's address. Avaya may charge Customer for shipping and handling charges in relation to the delivery of the Products, which will be reflected as a separate line item in Avaya's invoice. Risk of loss passes upon the Delivery Date.

5.2 Title to Hardware. Unless hardware is sold on an as-a-Service basis, title to the hardware will pass to Customer on the Delivery Date. Title to hardware sold on an as-a-Service basis does not pass to Customer.

5.3 Title to Software does not Pass. Software that is a Product is licensed to Customer as specified in Section 7. Title to Software will remain with Avaya and its licensors (provided that Customer will be entitled to retain the copies of the Software supplied for the duration of the license that applies to the use of the Software concerned).

5.4 Security Interest. Until Avaya has received payment in full from Customer for tangible Products, Customer authorizes Avaya to register Avaya's retention of title pending payment in the applicable official registers of any national or local jurisdiction to which the applicable Product is delivered or physically located. Customer will on request from Avaya (and at Avaya's expense) execute all such documents and take all actions reasonably requested by Avaya to enable Avaya to exercise its rights to security under this Section.

6. IP OWNERSHIP

6.1 Avaya Intellectual Property. Avaya, its Affiliates, licensors and suppliers own all rights, title and interest in and to any intellectual property in the Products, in the Services, and in any and all Deliverables provided to Customer in connection with this Agreement, including but not limited to any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, "Avaya Intellectual Property"). Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property.

6.2 Customer Intellectual Property. Customer reserves all rights, title, and interest in and to any Intellectual Property that Customer owns and makes available to Avaya under this Agreement.

6.3 Marks. Nothing in this Agreement grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, Services, or any software.

7. SOFTWARE LICENSE, SUBSCRIPTION LICENSE AND DELIVERABLES

7.1 License. Avaya grants Customer a license to use Software, including Subscription Licenses, and Documentation in accordance with the then-current terms and conditions set forth in the Avaya Global Software License Terms, found at <http://support.avaya.com/LicenseInfo> or a successor site (sometimes referred to herein as the "EULA"). Avaya may release new versions of the Avaya Global Software License Terms, which will replace the previously applicable version prospectively.

7.2 Subscription Licenses. Subscription licenses are also subject to then-current terms contained in the applicable Subscription License Terms found at <http://support.avaya.com/LicenseInfo> or a successor site and incorporated herein by this reference.

7.3. License to Deliverables for Professional Services Engagements. Subject to Customer's payment of fees for the applicable Professional Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicensable license to use Deliverables created by Avaya and delivered to Customer. Software contained in Deliverables is licensed subject to the EULA.

7.4. Third Party Terms. During the Term, Customer may elect to purchase Third Party Products and Third Party Services from Avaya and, in that case, Customer acknowledges that certain additional terms and conditions (as indicated by Avaya) may apply to these Third Party Products and/or Third Party Services ("Third Party Terms"). Customer agrees to be bound by and to abide by these Third Party Terms and, in case of a conflict, these will take precedence over the Terms only for those Third Party Products and/or Third Party Services. Avaya disclaims responsibility for Third Party Products and Third Party Services and is not a party to any such Third Party terms.

8. WARRANTIES

8.1. Warranty Scope. Avaya warrants to Customer that during the applicable warranty period: (i) Products will conform to and operate in accordance with the applicable Documentation in all material respects; (ii) Professional Services, Support Services, and Managed Services will be carried out in a professional and workmanlike manner by qualified personnel; and (iii) Deliverables will conform in all material respects to the specifications contained in the SOW. Avaya provides Third Party Products and Third Party Services on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND. However, such Third Party Products or Third Party Services may carry warranties from their manufacturers or providers, and Avaya will pass through to Customer any such warranties to the extent authorized. Exercise of such warranties will be directly between Customer and the relevant third party.

8.2. Warranty Period. The warranty periods are as follows:

8.2.1. Products: (i) hardware: 12 months, beginning on the In-Service Date for Avaya-installed hardware and on the Delivery Date for all other hardware; and/or (ii) Software and Software media: 90 days, beginning on the In-Service Date for Avaya-installed Software and on the Delivery Date for all other Software and media.

8.2.2. Professional Services and Deliverables: 30 days beginning on the acceptance or deemed acceptance date of the Professional Services, Deliverable or Project Phase, as applicable.

8.2.3. Support Services or Managed Services: 30 days beginning on the day of performance.

8.3. Remedies. If a Product, Professional Service, or Deliverable does not conform to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product, Professional Service, or Deliverable failed to be in conformance, then the following shall apply:

8.3.1. Products and Deliverables. Hardware, Software media or Deliverable: Avaya will, at its option: (i) repair or replace same to achieve conformance or (ii) refund to Customer the applicable fees upon return of the non-conforming hardware, Software media or Deliverable to Avaya. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products and Deliverables are warranted as above for the remainder of the original applicable Product or Deliverable warranty period. For Software warranty claims, Avaya will provide access to available Software corrective content and Product support knowledge base on a self-service basis.

8.3.2. Professional Services. Avaya will, at its option: (i) re-perform the applicable Professional Services or the nonconforming portion of the Project Phase or, (ii) refund to Customer the fees for the non-conforming Professional Services or the non-conforming Project Phase, as applicable. In the case of T&M Services, Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed.

8.3.3. Support Services or Managed Services. Avaya will re-perform non-conforming Support Services or Managed Services.

8.3.4. Warranty Procedures. Customer must provide written notice to Avaya during the applicable warranty period describing in reasonable detail how the Product, Deliverable, Professional Service, Support Services, or Managed Services failed to be in conformance with the applicable warranty. Customer will return Products and Deliverables subject to a warranty claim to Avaya in accordance with Avaya's instructions.

8.4. Costs. If a Product is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Avaya determines that the Product was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current time and materials rates.

8.5. Exclusions and Disclaimers. The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under this Agreement or in a manner inconsistent with the Documentation; (ii) normal wear due to Product use, including but not limited to Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iv) Customer's failure to follow Avaya's installation, operation or support instructions; (v) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; or (vi) failure to implement Updates provided by Avaya. Warranties do not extend to Products that have been serviced or modified by a party other than Avaya or a third party specifically authorized by Avaya to provide the service or modification. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKE ANY EXPRESS REPRESENTATIONS OR WARRANTIES ABOUT ANY MATTER UNDER THIS AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS OR DELIVERABLES, THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD, THAT SERVICES WILL DETECT ALL SECURITY THREATS AND VULNERABILITIES, OR THAT SERVICES WILL RENDER CUSTOMER'S NETWORK OR PARTICULAR NETWORK ELEMENTS SAFE FROM INTRUSIONS AND OTHER SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THIS AGREEMENT WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

9. INDEMNIFICATION

9.1 Defense and Indemnity. Subject to Sections 9.2-9.4 below, Avaya will defend and indemnify Customer for any judgments, settlements and court awarded attorney's fees resulting from a Claim, provided that, upon becoming aware of a potential Claim, Customer promptly notifies Avaya of the Claim in writing, gives Avaya sole authority and control of the defense and settlement of the Claim, provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense, and provides information and assistance reasonably requested by Avaya to defend against or settle the Claim.

9.2 Remedial Measures. If a Product becomes, or its use reasonably may become, the subject of a Claim, Avaya may opt to: (i) procure for Customer the right to continue use of the Product; (ii) replace or modify the Product; or (iii) refund to Customer a pro-rated portion of the applicable fees for the Product based on a linear depreciation monthly over a five year useful life, in which case Customer will cease all use of the Product and return the applicable Product to Avaya.

9.3 Exceptions. Avaya will have no defense or indemnity obligation for any Claim based on: (i) a Product that has been modified by someone other than Avaya; (ii) a Product that has been modified by Avaya in accordance with Customer-provided specifications or instructions; (iii) use or combination of a Product with Third Party Products, open source or freeware; (iv) Third Party Products, Third Party Services, open source, or freeware; (v) possession or use of the Product after Avaya has informed Customer of modifications or changes in the Product required to avoid such Claim and offered to implement those modifications or changes, if such Claim would have been avoided by implementation of Avaya's suggestions and to the extent Customer did not provide Avaya with a reasonable opportunity to implement Avaya's suggestions; or (vi) the amount of revenue or profits earned or other value obtained by the use of Products, or the amount of use of the Products. Customer will defend Avaya against any Claim, and will indemnify Avaya for any judgments, settlements and reasonable attorney's fees resulting from a Claim to the extent the Claim is based on subsection (i) or (ii) above.

9.4 Sole Remedy. THE FOREGOING STATES AVAYA'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PARTY. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS.

9.5 General Indemnification. Avaya shall defend Customer, Customer's agents, servants and employees against all third party actions, suits or proceedings (as used in this Section 9.5, "Claim") for damages to real or tangible personal property or for bodily injury or death to any person arising out of, or in connection with this Agreement, to the extent such damage, injury or death was caused by the negligence of Avaya, any subcontractor of Avaya or their employees, servants or agents while performing under this Agreement, and shall indemnify Customer for any judgments, settlements and reasonable attorney fees resulting from a Claim as provided in this Section; provided, however, that such indemnification and save harmless obligation shall apply only to direct damages which are proven and shall not apply to the extent such damages, injury or death was caused by Customer's act or omission or the act or omission of Customer's agents, servants, employees or others; and, provided, further, that such indemnification and save harmless obligation is expressly conditioned on the following: (i) that Avaya shall be notified in writing promptly of any such Claim, (ii) that Avaya shall have sole control of the defense of any action or such Claim and of all negotiations for its settlement or compromise provided that Customer's legal counsel may participate in such defense and settlement, at Customer's expense; and that (iii) Customer provides all information and assistance reasonable requested by Avaya to handle the settlement or defense of the Claim.

10. TERM AND TERMINATION

10.1 Term. This Agreement will be effective and continue in effect for five years from the Effective Date unless terminated earlier in accordance with this Section 10.

10.2 Termination for Breach. If either party commits a material breach of its obligations under this Agreement, or under any Order, the other party may terminate this Agreement or the affected Order by giving the breaching party at least 30 days' prior notice, with an opportunity to cure the breach before the 30-day period elapses.

10.3 Termination of Agreement for Convenience. Either party may terminate this Agreement at any time for convenience upon 90 days' prior written notice.

10.4 Termination for Convenience of Orders or SOWs.

10.4.1 Products. Customer may terminate or cancel a Product Order for convenience subject to payment of the fees set forth in Section 2.5.

10.4.2 Subscription Licenses. The term or termination of Subscription Licenses, including applicable termination fees, if any, will be in accordance with the applicable Subscription License Supplement.

10.4.3 Professional Services. Unless otherwise provided in the SOW, either party may terminate any Professional Services or Project Phase that has not been accepted (if acceptance is relevant) upon 45 days' prior written notice, and Customer will pay for (i) Professional Services performed through the effective date of termination, (ii) all non-recoverable out-of-pocket expenses incurred by Avaya, and (iii) if the termination is effected by Customer, applicable termination fees.

10.4.4 Other Services. The term and termination rights for other Services, including applicable any termination fees will be in accordance with the applicable Service Description.

10.5 Effect of Termination. Except as expressly provided otherwise in this Agreement or in the case of termination for uncured material breach, any termination of this Agreement will not affect any rights or obligations of the parties under any Order accepted before the termination of this Agreement became effective. The provisions contained in this Agreement will continue to apply to such Orders until their completion or expiry of their term.

10.6 Availability of Funds. Customer warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of this Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to Customer for any fiscal period following its current fiscal year ("subsequent fiscal period") for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under this Agreement was acquired, (ii) such non-appropriation has not resulted from Customer's act or failure to act, and (iii) Customer has

exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to Avaya, then Customer may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving Avaya prior written notice of termination citing the unavailability of funds to continue. Notwithstanding the preceding paragraph, Customer shall remain responsible for payment to Avaya for all Services performed, as well as for all Products delivered and accepted.

11. CONFIDENTIALITY

11.1 Confidential Information. Each party acknowledges that it may receive Confidential Information from the other party in connection with this Agreement, any Order, and during the course of the parties' general business relationship. Unless stated otherwise in this Section 11 or agreed otherwise by the parties, the receiving party shall keep in trust and confidence all Confidential Information, and may use Confidential Information solely for the purpose of furtherance of the business relationship between the parties, or to exercise its rights and fulfil its obligations under this Agreement.

11.2 Authorized Disclosure. Subject to applicable law, the receiving party will be authorized to disclose Confidential Information only to its employees, contractors, agents, directors, officers, professional legal advisers, Affiliates or subcontractors with a need to know ("**Authorized Parties**") and who are bound by confidentiality obligations with the receiving party at least as protective as the terms stated in this Section 11. Each party will be responsible for any Authorized Party's noncompliance with its confidentiality obligations and will only disclose Confidential Information to any third party other than an Authorized Party upon the prior written consent of the disclosing party. Notwithstanding the foregoing, the receiving party is authorized to disclose Confidential Information as required by applicable law in accordance with a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the receiving party, where allowed under applicable law, provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity for the other party to oppose such disclosure. The confidentiality obligations of each party will survive three (3) years following the expiration or termination of this Agreement or any Order, whichever occurs later. Upon such termination or expiration, each party, if so requested by the other party, will cease all use of or destroy the other party's Confidential Information (including any copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies due to mandatory retention laws, for regulatory purposes or to enforce its rights, subject to the confidentiality obligations as stated in this Section 11. Notwithstanding the foregoing, any trade secrets disclosed under this Agreement shall be held in confidence by the receiving party for: (i) as long as such Confidential Information remains the disclosing party's trade secret under applicable law; or (ii) until such Confidential Information falls under one of the exceptions to the confidentiality obligations specified in this Section.

11.3 Exclusions. This Section 11 does not apply to information which: (i) has entered the public domain except where such entry is the result of the receiving party's breach of this Agreement; (ii) was rightfully in the receiving party's possession prior to disclosure under this Agreement; or (iii) was obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.

12. LIABILITY AND EXCLUSIONS

12.1 Limitation of Liability. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (EXCLUDING ANY LIABILITY TO PAY THE FEES DUE FOR PRODUCTS AND SERVICES) WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM.

12.2 Exclusion of Consequential and Related Damages. NEITHER PARTY NOR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, COST OF SUBSTITUTE GOODS OR COST OF SUBSTITUTE PERFORMANCE.

12.3 Applicability. THE DISCLAIMERS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION 12 WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THEY DO NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMIT ON AGGREGATE LIABILITY WILL NOT APPLY TO THIS AGREEMENT'S CONTRACTUAL INDEMNIFICATION OBLIGATIONS.

13. COMPLIANCE WITH LAWS, EXPORT

Both parties will observe all applicable laws and regulations when providing or using the Products and work product of any Services. Avaya Products, technology and Services are subject to applicable import and export laws and regulations of the United States and other countries. Each party, at its own expense, will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export to certain countries, for certain users, or to certain end-users. Each party agrees to provide the other party the information, support documents and assistance as may be reasonably required in connection with securing necessary authorizations or licenses required for the transactions contemplated by this Agreement or in connection with associated reporting or recordkeeping obligations. Customer certifies that it is not on the U.S. Department of Commerce's Denied Parties List or affiliated lists, the U.S. Department of Treasury's Specially Designated Nationals List or on any other export exclusion list of any other U.S. or non-U.S. governmental agency. Customer further certifies that neither the U.S. Bureau of Industry and Security nor any other U.S. or non-U.S. governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's import or export privileges. Additional information relevant to Avaya's compliance with applicable export and import laws and regulations can be obtained by contacting Avaya Global Trade Compliance at globaltrade@avaya.com.

14. FORCE MAJEURE

Neither party will be liable for any delay or failure in performance, other than payment obligations, to the extent the delay or failure is caused by events beyond the party's reasonable control, including fire, flood, Act of God, explosion, terroristic acts, hacking, malware, ransomware, business interruption or data loss caused by malicious or criminal act, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, or civil or military authority, provided such party promptly notifies the other party and uses reasonable efforts to correct such failure or delay in its performance.

15. GOVERNING LAW AND JURISDICTION

15.1 Governing Law. Any Dispute under this Agreement will be governed by the laws of the state where the Customer is located, excluding both conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods.

15.2 Dispute Resolution, Notices and Negotiation. In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each controversy or claim within 30 days, (or other mutually agreed period), following the delivery of notice, by referral to designated representatives of the parties authorized to negotiate resolution thereof.

15.3 Choice of Forum for US Disputes. If a Dispute arises and cannot be settled under Section 15.2, then either party may bring an action or proceeding in either the state or federal courts within the state where the Customer is located. Except as otherwise stated in Section 15.1 each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Agreement.

15.4 Monies Owed Under this Agreement. Nothing in this Section 15 will preclude Avaya from seeking monetary damages and remedies from any court of competent jurisdiction for monies owing under this Agreement or any Order. If Avaya chooses to commence legal action in a court of competent jurisdiction for the aforesaid purposes, each party hereby irrevocably (i) waives any objection which it may have to the laying of venue of any legal action brought in such courts or that such legal action has been brought in an inconvenient forum, and (ii) further waives the right to object with respect to such legal action that any such court does not have jurisdiction over such party.

15.5 Injunctive Relief. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights at any time.

15.6 Time Limit. Except for actions for non-payment or breach of Avaya's proprietary rights, actions on Disputes between the parties must be brought in accordance with this Section within two years after the cause of action arises.

15.7 Compliance. Customer and Avaya will cause their Affiliates to comply with the dispute resolution procedures described in this Section 15.

16. NOTICE

Unless otherwise expressly specified herein, legal notice under this Agreement will be provided in writing and addressed to the other party at its address set forth below (or to any other address that the receiving party may designate from time to time in accordance with this Section). Notices will be deemed to have been given, as applicable, upon the earlier to occur of (i) actual receipt of the notice or (ii) 10 days after being sent by courier, return receipt requested, to the address stated below:

For Customer:

Customer Name:
Address:
City, State And Postal Code:
Country:

For Avaya:

ATTENTION: CORPORATE SECRETARY
AVAYA INC.
350 Mount Kemble Avenue
Morristown, NJ 07960
Email: lgnoticescomm@avaya.com
If to Avaya for Customer's written notice of cancellation or intent not to renew services:
Avaya Inc., Customer Care Center
14400 Hertz Quail Spring Pkwy, Oklahoma City, OK 73134
E-mail: mycontract@avaya.com
Facsimile 800-441-6371
Attn: Services Termination

In case of an Avaya Affiliate the notice of cancellation must be sent to the e-mail or address stated on the relevant Order.

17. ASSIGNMENT & SUBCONTRACTORS

Avaya may (i) assign this Agreement, in whole or in part, or any Order under this Agreement, to any of its Affiliates or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under this Agreement or the Order; (ii) pledge receivables under this Agreement to financiers (including their agents, trustees and representatives) providing credit to Avaya or Avaya Affiliates; (iii) subcontract any or all of its obligations to be performed by it under this Agreement, but will retain responsibility for the work. Any other assignment of this Agreement or any rights or obligations under this Agreement without the express written consent of the other party will be invalid.

18. INDEPENDENT CONTRACTORS

Avaya is an independent contractor and no partnership, joint venture, or agency relationship exists between the parties. Each party will be responsible for paying its own employees, including employment related taxes and insurance.

19. REFERENCE

Customer agrees that Avaya may, with prior written consent, use Customer's name, logos and trademark(s) to publicly list and promote Customer as a recipient of the Products and Services via Avaya's website, social media feeds, public announcements and marketing material.

20. ORDER OF PRECEDENCE AND MISCELLANEOUS TERMS RELATED TO INTERPRETATION/CONSTRUCTION

20.1 Order of Precedence. Should there be a conflict among these General Terms, the End User License Agreement, the Schedules, and/or any Orders or SOWs, the order of precedence will be: (i) the End User License Agreement; (ii) these General Terms and Schedules; (iii) any SOWs or Orders and any ancillary attachments to or documents referenced in an SOW or Order. In the event of any conflict between: (a) the SAS or SD and (b) a SOW, the SOW will govern.

20.2 Miscellaneous. The provisions concerning confidentiality, license grant to Customer, indemnity, and any other terms which, by their nature, are intended to survive termination or expiration of this Agreement or any Order will survive any termination or expiration of this Agreement and any Order. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this Agreement. No waiver of any term, condition, or breach of this Agreement or failure to enforce a remedy shall be construed as a waiver of subsequent terms, conditions, or breaches of the same or of a different kind. Except as expressly provided otherwise in this Agreement, no amendment, modification, change or discharge of this Agreement shall be valid unless in writing and signed by both parties. Paragraph headings are for reference only and will not affect the meaning or interpretation of this Agreement. The singular includes the plural, and vice versa. "Including" and similar words shall not be construed as terms of limitation. "Days" means calendar days unless otherwise stated. Each party represents that the person signing this Agreement has authority to contractually bind Avaya and Customer respectively to the terms and conditions of this Agreement. The parties agree that this Agreement or any related documents may be accepted by electronic signature which shall be accepted in lieu of a handwritten signature with full force and effect. This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original. Such counterparts together shall constitute one and the same instrument, subject to local law requirements. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties.

The duly authorized representatives of the parties execute this Agreement as of the date stated below.

Signed for and on behalf of [CUSTOMER NAME]
by:

.....
(signature)

.....
(print name)

.....
(position)

.....
(date)

Signed for and on behalf of
AVAYA INC. by:

.....
(signature)

.....
(print name)

.....
(position)

.....
(date)

SCHEDULE A: Glossary of Defined Terms

“Acceptance Period” means the time period in which Customer may test the Deliverable which shall not exceed five business days starting with the business day immediately following the date on which the Deliverable is delivered to Customer.”

“Added Products” means additional Products acquired during the relevant Service Term from Avaya or the relevant manufacturer or from an Avaya channel partner of the same type and manufacturer(s) as existing Supported Products and located by Customer with the existing Supported Products at the relevant Supported Site.

“Affiliate” means an entity that is directly or indirectly controlling, controlled by, or under common control with a signatory of this Agreement.

“as-a-Service” means provision of a time-based subscription service providing use of certain products in certain authorized countries as listed in the relevant Service Description.

“Avaya” means, as the context requires, either Avaya Inc. or the appropriate Avaya Affiliate or permitted assignee accepting an Order or entering into a SOW under this Agreement from Customer or a Customer Affiliate.

“Avaya Global Software License Terms” is defined in Section 7.1 of the Agreement.

“Avaya Tools” means any items that Avaya lends or makes available to Customer for purposes of this Agreement (e.g., Secure Access Link, etc.), and are not Products.

“Claim” means a claim, action, suit or proceeding brought by a third party against a party alleging that a Product, as of its delivery date under this Agreement infringes a patent, copyright or trademark.

“Customer” means, as the context requires, either the Customer signatory to this Agreement or a Customer Affiliate issuing an Order under this Agreement to Avaya.

“Confidential Information” means either party’s business and/or technical information, trade secrets, unpatented inventions or confidential intellectual property, financial information including pricing, discounts, forecasting or sales data, information acquired during any location visit or remote access, and other information regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential. Information communicated verbally will qualify as Confidential Information if the receiving party knew or had a reason to know that the information being disclosed was confidential information.

“Deliverable” means customized software, documentation, or other work product created in the course of a Professional Services engagement; Deliverables do not include generally available Products. Deliverables do not qualify as a “work made for hire”. Deliverables do not include generally available hardware and Software and are not Products.

“Delivery Date” means the date on which Avaya delivers Products in accordance with Section 5.1 or, in the case of Software that can be enabled by Avaya remotely or delivered via electronic means, the date the Software is enabled or downloaded to the target processor.

“Dispute” means any dispute, claim or controversy arising out of or relating to this Agreement.

“Documentation” means information published in varying media which may include product information, operating instructions and performance specifications that are generally made available to users of products. Documentation does not include marketing materials.

“End of Support” means in relation to a Product, where Avaya or the relevant third party manufacturer has declared that the Product concerned has reached the end of its life and will no longer be supported beyond a certain specified date.

“Extended Support” means continued support described in the applicable Service Description provided by Avaya for Products subject to End of Support, except for the End of Support exceptions and limitations listed therein.

“End of Sale Date” means the date after which a Customer is no longer able to purchase a Product directly from Avaya.

“End User License Agreement” or “EULA” is defined in Section 7.1 of the Agreement.

“Hosted Service” means a subscription service that comprises a hosted platform and software as a service solution provided by Avaya under this Agreement, together with the Documentation, software, application programming interface and any other functionality included in or used to provide the service, all as described in the applicable Service Description.

“Incident” means a failure of a Supported Product when in operation to conform in all material respects with the relevant manufacturer’s specifications.

“In-Service Date” means the date on which Avaya notifies Customer that the Avaya-installed Products are installed and in good working order or the date Customer first starts to use the Products, whichever is earlier.

“Intellectual Property” or “IP” means know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it.

“Managed Services” means the management of Supported Products, including (where applicable) automated client notifications, configuration management, incident and problem management, service desk, and monitoring.

“Order” means a purchase order placed by the relevant Customer Affiliate to the relevant Avaya Affiliate and subject to acceptance by such Avaya Affiliate either by electronic mail, at the email address provided by Customer Affiliate to Avaya Affiliate, by other agreed means of electronic communication, by shipping Products or by commencing to perform Services.

“Personal Data” means data that identifies or may be used to identify an individual.

“Products” means hardware, licensed Software, and associated Documentation as defined in the Avaya Global Software License Terms as incorporated in Section 7 of the General Terms.

“Project Phase” means a defined activity, objective or period as set out in the applicable SOW during which Professional Services will be provided.

“Professional Services” means the implementation of Products and other professional Services described in an Order or SOW. Professional Services do not include Product sales, Support Services, Managed Services or Subscription Services.

“Rejection Notice” means a notice Avaya receives from Customer before the end of the Acceptance Period indicating in reasonable detail the material failure of the Professional Services, Deliverable, or Project Phase, as applicable, to conform to the agreed acceptance criteria in the acceptance procedures.

“SAS” or “Service Agreement Supplement” means a document that describes the features, terms and conditions of an Avaya Support Services offer.

“SD” or “Service Description” means as the context requires SOW’s or SAS’s, that describe the features, terms and conditions of an Avaya service offer.

“SOW” or “Statement of Work” means a Customer-specific document that describes the features, terms and conditions of an Avaya service being purchased by Customer.

“Schedule” means an attachment incorporated by reference to these General Terms. The Schedules as of the Effective Date are identified in Section 2.9.

“Service Term” means the period of time during which any relevant Services are to be provided by Avaya in accordance with the relevant Order or Statement of Work.

“Services” means Avaya services ordered under this Agreement. Services are further described in the applicable Service Description.

“Software” is defined in the End User License Agreement.

“Subscription” means the term of a Customer’s access to the Subscription Service.

“Subscription Licensing Supplement” or “SLS” means the then-current Avaya offer description document for Subscription Licenses as of the date of Avaya’s acceptance of an Order.

“Subscription License(s)” means the software licenses ordered by Customer which are subject to a Subscription.

“Subscription Services” means time-bound subscription services provided by Avaya to Customer, against a periodic fee, for Customer’s internal business purposes, which may include Subscription Cloud or Hosted Services, provided by or on behalf of Avaya or as described in the applicable Service Description.

“Support Services” means the maintenance and support of Products.

“Supported Products” means the Products for which the Services are to be provided, as identified in the applicable Order or SOW, together with any Added Products, which may include Products made available for Customer’s use as part of Subscription Services and non-Avaya Products to the extent they are specified in the relevant Order or Service Description.

“Supported Sites” means Customer’s location(s) to which Services are to be provided, as set out in the applicable Order or SOW.

“T&M Services” or “time and material Services” are Professional Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.

“Third Party Host” means a third party who on behalf of Customer owns, manages and/or hosts any Supported Products or any systems on or in association with which Supported Products are installed or used.

“Third Party Product” means any product made or provided by a party other than Avaya, including: (i) products ordered by Customer from third parties; (ii) products provided by Avaya that are recognizable as standalone items, and; (iii) products identified as separate items on Avaya’s price list, quotes, Order specification forms or Documentation.

“Third Party Service” is any non-Avaya branded service provided under this Agreement.

“Unit” is the specific metric as described in the SLS used by Avaya as the basis for pricing and invoicing of Subscription Licenses and related Services. Unless otherwise specified in the Subscription Licensing Supplement, a single user license shall comprise a Unit.

“Update” means a patch, product correction notice (PCN), minor software, firmware update or service pack.

“Upgrade” means a major change to Software that introduces new optional features and functionality and typically designated as a change in the digit(s) to the left of the first decimal point (e.g. [n].y.z”).

“Vendor Management” refers to a service where Avaya is empowered to instruct or request product on Customer’s behalf from third party vendors under Customer’s supply contracts with third party vendors.

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SCHEDULE B: Services

This schedule applies to the extent Customer purchases any Subscription, Managed, Support, or Professional Services under the Agreement. These terms are part of the Agreement between Avaya and Customer. Capitalized terms have the meaning given in the Glossary of Defined Terms.

1. PROFESSIONAL SERVICES

1.1 Services Provided. Avaya will provide Professional Services as specified in an Order or applicable SOW. Professional Services may include installation and configuration of Products, consulting and other Services where Avaya creates a Deliverable and/or completes other defined objectives or a Project Phase on a milestone basis, T&M Services, or other basis.

1.2 Changes to Professional Services. Any changes to the Professional Services must be agreed to in writing between the parties or if the applicable SOW incorporates a process for agreeing to changes, in accordance with such process.

1.3 Acceptance of Professional Services.

1.3.1 T&M Services. T&M Services are deemed accepted upon performance.

1.3.2 SOW without Acceptance Procedures. Where the SOW does not contain specific acceptance criteria and procedures, Professional Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) Customer signature of an acceptance certificate.

1.3.3 SOW with Acceptance Procedures. Professional Services or a Project Phase as applicable, are deemed accepted upon the earlier of either: (i) the end of the acceptance period as set out in the SOW or Order (as applicable), unless before the end of the acceptance period Avaya has received from Customer a Rejection Notice; or (ii) Customer signature of an acceptance certificate. If Professional Services, Deliverable and/or Project Phase, as applicable, fails to conform to the agreed acceptance criteria and Avaya has received a Rejection Notice, then Avaya will re-perform the non-conforming Professional Services, Deliverable and/or Project Phase, as applicable, and re-submit it for acceptance as described above. If, after resubmission, Professional Services, Deliverable and/or Project Phase, as applicable, fail to conform to the agreed acceptance criteria in any material respect, then Customer's remedies will be either to: (a) terminate the non-conforming Professional Services, Deliverable and/or Project Phase, as applicable, and return all non-conforming Deliverables for a refund of fees paid under the SOW for the non-conforming Professional Services, Deliverable and/or Project Phase; or (b) accept the Professional Services, Deliverable and/or Project Phase, as applicable, subject to the warranties and remedies described in Section 8 of the Agreement. Customer will be deemed to have accepted the applicable Professional Services, Deliverable and/or Project Phase in accordance with subsection (b) above if, Avaya has not received a written termination notice within ten (10) days of Avaya's resubmission for acceptance.

1.4 Acceptance certificate. Upon acceptance in accordance with this Section 1, Customer will sign and return an acceptance certificate without undue delay. Acceptance certificates may be provided by Customer to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication.

1.5 Production Use. Unless otherwise provided for in acceptance procedures, production use will constitute acceptance for all purposes under this Agreement.

1.6 Project Delays. If performance of Professional Services is delayed for any reason at the request of Customer or its agents, Avaya may invoice, and Customer agrees to pay, for any additional costs reasonably incurred by Avaya as a direct result of such delay, including applicable rescheduling costs. If such delay continues for more than 30 days Avaya may terminate the SOW, Project Phase or Order, as applicable, and will be entitled to invoice, and Customer agrees to pay 100% of the fees associated with the Professional Services performed to date, and 10% of all sums due for Professional Services as contained in the relevant Order or SOW being terminated. Where a Customer requests a delay prior to the commencement of Professional Services, and such delay continues for more than 75 days, Avaya may terminate the applicable SOW, Project Phase or Order as applicable and Customer will pay for the Professional Services performed to the date of termination plus 10% of the fees that would have been due if the SOW, Project Phase or Order had not been terminated.

1.7 Transfer of Risk. If a Deliverable includes tangible items to be delivered to Customer, risk of loss and title shall pass as specified in the General Terms Section 5.

1.8 License to Deliverables. Subject to Customer's payment of fees for the Professional Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicensable license to use Deliverables created by Avaya and delivered to Customer. Software contained in Deliverables will be licensed subject to the Avaya Global Software License Terms referenced in Section 7.1 of the General Terms.

2. SUBSCRIPTION SERVICES

2.1 Subscription Services Provided. Upon acceptance of an Order Avaya will make the Subscription Services available to Customer.

2.2 Service Grant. Customer may use the Subscription Services solely for the Customer's internal business use in accordance with the Service Description and, for avoidance of doubt, not for further sublicense or resale. Customer's rights to use the Subscription Services are limited to those expressly granted in Schedule C (Master Cloud Terms).

2.3 Terms of Use. Subscription Services will be provided subject to the applicable Schedule C (Master Cloud Terms) the same will apply in addition to this Agreement and any applicable Service Description.

2.4 Registration. To access the Subscription Services, Customer may be asked to provide certain information, including, without limitation, email or physical addresses, before any use of, or access to, the Subscription Services will be permitted. Customer agrees that any registration information shall be accurate, correct, and up to date. Customer agrees to promptly update such information as needed, including but not limited to the physical location of each user. Customer shall be solely responsible for all activities that occur under Customer's account or Subscription.

2.5 Software License Terms and Updates.

2.5.1 If use of the Subscription Services requires Customer to download software or software is otherwise made available to Customer, such software is licensed pursuant to (1) the terms and conditions made available to Customer when Customer downloads or installs the software portion of the Subscription Services, or (2) if no such terms and conditions exist, then the End User License Agreement, current as of the date of the Subscription Services commencement per the Order, will apply, for the sole purpose of using the Subscription Services, in accordance with the Terms of Use, Service Description, and solely for the duration of the Subscription.

2.5.2 It is possible that software may automatically download and install Updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to allow such Updates to be promptly downloaded and installed as part of Customer's use of the Subscription Services.

2.6 Subscription Services Term and Termination. The term or termination of Subscription Services, including applicable termination fees, if any, will be in accordance with the applicable Service Description. Termination or expiry of any Subscription Services Order will be deemed to terminate the applicable Subscription Services for Customer and any and all licenses granted under that Subscription Services Order. Except as set forth in this Section 2, in the event that this Agreement expires or terminates during the term of any Subscription Services Order, this Agreement will remain in effect solely for purposes of enabling the underlying Subscription Services Order. Notwithstanding the foregoing, termination or expiry of the Agreement for an uncured material breach in accordance with this Agreement will be deemed to terminate all underlying Subscription Services Orders, unless the parties expressly agree otherwise in writing. Unless the applicable Service Description expressly states otherwise, Subscription Services hosted by or on behalf of Avaya may be discontinued at any time and Avaya will endeavor to provide advance notice by posting the relevant information on <https://support.avaya.com/products> or such successor site as designated by Avaya. Upon termination or expiry of this Agreement and/or termination or expiry of the Subscription Service Order for any reason, unless Avaya expressly agrees in writing, Customer will immediately and permanently destroy any materials related to the Subscription Services in Customer's possession or control and immediately cease all access to the Subscription Services, and upon Avaya's request certify the foregoing in writing.

3. SUPPORT AND MANAGED SERVICES

3.1 Order and Provision of Services. In return for the payment of applicable fees and subject to compliance with the terms of this Agreement, Avaya will provide the Support or Managed Services (collectively "Services" for this Section 3) options for Supported Products at the Supported Sites.

3.2 Monitoring. Avaya may electronically monitor Supported Products for the following purposes: (i) to perform remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable End User License Agreement; (iv) to assess Customer needs for additional Products or Services to address or resolve Services issues; or (v) as otherwise provided in the Service Description.

3.3 Incident Correction. Some Services options may include correction of Incidents. The Incident categories and the corresponding support level, if any, are further described in the applicable Service Description.

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

3.5 End of Support. Periodically, Avaya or a third party manufacturer may declare End of Support for certain Supported Products. Customer may access Avaya's user support website <http://support.avaya.com> or such successor site as designated by Avaya) for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide Extended Support, except for the End of Support exceptions listed therein). If the Service Description does not include Extended Support information, Avaya will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the Order and rates will be adjusted accordingly.

3.6 Replacement Hardware. Any replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer as specified in Section 5.2 of the General Terms.

3.7 Added Products. Added Products will be added to the Order automatically for the remainder of the term at the applicable rates. Customer will inform Avaya without undue delay of any Added Products not acquired from Avaya. Added Products purchased from a party other than the manufacturer or an Avaya channel partner may be added to or declined from being added to the Supported Products at Avaya's discretion, and will be subject to certification by Avaya at Avaya's then current Services rates.

3.8 General Limitations. Unless the applicable Service Description provides otherwise, Avaya will provide software Services only for the unaltered current release of the Software and the prior release. The following items are included in the Services only if the Service Description specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Incidents arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, have had their serial numbers altered, defaced or deleted.

3.9 Additional Customer Responsibilities.

3.9.1 General. At Customer's expense, Customer will cooperate with Avaya as reasonably necessary for Avaya's performance of its obligations, including, without limitation: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; (iii) providing interface information for Supported Products and necessary third party consents and licenses

to access them; and (iv) any other responsibilities as set out in the applicable Service Description. If Avaya provides patches or Updates as part of Services, Customer will implement them promptly.

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

3.9.3 Moves of Supported Products. Customer will notify Avaya in advance before moving Supported Products. Identical Services may not be available in all locations and in such circumstances either cancellation charges will apply, or additional charges may apply if Avaya incurs additional costs in providing Services as a result of such moves.

3.9.4 Vendor Management. Where Avaya provides Vendor Management for Customer, Customer will provide Avaya, upon request, a letter of agency or similar document, permitting Avaya to perform Vendor Management. Where the third-party vendor's consent is required for Avaya to be able to perform Vendor Management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

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

3.9.6 Access to Personal Data. From time to time, Customer may require Avaya to access a Supported Product containing Personal Data. Where Customer instructs Avaya to access any Personal Data, or to provide Customer or a third party identified by Customer with access, Customer will: (i) notify all relevant employees and other individuals of the fact that Avaya will have access to such Personal Data in accordance with Customer's instructions, and (ii) as permitted by local law or regulation, indemnify Avaya and its officers, directors, employees, subcontractors and Affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Avaya accessing or providing access in accordance with Customer's instructions.

3.10 Software License. Where Services include provision of Updates for Supported Products, they will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original Software from Avaya. Services that include an Upgrade will be provided subject to the then-current End User License Agreement. Where there is no existing license granted from Avaya, Software will be provided subject to the relevant manufacturers' then current license terms and restrictions for the applicable Software.

3.11 Term

3.11.1 Support Service Term. Unless a different term is mandated in the applicable Service Description, Avaya will provide Services for an initial term of one year. Services will be renewed automatically for successive one year terms (unless a longer renewal period is mandated in the applicable Service Description) applying the most similar generally available support offer and then current rates, unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the applicable initial or renewal term.

3.11.2 Managed Services. Unless a longer initial term or different renewal terms are defined in the Order or Statement of Work, Avaya will provide Managed Services for an initial term of three years and such initial term will be renewed automatically for subsequent one year periods, unless either party gives the other party written notice of its intent not to renew at least 90 days prior to the expiration of the applicable initial or renewal term.

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SCHEDULE C: Master Cloud Terms

These terms are between the Customer and Avaya Cloud Inc. a wholly owned subsidiary of Avaya Inc., and a Delaware corporation with principal offices at 350 Mount Kemble Ave., Morristown, NJ 07960 ("Avaya").

This Schedule contains terms and conditions that govern Customer's use and ordering of Avaya OneCloud Services and/or Avaya OneCloud CPaaS Services, detailed on the Matrix (individually and collectively, the "Service"). In addition to the terms and conditions in this Attachment, each of Avaya's individual II Services may be subject to additional terms and conditions including Use Policies (in accordance with Section 1.7) that are specific to the Services only and the applicable Service Description. When Customer accesses or uses the Services, the applicable Supplemental Terms will apply to Customer, and will automatically be incorporated into this Agreement by reference.

GENERAL TERMS

The following Exhibits are part of these Terms:

- Exhibit A, Terms for the Purchase of Avaya OneCloud™ CPaaS
- Exhibit B, Definitions for Cloud Services

1 TERMS OF SERVICE

1.1 Terms of Service. Upon acceptance of an order (pursuant to Section 1.2 below), Avaya will make the Services available to Customer for the Initial Term. The Initial Term will renew for consecutive Renewal Terms where auto renew is available, unless either party gives the other 30 days (or longer period if expressly set out by Avaya in the applicable SOW or Supplemental Terms) advance written notice before the end of the Initial Term or current Renewal Term of their intent not to renew. Where autorenewal is available, the Renewal Term shall be as stated in writing by Avaya in the SOW or Supplemental Terms.

1.2 Orders. Orders are subject to acceptance by Avaya. Accepted orders will be governed by this Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in this Agreement will have no effect.

1.3 Order of Precedence. If there is an express conflict between this Agreement and this Schedule, this Schedule will govern the use of the Services that can be purchased under this Schedule.

1.4 Changes to, and Discontinuation of, the Service.

1.4.1 From time to time, Avaya may update or modify the Service, including features, functionality and Supplemental Terms provided that: the change and modification applies to all customers generally, and are not targeted to any particular customer, and (b) one-month prior notice is provided to Customer for any material changes to the Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Service and terminate the respective Service Order without penalty in the case any change to the Service or Supplemental Terms that is of material detriment to the Customer, by written notice within 60 days after Avaya notifies Customer of the change.

1.4.2 Avaya will use commercially reasonable efforts to provide 60 days' notice prior to ending the sale of a Services, at which time the Service will no longer be available for order. Avaya will continue to provide the Service through the end of Customer's then current Service Period.

1.5 Registration. Customer may be required to register to use the Service. Registration may include providing certain information, (e.g., email or physical addresses, etc.) and Customer agrees to keep such information updated.

1.6 Use Policies. When Customer accesses and uses a Service, Customer is responsible for complying with this Schedule, applicable Law, and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: <http://support.avaya.com/TermsOfSale> (or such successor site) and are incorporated into and form part of this Schedule. Avaya may update the Use Policies from time to time and will post the updated version. Such updates will become effective on the next calendar month in which Avaya posts the updated version. Customer is responsible for reviewing the Matrix to determine which Use Policy applies to each Service.

1.7 Third Party Terms. During the Service Period, Customer may elect to purchase Third Party Products and Third Party Services from Avaya and, in that case, Customer acknowledges that certain additional terms and conditions may apply to these Third Party Products and/or Third Party Services ("Third Party Terms"). Customer agrees to be bound by and to abide by these Third Party Terms. These Third Party Terms will be provided by Avaya in advance of order in the applicable Supplemental Terms or otherwise.

2 PAYMENT, INVOICING, FEES and TAXES

2.1 Charges. Unless otherwise stated in the Supplemental Terms, or order, prices are quoted on a consumption and/or subscription basis and are expressed in local currency. Pricing herein does not include charges for taxes, fees, and government-imposed surcharges, which may be included in the invoices. All fees due to Avaya Cloud Inc. under this Schedule are non-cancellable and the sums paid are non-refundable, except as otherwise

expressly provided in this Schedule. Unless otherwise stated in the Supplemental Terms, Services will be billed to Customer monthly in arrears by Avaya Cloud Inc..

2.2 In the event Customer adds or removes users or if applicable, numbers, during a month, Avaya will charge Customer a prorated portion of the per-user Subscription fees for such added or removed user or number.

2.3 Price Changes. Avaya may change the fees associated with any Services upon 30 calendar days advance written notice. Customer's continued use of the Service after any price change becomes effective constitutes Customer acceptance of the modified fees, and such amounts shall apply as of the first day of the next month after the fee change was posted or communicated to Customer.

2.4 Customer will be responsible for all governmental assessments, surcharges and regulatory fees pertaining to the Customer's use of the Service that are imposed on Avaya or any Affiliate of Avaya incident to the provision or sale of the Service, or chargeable to customers by any governmental entity, including, but not limited to, any government assessment or regulatory fees imposed on Avaya as a result of a material change in the manner in which the Service or Avaya is regulated.

3 SERVICES PROVIDED; USE OF THE SERVICE

3.1 Services Provided. The Service is sold on a consumption and/or subscription basis, until terminated. Avaya will notify Customer of the Services Date. Unless Customer notifies Avaya by the close of the second Business Day following the Service Date that the Services are not operational, the Service Period will commence on the Services Date and will continue until expiration or termination of the Services.

3.2 Misuse of Service. Avaya may take any action it deems appropriate with respect to prohibited use of the Service or other use of the Service that it deems to be inappropriate, in violation of these Terms, or potentially disruptive to the Avaya Service or Avaya's network.

3.3 Support. Avaya will provide Customer with technical consultation support for the duration of the Service. Customer may access technical support by sending an email or calling the numbers detailed in the applicable Supplemental Terms.

3.4 Customer's Use of Service. Customer may use the Service solely for the Customer's internal business use in accordance with and in the countries designated in the applicable Supplemental Terms, this Agreement and the Order, for avoidance of doubt, not for further sublicense or resale. Customer shall be solely responsible for all activities that occur under Customer's account. Upon request, Customer will provide Avaya with signed confirmation of its compliance with this provision.

4 TERMINATION; DOWNTIME AND SERVICE SUSPENSION; SURVIVAL

4.1 Termination. Unless otherwise specified in the Supplemental Terms, if either party commits a material breach of its obligations under these Terms, or under any order, the other party may terminate these Terms or the affected order by giving the breaching party at least 30 days' prior notice, with an opportunity to cure the breach before the 30-day period elapses. If Avaya terminates under this provision, then in addition to any other rights Avaya may have, Customer will be responsible for all fees for the Service for the remainder of the Service Period, as well as any early termination or cancellation fees (if applicable).

4.2 Expiration/Termination. Upon expiration of the Service Period or termination pursuant to Sections 4.1, Customer shall immediately cease use of the Service and return or destroy (in accordance with Avaya's instructions) any Deliverables provided to Customer in connection with the Service, including any Avaya's Intellectual Property. Upon request, Customer shall certify in writing to Avaya that Customer has complied with this provision and Avaya may provide such certification to its suppliers. Except as provided in Section 4.1, any termination of this Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of this Agreement became effective. Under all circumstances, Customer shall pay Avaya the fees for the Service through the effective date of expiration or termination of an order, in addition to any true up or early termination/cancellation fees (if applicable). The provisions contained in these Terms will continue to apply to such accepted orders until their expiry or termination.

4.3 Downtime and Service Suspensions. Customer acknowledges that: (a) Customer's access to and use of the Service may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Service for any reason, including as a result of power outages, hacking, system failures, fraud prevention, or other interruptions; and (b) Avaya shall also be entitled, without incurring any liability to Customer or its users, to suspend access to any portion or all of the Service at any time, on a Service-wide basis: (i) for scheduled downtime to permit Avaya to conduct maintenance or make modifications, upgrades, or updates to any Service; (ii) in the event of a denial of service attack or other attack on the Service or other event that Avaya determines, in its sole discretion, may create a risk to the applicable Service, to Customer or its users or to any of Avaya's other customers if the Service were not suspended; or (iii) in the event that Avaya determines that it is necessary or prudent to do so for legal or regulatory reasons (collectively, "Service Suspensions"). WITHOUT LIMITATION TO SECTION 8 (LIMITATION OF LIABILITY), AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT CUSTOMER OR ITS USERS MAY INCUR AS A RESULT OF ANY SERVICE SUSPENSION. TO THE EXTENT AVAYA IS ABLE, AVAYA WILL ENDEAVOR TO PROVIDE CUSTOMER NOTICE OF ANY SERVICE SUSPENSION IN ACCORDANCE WITH THE SUPPLEMENTAL TERMS OR SOW AND TO POST UPDATES REGARDING RESUMPTION OF THE SERVICE FOLLOWING ANY SUCH SUSPENSION, BUT SHALL HAVE NO LIABILITY FOR THE MANNER IN WHICH AVAYA MAY DO SO OR IF AVAYA FAILS TO DO SO.

5 CUSTOMER CONTENT AND MARKS

5.1 Customer is solely responsible for Customer Content, including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content. Customer represents and warrants that it has the necessary rights and licenses, consents, permissions, waivers and releases to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Customer Content; and (b) Avaya, its suppliers and subcontractors are authorized to do the same to the extent necessary for the purpose of providing the Service.

5.2 As between Avaya and the Customer, Customer retains all right, title and interest in and to Customer Content.

5.3 Avaya will not share Customer Content or Other Users' Content with any third parties unless: (a) Avaya has Customer written or electronic consent for sharing any of Customer Content and Other Users' Content; (b) it is required by law; or (c) Avaya provides Customer Content or Other

Users' Content to third parties (e.g. sub-contractors) to carry out tasks on Avaya's behalf (e.g., data storage, etc.) as directed by Avaya and subject to appropriate agreements with those third parties.

5.4 Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer trade names, trademarks, service marks, logos, domain names and the like ("Customer Marks") and to host and display likenesses and photo images for the purpose of providing the Service to Customer or promoting or advertising that Customer uses the Service; provided, that the use of Customer Marks in connection with this Agreement shall not create any right or title in or to the use of the Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

6 RIGHTS AND DISCLAIMERS

6.1 All information transmitted through the Service is the sole responsibility of the person from whom such information originated. Avaya reserves the right, but is not obligated to pre-screen, refuse, flag, filter, or remove any material posted on the Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with these Terms, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) or similar actions, without notice or liability to Customer or any other party. Accordingly, Avaya assumes no liability for any action or inaction regarding transmissions, communications, or content provided by Customer or any third parties.

6.2 Customer acknowledges that, as part of the Service, Avaya may archive Customer Content and Other Users' Content and may periodically delete Customer Content and Other Users' Content without notice to Customer. Customer is solely responsible to ensure that any information, including Customer Content, Customer wishes to retain is downloaded, saved and/or backed-up. Avaya may also implement reasonable limits as to the size or duration of storage of any Customer Content or Other Users' Content related to the use of the Service.

6.3 Any software security feature is not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures.

6.4 It is Avaya's policy to respond to notices of alleged copyright or trademark infringement that comply with applicable international Intellectual Property law (including, without limitation, in the United States the Digital Millennium Copyright Act) and where appropriate at Avaya's discretion to terminate the accounts or subscription of infringers. If Customer would like to send Avaya an alleged copyright or trademark infringement notice as it pertains to the Service, go to the following link <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site as designated by Avaya) and follow the instructions on how to get in touch with Avaya. If Customer has trouble accessing this link, then Customer may contact Avaya for further information at copyrightagent@avaya.com with the subject line: "DMCA Takedown Request" or by mail to:

Avaya Copyright Agent Notification
350 Mount Kemble Avenue
Room 2C109
Morristown, NJ 07960
Phone: +1-908-953-2044

7 DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH AND LIMITED HEREIN AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA PROVIDES NO WARRANTIES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE., WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER AVAYA, NOR ITS LICENSORS, NOR ITS SUPPLIERS WARRANTS THAT: (A) CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS; (B) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR VIRUSES; (C) THAT CUSTOMER'S USE OF THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, OR DELETION OF CUSTOMER OR THIRD PARTY DATA; (D) THAT THE SERVICES WILL PREVENT TOLL FRAUD; (E) INFORMATION OR CONTENT PROVIDED TO CUSTOMER THROUGH THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (F) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (G) THE SERVICE WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

8 LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS OF PERSONAL INJURY, WILLFUL MISCONDUCT, VIOLATION OF AVAYA'S OR ITS SUPPLIERS' OR LICENSORS' INTELLECTUAL PROPERTY RIGHTS, AND/OR TO THE EXTENT OF THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, IN NO EVENT WILL AVAYA AND ITS AFFILIATES AND LICENSORS OR SUPPLIERS, OR CUSTOMER, BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OTHERWISE FOR: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) TOLL FRAUD, ANY LOSS OF PROFITS, REVENUE, REPUTATION, GOODWILL, OR ANTICIPATED SALES OR SAVINGS, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE, EVEN IF AVAYA OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL LIABILITY OF AVAYA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS COLLECTIVELY FOR CLAIMS ARISING OUT OF THESE TERMS, CUSTOMER'S ORDER, OR THE SERVICE SHALL NOT EXCEED THE FEES PAID TO AVAYA FOR THE SERVICE DURING THE TWELVE (12) MONTHS BEFORE THE LAST EVENT THAT GAVE RISE TO THE CLAIM. THE LIMIT IS IN THE AGGREGATE AND NOT PER INCIDENT.

NOTHING IN THESE TERMS LIMITS OR EXCLUDES LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW

9 INDEMNIFICATION

9.1 Avaya's Defense and Indemnification Obligations. Avaya will defend Customer against third party claims brought against Customer to the extent arising solely from an allegation that the Service directly infringes a third-party patent or copyright. Avaya will indemnify Customer against damages (specifically excluding any increased or enhanced damages resulting from Customer's willful infringement) finally awarded against Customer by a court of competent jurisdiction or a settlement amount approved by Avaya. Avaya's obligations under this Section will not apply if the claim arises or results from (a) Customer's breach of this Agreement, (b) modification to the Service or use of the Service outside the scope of this Agreement the Supplemental Terms or SOW, (c) combination, operation, or use of the Service with, or damages based on the value of, products, software, data, services or business processes not provided by Avaya, (d) Third Party Products and non-Avaya branded Services, (e) Avaya's compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf, (f) use of non-current or unsupported versions of the Service, or use of the Service after Avaya notifies Customer to stop use due to a third party claim, (g) Customer's Applications, Customer Content or Customer data (including Personal Data), Other Users' Content or any other content or data not provided by Avaya, (h) Deliverables, APIs and SDKs, (i) open source and freeware software or (j) any services, products, software or business processes Customer provides based on or related to the Service. In the event a claim is made or likely to be made, Avaya may, at Avaya's option and discretion, (i) procure for Customer the right to continue using the Service under the terms of this Agreement, or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If these options are not commercially reasonably available, at Avaya's discretion, Avaya may terminate the Service (by unilaterally terminating the applicable order) upon written notice to Customer and refund Customer any advanced payments for unused Subscription.

9.2 Customer's Indemnification Obligations. Customer will defend and indemnify Avaya and its Affiliates, and their respective officers, directors, employees, contractors, suppliers, licensors, partners and agents (each, an "Avaya Indemnified Party") against third party claims brought against an Avaya Indemnified Party arising from (a) Customer's breach of this Agreement, (b) Customer's violation of applicable law or unauthorized use of the Services, (c) Customer Applications, Customer Content or Customer data (including Personal Data), Other Users' Content, or the combination of Customer's Customer Content or data, or Other Users' Content, with other applications, content or processes (including, but not limited to any claim involving infringement or misappropriation of third party rights), (d) Customer's use of the Services, (e) a dispute between Customer and any client, or dispute between Customer and any third party with whom Customer uses the Service to interact, or (f) Customer's or its employees' or agents' negligence or willful misconduct. Customer will defend and indemnify the applicable Avaya Indemnified Party against all damages finally awarded against the Avaya Indemnified Party (or the amount of any settlement entered into by Customer) with respect to such claims.

9.3 Indemnification Procedures. The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice shall not relieve the indemnifying party of its obligations under this Section 9 unless the indemnifying party's defense of such claim is materially prejudiced by such failure), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

9.4 Sole Remedy. THE FOREGOING STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INTELLECTUAL PROPERTY CLAIMS. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE SERVICE AND ANY OTHER AVAYA INTELLECTUAL PROPERTY.

10 DATA PRIVACY

Avaya respects Customer's privacy and will only use information provided by Customer to Avaya or collected in the provision of Services in accordance with Avaya's data privacy policies. To the extent Avaya processes Personal Data on behalf of Customer, the most current Avaya DPA, published on <http://support.avaya.com/TermsOfSale> at the time of the particular order, applies and is incorporated herein by reference. The DPA is considered a Supplemental Term, if applicable.

10.1 Co-operation with law enforcement authorities. Avaya reserves the right to fully cooperate with any law enforcement authorities, regulatory authorities, or court order requesting or directing Avaya to disclose the Personal Data of anyone posting any messages or content or publishing or otherwise making available any materials that are believed to violate this Agreement. Customer is fully responsible for informing all relevant Data Subjects with whom Customer may communicate or otherwise interact via the Service of the foregoing right belonging to Avaya. BY ACCEPTING THIS AGREEMENT, CUSTOMER WAIVES AND HOLDS HARMLESS AVAYA FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND / OR FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER AVAYA OR LAW ENFORCEMENT AUTHORITIES. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT AVAYA RESERVES THE RIGHT TO INVOICE CUSTOMER AN ADMINISTRATIVE FEE TO RECOVER AVAYA'S COST TO RESPOND TO VALID SUBPOENAS, COURT ORDERS OR COMPLAINTS ISSUED BY A COMPETENT LAW ENFORCEMENT AUTHORITY, REGULATORY AUTHORITY, OR COURT OF LAW REGARDING ABUSIVE OR FRAUDULENT USAGE OF THE SERVICE BY CUSTOMER OR ITS END USERS.

11 FEEDBACK

Avaya welcomes Customer Feedback about the Service. All such Feedback provided by Customer or its users to Avaya or its authorized channel partners becomes Avaya's property and Customer agrees that all intellectual property rights therein are transferred and hereby assigned to Avaya. Customer agrees to cooperate fully with Avaya in connection with such transfer and assignment and Avaya may use such Feedback however it elects without any monetary or other consideration of any kind owed to Customer or any third party.

12 EXTERNAL LINKS AND THIRD-PARTY SERVICES

In some cases, the Service may contain hyperlinks to External Services and Sites. Customer's use of such External Services and Sites is at Customer's own risk. Customer acknowledges and agrees that Avaya has no responsibility for the availability, security, or other aspect of External Services and Sites.

13 SOFTWARE LICENSE TERMS AND UPDATES

13.1 If use of the Service requires Customer to download Software or Software is otherwise made available to Customer, such Software is licensed pursuant to (1) the terms and conditions made available to Customer when Customer downloads or installs the Software portion of the Service, or (2) if no such terms and conditions exist, then the applicable Avaya Global Software License Terms posted at <http://support.avaya.com/LicenseInfo> as applicable (or such successor site) in effect as of the Services Date and solely for the duration of the Service Period.

13.2 It is possible that Software may automatically download and install updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to promptly allow such updates to be downloaded and installed.

14 RECORDING

14.1 Recording of Conferences. If conferences are applicable to the Service Customer is subscribing to, Customer acknowledges that the laws of certain states, provinces or countries require that if a conference is to be recorded, all participants in the conference must be informed of that prior to the recording taking place, so they may consent to being recorded (if required by applicable laws) in the relevant jurisdictions when using recording features. Customer acknowledges and agrees that Customer shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Customer's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Avaya shall have no liability to Customer or any user or third party if consent is not obtained.

15 EMERGENCY SERVICES, HIPAA and PCI DISCLAIMERS

IN ADDITION, CUSTOMER HAS READ, UNDERSTOOD, AND AGREES TO THE FOLLOWING:

A. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE SERVICE, AS PROVIDED BY COMPANY, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 911 AND E911 SERVICE.

B. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").

C. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERRED TO AS PCI OR PCI DSS.

16 GENERAL

16.1 Message Routing. Customer may not use phone numbers provided by Avaya to route SMS messages over any other provider's network. All SMS messages sent and received for an Avaya number must be sent and received via the Services. If Customer uses SMS it is Customer's responsibility to ensure that if Customer initiates any unsolicited SMS, Customer provides Customer's end user with the option to opt in or opt out of receiving those messages as required by applicable law.

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EXHIBIT A -TERMS FOR THE PURCHASE OF AVAYA ONECLOUD™ CPaaS

These terms for the purchases Avaya OneCloud™ CPaaS, apply to Customer purchase and use of Avaya OneCloud™ CPaaS Services. Any terms used in this Exhibit A without defining them have the definitions given to them in Exhibit B to these Terms or elsewhere in this Agreement.

1. MANDATORY PREREQUISITES FOR THE AVAYA ONECLOUD™ CPAAS TERMS OF SERVICE

In order to use the Avaya API's and markup language (the "API"), or make use of the Properties and various Avaya OneCloud™ CPaaS services and information contained therein (the API, Properties and Avaya OneCloud™ CPaaS services are collectively referred to herein as the "Avaya CPaaS Services") and are included within the definition of "Services, Customer must accept the terms in this Exhibit.

Customer agrees to incorporate terms and conditions into the terms and conditions that apply to Customer's own products and services using applications that incorporate the Avaya CPaaS Services ("Customer's End User Agreements") that enable Avaya to use Customer's or any of Customer's users, employees, clients or customers' ("End Users") data as necessary to provide the Avaya CPaaS Services and that protect Avaya's rights to the same extent as the terms and conditions of this Exhibit and the Agreement. By way of example, Customer's End User Agreements must include terms concerning restrictions on use, protection of proprietary rights, disclaimer of warranties, and limitations of liability. Customer must ensure that Customer's End Users using applications that incorporate the API or the Avaya CPaaS Services adhere to this Agreement, and Customer agrees to notify Avaya promptly if Customer becomes aware of any breach of the terms of Customer's End User Agreements that may impact Avaya. Customer will take all reasonable precautions to prevent unauthorized access to or use of the Avaya CPaaS Services and notify Avaya promptly of any such

2. GRANT OF RIGHTS TO USE THE SERVICE

unauthorized access or use.

2.1 So long as Customer is in compliance with this Agreement, Avaya hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right and license during the Service Period to access and use the Avaya CPaaS Services, solely in accordance with this Agreement. Unless explicitly stated otherwise, any new features provided by Avaya that augment or enhance the current Avaya CPaaS Services shall also constitute "Avaya CPaaS Services" and shall be subject this Agreement. Customer may not, nor may Customer allow any third party to, copy, distribute, sell, disclose, lend, transfer, convey, modify, decompile, disassemble or reverse engineer the Avaya CPaaS Services for any purpose whatsoever. Customer may not allow any unauthorized third party to access the Avaya CPaaS Services for any purpose whatsoever. All rights not expressly granted under this Agreement are retained by Avaya or its Affiliates, licensors or suppliers.

2.2 Customer may create a software application or website (an "Application(s)") that interfaces with the Avaya CPaaS Services, provided that Customer complies with this Agreement. Customer may use the Avaya CPaaS Services to execute Applications owned or lawfully obtained by Customer, except as limited by this Agreement or Customer's End User Agreement.

2.3 Customer and any Applications that Customer may create, build or distribute may make network calls or requests to the Avaya CPaaS Services, or may receive telephone calls via the Avaya CPaaS Service, at any time that the Avaya CPaaS Services are available, provided that those requests do not violate this Agreement.

2.4 Customer may not remove, obscure, or alter any notice of any Avaya trademark, service mark ("Marks") or other intellectual property or proprietary right appearing on the Avaya CPaaS website posted at <https://www.avaya.com/en/products/CPaaS/> or such successor site ("Website") or contained within the Avaya CPaaS Services.

2.5 Customer acknowledges that Avaya may change APIs for any Avaya CPaaS Service or any feature of an Avaya CPaaS Service from time to time, and that it is Customer's responsibility to ensure that calls or requests from Customer's Applications made to or via Avaya CPaaS Services are compatible with then-current APIs for the Avaya CPaaS Services. Avaya will attempt to provide reasonable prior notice to Customer of any API changes so Customer can adjust Customer's Applications, but Avaya is under no obligation to do so.

2.6 Customer is solely responsible for Customer's Applications, including any data, text, images or content contained therein. Customer is also solely responsible for all traffic originating from Customer's Applications that uses Customer's account credentials to access the Avaya CPaaS Services. Actions taken using Customer's credentials shall be deemed to be actions taken by Customer, with all associated consequences including charges for Avaya CPaaS Services, service termination, civil and criminal penalties.

2.7 Avaya may make available to Customer, for Customer's installation, copying or use in connection with the Avaya CPaaS Services, a variety of software, data and other content and printed and electronic documentation (the "Properties"). Avaya hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license, during the Service Period only, to install, copy and use the Properties solely in connection with and as necessary for Customer's use of the Avaya CPaaS Services in accordance with this Agreement. The Properties may include, without limitation:

- (a) The Website;
- (b) APIs;
- (c) Documentation; and
- (d) Specifications describing the operational and functional capabilities, use limitations, technical and engineering requirements, and testing and performance criteria relevant to the proper use of the Avaya CPaaS Service and its related APIs and technology.

2.8 Avaya may make additional content or software available under another license agreement, such as an open source license. Any such content or software will be clearly marked with such a license indicating the usage rights available for that content or software. Such content or software may include:

- (a) Developer tools, such as software development kits or sample code for use in connection with the APIs; and
- (b) Articles and documentation for use in connection with the use and implementation of the APIs (collectively, "Documentation").

2.9 Except as may be expressly authorized under this Agreement:

- (a) Customer may not, and may not attempt to, modify, alter, tamper with, repair, or otherwise create derivative works of the Properties.
- (b) Customer may not, and may not attempt to, reverse engineer, disassemble, or decompile the Properties or the Avaya CPaaS Service or apply any other process or procedure to derive the source code of any software included in the Properties.

2.10 Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer's trade names, trademarks, service marks, logos, domain names and the like for the purpose of providing the Avaya CPaaS Services to Customer or promoting or advertising that Customer uses the Avaya CPaaS Services. Customer may not display or use the Properties in any manner unless Customer obtains Avaya's prior written consent. All uses of the Marks and goodwill associated therewith shall inure to the benefit of Avaya or its Affiliates.

The rights granted by Avaya in this Agreement with respect to the Properties and the Avaya CPaaS Services are nonexclusive, and Avaya reserves the right to: (i) act as a developer of products or services similar to any of the products or services that Customer may develop in connection with the Properties or the Avaya CPaaS Services; and (ii) grant similar rights to those provided under this Agreement to third parties that as developers or systems integrators may offer products or services which compete with Customer's Application(s).

2.11 Customer understands and acknowledges that Avaya is not certifying or endorsing, and has no obligation to certify or endorse, any of Customer's Applications or Customer's Content.

SUSPENSION OR TERMINATION

Avaya may suspend or terminate Customer's right to use the Avaya CPaaS Services for cause immediately upon Avaya's notice to Customer in accordance with the notice provisions set forth in this Agreement if: (i) Customer or Customer's End Users violate, or Avaya has reason to believe that Customer or Customer's End Users have violated, any provision of the AUP, (ii) there is an unusual spike or increase in Customer's use of the Avaya CPaaS Service, and there is reason to believe such traffic or use is fraudulent or negatively impacting the operating capability of the Avaya CPaaS Service; (iii) Avaya determines, in Avaya's sole discretion, that Avaya's provision of the Avaya CPaaS Service to Customer is prohibited by applicable law, or has become impractical or unfeasible due to any legal or regulatory change; or (iv) subject to applicable law, upon Customer's liquidation, Customer's commencement of dissolution proceedings, the disposal of Customer's assets, the failure to continue Customer's business, an assignment for the benefit of Customer's creditors, or Customer's becoming the subject of a voluntary or involuntary bankruptcy or similar proceeding.

BACKUP AND RETENTION

INTELLECTUAL PROPERTY

Notwithstanding Sections 8 and 9 of the General Terms, Customer acknowledges that Customer bears sole responsibility for adequate backup of Customer's Content, including all audio recordings associated with Customer's account. AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT CUSTOMER OR CUSTOMER'S END USERS MAY INCUR WITH RESPECT TO LOSS OF DATA ASSOCIATED WITH CUSTOMER'S ACCOUNT AND CUSTOMER'S OR ANY OF CUSTOMER'S END USERS' CONTENT DATA THEREIN.

5.1 Other than the limited use and access rights and licenses expressly set forth in this Agreement, Avaya and/or its Affiliates, suppliers and licensors reserve all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) the Avaya CPaaS Services; (ii) the Properties; (iii) the Marks; and (iv) any other technology and software that Avaya provides or uses to provide the Avaya CPaaS Services and the Properties. Customer does not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the Avaya CPaaS Services, the Properties, the Marks, or any other technology and software, except for the limited use and access rights described in this Agreement.

5.2 Avaya may, at its discretion, offer certain software development kits, tools, application samples, documentation or other software under an open source license. Any such products will be marked with copyright details, and those copyrights will apply to those and only those software development

kits, tools, application samples, documentation or other software. Avaya, its Affiliates, suppliers and licensors reserve all rights to any documents, tools, services, technologies and the like not subject to an open source license.

5.3 Other than the rights and interests expressly set forth in this Agreement and excluding any and all works derived from Properties, Customer reserves all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) Customer Content Customer may send to Avaya or use as part of Customer's use of the Avaya CPaaS Services; and (ii) Customer's Applications.

5.4 During and after the Agreement Term, with respect to the Avaya CPaaS Services that Customer elects to use, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against Avaya or any of Avaya's Affiliates, customers, end users, vendors, business partners (including third-party sellers on websites operated by or on behalf of Avaya), sub-licensees or transferees, any patent infringement or other intellectual property infringement claim with respect to such Avaya CPaaS Services.

REPRESENTATIONS

6.1 Customer represents and warrants that Customer will not use the Avaya CPaaS Services, Properties, Marks, Customer's Application or Customer's Content in a manner that violates this Agreement. Although Avaya does not assume the duty or obligation to monitor any materials created, posted or uploaded by Customer or any third parties, Avaya reserves the right, in its sole and absolute discretion, to monitor any and all materials posted or uploaded by Customer or any third parties at any time without prior notice to ensure that they conform to any usage guidelines or policies (including Avaya's AUP).

6.2 Customer shall not use the Avaya CPaaS Services to create a medical device or take other action that would violate regulations promulgated by the Food and Drug Administration, including but not limited to (i) diagnosing a disease or other condition, (ii) curing, mitigating, treating, or preventing a disease or condition, or (iii) using the Avaya CPaaS Services in a way that may affect the structure or function of the body of a human or animal. Avaya shall have no liability of any kind whatsoever as a result of Customer's violation of this Section. Customer's violations of this Section will be subject to the indemnification provisions in this Agreement.

6.3 Customer represents and warrants that Customer is responsible for any charges incurred by virtue of Customer's use of the Avaya CPaaS Services, no matter whether Customer's Application acted in error. Customer also represents and warrants: (i) that Customer is solely responsible for the development, operation, and maintenance of Customer's Application and for Customer's Content, including without limitation, the accuracy, appropriateness and completeness of Customer's Content and all product-related materials and descriptions; (ii) that Customer has the necessary rights and licenses, consents, permissions, waivers and releases to use and display Customer's Application and Customer's Content; (iii) that neither Customer's Application nor Customer's Content (a) violates, misappropriates or infringes any rights of Avaya or any third party, (b) constitutes defamation, invasion of privacy or publicity, or otherwise violates any rights of any third party, (c) violates any applicable laws or regulations, or (d) is designed for use in any illegal activity or promotes illegal activities, including, without limitation, activity that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (iv) that neither Customer's Application nor Customer's Content contains any components capable of harming Avaya's network or Avaya CPaaS Services; and (v) to the extent to which Customer is authorized by Avaya to use any of the Marks, that Customer will conduct Customer's business in a professional manner and in a way that reflects favorably on the goodwill and reputation of Avaya.

6.4 Customer agrees to abide by all applicable local, state, national, foreign and international laws and regulations and that Customer will be solely responsible for all acts or omissions that occur under or through Customer's account or password, including the content of Customer's and Customer's customers' transmissions through the Avaya CPaaS Services. Customer further agrees that neither Customer nor Customer's End Users will use the Avaya CPaaS Service for any purpose that is unlawful, abusive, intrusive on another's privacy, harassing, libelous, threatening or hateful, or in any other way that would violate any applicable laws or regulations. Customer represents and warrants that (i) Customer has the legal right and authority, and will maintain the legal right and authority during each Service Term, to install and use the Avaya CPaaS Services as contemplated hereunder; (ii) the performance of Customer's obligations under this Agreement and use of Avaya CPaaS Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications or unreasonably interfere with Avaya's or its other customers' use of the Avaya CPaaS Services or network; (iii) Customer is authorized and has completed all required corporate actions necessary to execute this Agreement; and (iv) Customer shall not intentionally carry out any act or omission that results in Avaya breaching any law, rule or regulation. Customer shall comply with all the applicable legal and/or regulatory licenses and consents specifically required from the relevant governmental authorities with respect to any permitted resale of the Avaya CPaaS Services. Customer shall be solely responsible and liable for any misuse of the Avaya CPaaS Services by Customer's End Users or any third parties in respect of Customer's resale of the Avaya CPaaS Services and shall defend and indemnify and hold harmless Avaya for against any claims or proceedings, including any judgements, settlements and reasonable attorney's fees resulting from and against any and all third party claims or proceedings arising from or related to such resale of the Avaya CPaaS Services by Customer. Any failure by any third party (including End Users) to comply with any applicable law rule or regulation regarding sale or use of the Avaya CPaaS Services shall be attributable to Customer for the purposes of this Agreement. Any resale or sublicense by Customer of the Avaya CPaaS Services shall not relieve Customer of Customer's obligations under this Agreement. Any such third party waives any liability by Avaya in connection therewith.

6.5 Customer represents and warrants that without Avaya's express written consent Customer will not use, and will not authorize any third party to use, any Public Software (as defined below) in connection with the Avaya CPaaS Services in any manner that requires, pursuant to the license applicable to such Public Software, that any Properties or the Avaya CPaaS Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients. Customer represents and warrants that all Feedback and Communications contributed by or through Customer (a) are legally distributable by Customer, either because Customer owns the copyright or because Customer has fully complied with any copyright terms associated with the software or content, (b) contain no third-party software or any software that may be considered Public Software, and (c) do not violate, misappropriate or infringe any intellectual property rights of any third party. "Public Software" means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux or Asterisk) or similar licensing or distribution models, including, but not

limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU Affero General Public License (AGPL), Common Public Attribution License (CPAL), European Public License (EUPL), GNU's General Public License (GPL), Lesser/ Library GPL (LGPL), or Free Documentation License, (2) The Artistic License (e.g., PERL), (3) the Mozilla Public License, (4) the Netscape Public License, (5) the Sun Community Source License (SCSL), (6) the Sun Industry Standards License (SISL), (7) the BSD License and (8) the Apache License.

6.6 In addition to the foregoing, Avaya specifically disclaims all liability for, and Customer agrees that Customer shall be solely responsible for:

- the development, operation, and maintenance of Customer's Application, all related equipment, and all materials that appear on or within Customer's Application and Customer's Content;
- the accuracy and appropriateness of any materials posted on or within Customer's Application or Customer's Content (including, among other things, any product-related materials);
- ensuring that any materials posted on Customer's site or within Customer's Application do not violate Avaya's AUP, are not illegal and do not promote illegal activities, including any activities that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age;
- ensuring that Customer's Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers; and
- any of Customer's End Users' claims relating to Customer's Application or Customer's Content or the Avaya CPaaS Services utilized in connection with Customer's Application.

LIABILITY FOR EMERGENCY CALLING

- TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, AND RESELLERS ("911/E911 INDEMNIFIED PARTIES") WILL HAVE NO LIABILITY TO CUSTOMER, CUSTOMER'S USERS, OR ANY THIRD PARTY, AND CUSTOMER WAIVES ALL CLAIMS AND CAUSES OF ACTION, ARISING OUT OF OR RELATED TO CUSTOMER'S, CUSTOMER'S USERS, OR ANY THIRD PARTY'S INABILITY TO DIAL LOCAL EMERGENCY NUMBERS (SUCH AS 112, 911, 999) OR ANY OTHER EMERGENCY TELEPHONE NUMBER OR TO ACCESS AN EMERGENCY SERVICE OPERATOR OR EMERGENCY SERVICES. CUSTOMER HEREBY RELEASES AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE 911/E911 INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, LOSSES, EXPENSES, AND/OR COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COST OF SUIT) BY OR ON BEHALF OF CUSTOMER OR ANY THIRD PARTY OR USER ARISING FROM OR RELATED TO THE FAILURE OF 911/E911 TO FUNCTION OR FUNCTION PROPERLY OR AVAYA'S PROVISION OF 911/E911 SERVICES OR FAILURE TO PROVIDE ACCESS TO 911/E911 SERVICES.

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EXHIBIT B- DEFINITIONS FOR CLOUD SERVICES

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in the Terms. This Exhibit B is incorporated into and part of the Terms.

“Acceptable Use Policy” or “AUP” means the document posted at <http://support.avaya.com/TermsOfSale> (or such successor site as designated by Avaya) which describes actions that Avaya prohibits when any party uses its services.

“Application” means a software application or website within a Customer’s domain or that the Customer creates using the API’s that interfaces or connects to the Services.

“Business Days” means Monday through Friday, 8:00 to 5:00 pm ET, excluding Avaya holidays.

“Customer Content” means the content of all data, information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by Customer or Customer personnel, including Other Users Content while utilizing the Service.

“Data Subject” means an identified or identifiable natural person.

“DPA” means Data Privacy Addendum

“External Services and Sites” means non-Avaya websites, content, or resources or otherwise interface or work with third party services which are not maintained or controlled by Avaya.

“Feedback” means comments or suggestions.

“Initial Term” means the term of the Subscription that is indicated in the Customer’s order and commences upon the date the Service is available for Customer’s use.

“Matrix” means the chart that is posted on the following website (or such successor site as designated by Avaya): <http://support.avaya.com/TermsOfSale> that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix periodically and post an updated version.

“Other Users’ Content” means the content of any information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by other users while interacting with the Service, including, without limitation, likenesses or photo images, advertisements or sponsored content.

“Processing”, “Process”, “Processed” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Renewal Term” means each of the terms after the Initial Term when the Services are extended.

“Renewal Term” means each of the subsequent terms after the Initial Term.

“Services Date” means the date Avaya advises Customer that the Services are available for Customer’s use.

“Service Description” means the applicable description of the Services then current as of the date of Customer’s ordering of the Services which is incorporated by reference and is available to Customer upon request or via links in the Matrix.

“Service Period” means the period of time in which Avaya is providing Service to Customer, whether the Initial Terms or Renewal Term.

“Software” means computer programs in object code, provided by Avaya whether as stand-alone products or pre-installed on Equipment, and any upgrades, updates, patches, bugfixes, or modified versions thereto.

“Statement of Work” or “SOW” means a Customer-specific document(s) that describes the features, terms and conditions of an Avaya service being purchased by Customer in connection with this Agreement.

“Subscription” means the term of Customer’s access to the Services.

“Supplemental Terms” mean Individually or collectively, the Use Policies and Service Descriptions.

“Traffic Data” means user billing data and/or metadata, including Caller ID, name, number dialed, duration of call, landline or mobile originated call, SMS send / receive destinations.

“Use Policies” means the policies or additional terms that are incorporated in this Agreement and apply to the provision of certain Services as identified herein and in the Matrix.

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NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



210101
Avaya Inc.
Supplier Response

Event Information

Number: 210101
Title: Technology Solutions, Products and Services
Type: Request for Proposal
Issue Date: 1/7/2021
Deadline: 2/26/2021 03:00 PM (CT)
Notes:

IF YOU ALREADY HOLD TIPS CONTRACT 200105 TECHNOLOGY SOLUTIONS, PRODUCTS AND SERVICES (“200105”), YOU DO NOT NEED TO RESPOND TO THIS SOLICITATION UNLESS YOU WISH TO REPLACE 200105 AT THIS TIME. IF YOU HOLD 200105, CHOOSE TO RESPOND HEREIN, AND ARE AWARDED ON THIS CONTRACT, YOUR 200105 WILL BE TERMINATED AND REPLACED BY THIS CONTRACT.

IF YOU HOLD ANY OF THE FOLLOWING TIPS CONTRACTS AND YOU DO NOT HOLD 200105 OR WISH TO REPLACE 200105 AT THIS TIME, PER TIPS PRIOR NOTIFICATION, YOU MUST RESPOND TO THIS SOLICITATION BECAUSE YOUR SPECIFIC CONTRACT IS BEING CONSOLIDATED INTO OR REPLACED BY THIS CONTRACT.

- TIPS 181204 Notification Systems
- TIPS 181201 Data Backup Disaster Recovery
- TIPS 181203 Management Software and Services
- TIPS 180701 Distance Learning Services and Hardware
- TIPS 170904 Managed Print Services
- TIPS 180503 Software
- TIPS 181102 Internet & Network Security
- TIPS 180306 Technology Solutions, Products and Services

(2)

- TIPS 190302 Technology Solutions, Products and Services

(3)

TIPS RESERVES THE RIGHT TO ISSUE, REBID, OR CANCEL ANY PLANNED SOLICITATIONS AT ANY TIME AS NECESSARY FOR THE NEEDS OF TIPS, TIPS VENDORS, AND TIPS MEMBERS.

Contact Information

Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686
Phone: +1 (866) 839-8477
Email: bids@tips-usa.com

Avaya Inc. Information

Contact: Shannon Hinnant
Address: 2605 Meridian Parkway
Suite 200
Durham, NC 27713
Phone: (866) 462-8292
Toll Free: (866) 462-8292
Email: dshinnant@avaya.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Jon Newton

Signature

Submitted at 2/25/2021 4:33:22 PM

jnewton@avaya.com

Email

Supplier Note

Avaya has a long history of serving public sector customers and helping them meet their missions. We believe Region 8 ESC/TIPS' participating states, counties, cities, higher education, non-profits, and school districts will benefit from Avaya's scalable, flexible, customizable, and easy to-turn-up technology solutions, products, and solutions. These solutions can help meet internal requirements as well as serve the needs of their citizens and constituents. Thank you for the opportunity to bid; we look forward to working with Region 8 ESC/TIPS and its member community.

Requested Attachments

Vendor Agreement

RFP 210101 Vendor Agreement Avaya Inc.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

Agreement Signature Form

RFP 210101 Agreement Signature Form Avaya Inc.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

Pricing Form 1

RFP 210101 Pricing Form 1 Avaya Inc.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

Pricing Form 2

RFP 210101 Pricing Form 2 Avaya Inc.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

Reference Form

RFP 210101 Reference Form Avaya Inc.xls

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Proposed Goods and Services

RFP 210101 Proposed Good and Services Avaya Inc.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

D/M/WBE Certification OPTIONAL

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Warranty

RFP 210101 Warranty Policy Avaya Inc.pdf

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Supplementary

No response

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

All Other Certificates

No response

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Logo and Other Company Marks

Avaya_Logo_Hi_Res_JPEG_File__Red_2016 (2).jpg

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS
Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

Certification of Corporate

RFP 210101 CERTIFICATION OF CORPORATE OFFERER FORM Avaya Inc.pdf

Offerer Form- COMPLETE ONLY IF OFFERER IS A CORPORATION

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

Disclosure of Lobbying Activities Standard Form LLL

No response

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

Confidentiality Claim Form

RFP 210101 CONFIDENTIALITY CLAIM FORM Avaya Inc.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.

Response Attachments

RFP 210101 W9 Avaya Cloud Inc.pdf

Avaya Cloud Inc. W9

RFP 210101 TIPS Members Avaya Customer Agreement with MCA and CPaaS.pdf

TIPS Members Avaya Customer Agreement with Master Cloud Agreement and CPaaS

RFP 210101 Vendor Agreement Exceptions-Deviations Avaya Inc.docx

Vendor Agreement Exceptions - Deviations Avaya Inc

Bid Attributes

1	<p>Yes - No</p> <p>Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.</p> <p><input type="text" value="NO"/></p>
2	<p>Yes - No</p> <p>Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at https://comptroller.texas.gov/purchasing/vendor/hub/ or in a HUBZone as defined by the US Small Business Administration at https://www.sba.gov/offices/headquarters/ohp</p> <p>Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.</p> <p><input type="text" value="No"/></p>
3	<p>Yes - No</p> <p>The Vendor can provide services and/or products to all 50 US States?</p> <p><input type="text" value="Yes"/></p>
4	<p>States Served:</p> <p>If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)</p> <p><input type="text" value="No response"/></p>
5	<p>Company and/or Product Description:</p> <p>This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)</p> <p><input type="text" value="Avaya is a global leader in solutions to improve and simplify communications and collaboration. Avaya is focused on meeting and supporting the needs of private businesses and local, state, and federal governments by delivering Avaya's portfolio of comprehensive technology and high-end Contact Center as a Service (CCaaS), Unified Communications as a Service (UCaaS), and Communication Platform as a Service (CPaaS) solutions and services. The scalable, customizable, and flexible products and technologies Avaya delivers meet the demands of the most complex and vital systems in the world."/></p>

6	Primary Contact Name Primary Contact Name <input type="text" value="Jon Newton"/>
7	Primary Contact Title Primary Contact Title <input type="text" value="Regional Sales Leader - West"/>
8	Primary Contact Email Primary Contact Email <input type="text" value="jnewton@avaya.com"/>
9	Primary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="6692428186"/>
10	Primary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="7035394571"/>
11	Primary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="6692428186"/>
12	Secondary Contact Name Secondary Contact Name <input type="text" value="Tony Melikian"/>
13	Secondary Contact Title Secondary Contact Title <input type="text" value="Regional Sales Leader - South"/>
14	Secondary Contact Email Secondary Contact Email <input type="text" value="melikian@avaya.com"/>
15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="7863310117"/>
16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="7035394571"/>

17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="7863310117"/>
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18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Stacey Cox"/>
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19	Admin Fee Contact Email Admin Fee Contact Email <input type="text" value="sacox@avaya.com"/>
-----------	---

20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="7863310108"/>
-----------	--

21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Jon Newton"/>
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22	Purchase Order Contact Email Purchase Order Contact Email <input type="text" value="jenewton@avaya.com"/>
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23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="6692428186"/>
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24	Company Website Company Website (Format - www.company.com) <input type="text" value="https://www.avaya.com"/>
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25	Federal ID Number Federal ID Number also known as the Employer Identification Number (EIN). Numeric only. (Format: 123456789) <input type="text" value=""/>
-----------	--

26	Primary Address Primary Address <input type="text" value="2605 Meridian Parkway, Suite 200"/>
-----------	--

27	Primary Address City Primary Address City <input type="text" value="Durham"/>
-----------	--

28	Primary Address State
	Primary Address State (2 Digit Abbreviation)
<input type="text" value="NC"/>	

29	Primary Address Zip
	Primary Address Zip
<input type="text" value="27713"/>	

30	Search Words:
	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)
<input type="text" value="Avaya, HIPAA, PCI, fedramp, cloud communications, spaces, subscription, cloud PBX, phone system, desktop phones, IP phone system, SIP services, SIP trunking, office phone system, Phone lines, telephone systems, UCaaS, CCaaS, CPaaS, cloud based communications, cloud unified communications, unified communication solutions, NG911, 911, cloud 911, Kari's Law, Ray Baum's Act. unified communications and collaboration, unified communication systems, 508 compliance, omnichannel contact center, notification system, campus emergency services, email message alerts, text notification, location tracking, notification services, message Broadcast, emergency notification, weather notification, transportation notification, parent notification, incident response, call center, SIP, VoIP, cloud call center, Cloud contact center, Cloud contact center solution, contact center as a service, contact center solutions, IVR, workforce optimization, workforce management, WFO, WFM, contact center technology, conference phones, video conferencing equipment, video conferencing systems, video conferencing technology, videophones, analog phones, collaboration solutions, cloud collaboration, team collaboration software, business collaboration tools, business video conferencing, video conferencing, video conferencing software, video conferencing solutions, cloud video conferencing, video conferencing app, video conference meeting, distance learning, remote work solutions, alternatives to zoom, video meeting, online video conference, secure video conferencing, secure cloud services, secure cloud phone system, secure phones, secure videophones, handsets, secure voicemail, secure chat, secure cloud options, fedramp cloud, secure cloud, telephony equipment, telephony accessories and supplies, devices, video phones, intercom systems, auto attendant, telephone equipment"/>	

31	Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?
	Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR) compliant. Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to TIPS Members regardless of the fund source, whether it be local, state or federal?
<input type="text" value="Yes"/>	

3 **Yes - No**

2

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. It does not affect scoring with TIPS.

3 **Company Residence (City)**

3

Vendor's principal place of business is in the city of?

3 **Company Residence (State)**

4

Vendor's principal place of business is in the state of?

3 **Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

5

Remember this is a MINIMUM discount percentage. So, be sure that the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGHOUT THE LIFE OF THE CONTRACT

CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD NOW OR DURING THE LIFE OF THE CONTRACT.

What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the solicitation specifications document), website, store or shelf pricing or when adding new goods or services to your offerings during the life of the contract? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale.

Must answer with a number between 0% and 100%.

36 Yes - No

For the duration of the Contract, Vendor agrees to provide catalog pricing, as defined in the solicitation and below, to TIPS upon request for any goods and services offered on the Vendor's TIPS Contract.

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing Vendor may be applied.

37 TIPS Administration Fee

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the Administration Fee, as designated in the solicitation or as otherwise agreed in writing which shall be remitted to TIPS by the Vendor, or the vendor's named resellers, and as agreed to in the Vendor Agreement. I agree that the fee shall not and will not be added by the Vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

38 Yes - No

Vendor agrees to remit to TIPS the required administration fee or, if resellers are named, Vendor agrees to guarantee the fee remittance by or for the reseller named by the vendor?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

39 Yes - No

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

40 Years experience in category of goods or services

Company years experience in this category of goods or services? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.

41 Resellers:

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).

4 2	Pricing discount percentage are guaranteed for? Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award? <input type="text" value="YES"/>
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4 3	Right of Refusal Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion? <input type="text" value="Yes"/>
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4 4	NON-COLLUSIVE BIDDING CERTIFICATE By submission of this bid or proposal, the Bidder certifies that: 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor; 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor: 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal; 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.
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4 5	CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. You may find the Blank CIQ form on our website at: Copy and Paste the following link into a new browser or tab: https://www.tips-usa.com/assets/documents/docs/CIQ.pdf There is an optional upload for this form provided if you have a conflict and must file the form. <input type="text" value="No"/>
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4 6	Filing of Form CIQ If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above? <input type="text" value="No response"/>
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Regulatory Standing

I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

Yes

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Regulatory Standing

Regulatory Standing explanation of no answer on previous question.

No response

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Antitrust Certification Statements (Tex. Government Code § 2155.005)

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Suspension or Debarment Instructions

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participants,” “person,” “primary covered transaction,” “principal,” “proposal” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

5
1 **Suspension or Debarment Certification**

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

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2 **Non-Discrimination Statement and Certification**

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

5 **2 CFR PART 200 Contract Provisions Explanation**

3 Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

5 **2 CFR PART 200 Contracts**

4 Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

5 **2 CFR PART 200 Termination**

5 Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

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2 CFR PART 200 Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

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2 CFR PART 200 Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

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2 CFR PART 200 Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

5 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

6 2 CFR PART 200 Rights to Inventions

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

6 2 CFR PART 200 Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, class, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

6 2 2 CFR PART 200 Ban on Foreign Telecommunications

Federal grant funds may not be used to purchase equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use "covered telecommunications", as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

6 3 Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

6 4 If you answered "I HAVE lobbied" to the above Attribute Question

If you answered "I HAVE lobbied" to the above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

**6
5 Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

NO

**6
6 ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?**

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

No response

6 **Indemnification**

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The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

6 **Remedies**

8

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

6 **Remedies Explanation of No Answer**

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70 Choice of Law

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.
THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

71 Venue, Jurisdiction and Service of Process

Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Do you agree to these terms?

72 Infringement(s)

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

73 Infringement(s) Explanation of No Answer

74 Contract Governance

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

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Payment Terms and Funding Out Clause

Payment Terms:

TIPS or TIPS Members shall not be liable for interest or late payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

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Insurance and Fingerprint Requirements Information

Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:
Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

None

7 **Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

8 SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

7 **Texas Government Code 2270 Verification Form**

9 Texas Government Code 2270 Verification Form

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Our entity further certifies that it is is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

8 **Logos and other company marks**

0 Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

- * Your Vendor Profile Page of TIPS website
- * Potentially on TIPS website scroll bar for Top Performing Vendors
- * TIPS Quarterly eNewsletter sent to TIPS Members
- * Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

8
1 **Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

8
2 **Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

8
3 **Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

8
4 **Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

8
5 **Felony Conviction Notice**

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.” Subsection (b) states “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.” (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

86 If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

87 Long Term Cost Evaluation Criterion # 4.

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation".

Points will be assigned to this criterion based on your answer to this Attribute. Points are awarded if you agree not increase your catalog prices (as defined herein) more than X% annually over the previous year for the life of the contract, unless an exigent circumstance exists in the marketplace and the excess price increase which exceeds X% annually is supported by documentation provided by you and your suppliers and shared with TIPS, if requested. If you agree NOT to increase prices more than 5%, except when justified by supporting documentation, you are awarded 10 points; if 6% to 14%, except when justified by supporting documentation, you receive 1 to 9 points incrementally. Price increases 14% or greater, except when justified by supporting documentation, receive 0 points.

88 Required Confidentiality Claim Form

Required Confidentiality Claim Form

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you.

Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at

rick.powell@tips-usa.com

89 Choice of Law clauses with TIPS Members

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

90 Venue of dispute resolution with a TIPS Member

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

9 1 Automatic renewal of contracts or agreements with TIPS or a TIPS member entity

This clause **DOES NOT** prohibit multiyear contracts or agreements with TIPS member entities. Because TIPS and TIPS members are governmental entities subject to laws that control appropriations of funds during their fiscal years for contracts and agreements to provide goods and services, does the Vendor agree to limit any automatic renewal clauses of a contract or agreement executed as a result of this TIPS solicitation award to not longer than "month to month" and at the TIPS contracted rate.

9 2 Indemnity Limitation with TIPS Members

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

Agreement is a required condition to award of a contract resulting from this Solicitation.

9 3 Arbitration Clauses

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

9 4 Required Vendor Sales Reporting

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

9 5 Upload of Current W-9 Required

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.

TIPS REP # 210101

Required Confidential Information Status Form

Avaya Inc.

Name of company

Jenifer Bond, Area Sales Leader

Printed Name and Title of authorized company officer declaring below the confidential status of material

2605 Meridian Parkway, Suite 200 Durham NC 27713 713-852-1161

Address City State ZIP Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you **must attach a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission.** (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.

ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW.

OPTION 1:

I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OT TOTAL PAGES THAT ARE CONFIDENTIAL.

ATTACHED ARE COPIES OF 3 PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

DocuSigned by: Jenifer Bond Signature _____ Date February 10, 2021 | 9:45 AM EST

OR

OPTION 2:

I DO NOT CLAIM any of my proposal to be confidential, complete the section below.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature _____ Date _____

Avaya Global Services Warranty Support Policy

Version 3.2

January 2012

1. Policy Summary

This policy defines the support Avaya provides to customers who request support during the Avaya warranty period for a particular product. The support provided varies depending on whether the customer has Support Coverage (defined below) for the affected product. Specific product warranties are defined by the Avaya Business Units, although customers may have negotiated different terms in their Avaya agreements. In summary, the current policy provides for defective parts/media replacement, repair, access to software/firmware updates and access to the Self Help Web site.

This policy does not reflect any change to a customer's existing Avaya product warranty. This policy applies globally unless regional or country laws around warranty or warranty delivery supersede. This applies to all products that have standard Avaya Warranty and applies to Avaya branded products but does not include non-branded vendor products sold through Avaya which are not covered under Avaya Warranty. Customers must be registered with Avaya before we provide warranty or other support.

This Policy does not completely address services billing or services offers. For more information on offers and billing please refer to specific services offers on the portal. As used in this Policy, "Support Coverage" means that a product is covered by an active order for Avaya maintenance support, which may be referred to informally as a support agreement or service agreement. **Certain offers (including, but not limited to, SME Technical Support for Partners Service Offer, Advanced Parts Replacement Option) do not qualify as Support Coverage.**

1.2 Benefit Overview

- Definition of the support we provide under warranty allows for more consistent global service delivery.
- Brings support in line with Business Unit warranty policy and contractual language.
- Allows for alignment between Enhanced Customer Group and Small Medium Business group and better alignment in the Direct and Indirect channels.
- Drives increase in Point of Sale service attachment rates.

2. Policy Description

Warranty support is defined in three categories.

1. Warranty support of customers without Support Coverage
2. Warranty support of customers with Support Coverage
3. Warranty support of customer upgrades/migrations.

2.1 Warranty coverage for customers without Support Coverage

Customers who do not have Support Coverage for the affected product will receive support in accordance with the Avaya standard warranty parts replacement (mail out & return only) and product defect support on Software for 90 days and Hardware for 12 months.

Remote per Incident (T/M) Technical support and on-site Per Incident Technical support are not part of Avaya Standard GCS Product Warranty support. When an end-customer or partner contacts Avaya GSS (Services Desk and/or Backbone) for support on an Avaya solution:

- a. During the defined software (currently 90 days) or hardware (currently 12 months) Product Warranty period and
- b. Without an active Avaya support agreement for the affected Product,

Avaya GSS will deliver remote support in the form of Trouble Investigation (TIV) services. There will be a 15 minute 'free' remote support period (Services Desk and Backbone, all Products) for initial Customer discovery discussions. If Trouble Investigation (TIV) services extend past the first 15 minutes, the following guidelines will apply.

If GSS determines the root cause of the service issue is:

1. A Product deficiency (associated with the Avaya Product under Avaya Warranty), there will be no support fee assessed.
2. Other than a Product deficiency (associated with the Avaya Product under Avaya Warranty) support fees will:
 - a. Be assessed beginning from initial contact and include the total support time (total Service Request hours worked by the GSS team member)
 - b. Be based on the current Non-Service Agreement per Incident (TIV) fee structure.

Refer:

<https://enterpriseportal.avaya.com/ptlWeb/getfile?docID=MDAzODM3MDkx> (Avaya)

<http://portal.avaya.com/ptlWeb/getfile?docID=MDAzODM3MDkx> (Business Partner)

No support beyond the standard warranty entitlements will be provided without purchase of support services from Avaya.

Warranty support for products sold via the Indirect Channel is handled directly by the channel partner unless the customer has purchased Support Coverage for the affected Product.

2.2 Warranty coverage for products under Support Coverage

Products under Support Coverage are entitled to the same level of support entitlement during the Warranty period as provided by their Support Coverage. For example, if the customer has a Remote Only maintenance agreement, they will receive Remote Only support during their Warranty period and replacement of defective parts only per the Avaya warranty. Any on-site support is billable. Remote Plus Parts will afford them the same coverage and on-site support is billable. Full coverage will provide full coverage support during the warranty period which includes on-site service (labor) and parts replacement. **Support Coverage is billable from the date of order acceptance by Avaya; regardless of whether a Product is under warranty (this is known as "day one billing) Please note: Support coverage entitlements during the warranty period are valid from the day the services order is accepted by Avaya. They are only valid for the entire warranty period if purchased at POS (Point of Sale), otherwise they are valid for the remainder of the warranty period from the support coverage order acceptance date. Example: If Support Coverage for hardware is signed 6 months after the install date, only the remaining 6 months of warranty will have the Support coverage entitlement. The first 6 months will be parts replacement only, and any remote or on-site support during that time period will be billable at T&M rates.**

The service / entitlements customers may receive during the warranty period (beyond the standard product warranty description) are based on the support coverage selected at the point of sale (which bill day 1 – i.e. *during* the warranty period).

Entitlements are specified in the relevant Service Descriptions.

At present, support for most state and local government entities in the US should follow Full Coverage Services Support. This exception exists for state and local government entities because these customers mandate Warranty terms in their agreements that differ from Avaya's standard warranty coverage.

If customers terminate their services support coverage, all applicable fees and charges are calculated per the terms of the customer's agreement and as defined in the Global Multi-Channel Termination Policy. Please refer to the following policy for further information.

Global Multi-Channel Maintenance Termination Policy

<https://enterpriseportal.avaya.com/ptlWeb/getfile?docID=MDAzNzcwNzc0> (Avaya)

<http://portal.avaya.com/ptlWeb/getfile?docID=MDAzNzcwNzc0> (Business Partner)

2.3 Upgrades and Migrations

Upgrades and migrations should follow the same policy as all other products. If the system being upgraded has Support Coverage, Avaya provides support consistent with the level of Support Coverage. If the affected Product does not have Support Coverage, Avaya will handle as parts replacement for parts showing warranty only. **An upgraded/migrated system without Support Coverage does not receive an entire system Warranty after the upgrade/migration.** This applies to the Federal Government accounts as well.

Any equipment being reused after an upgrade is required to carry Support Coverage to be entitled to alarming on the new system. For example, upgrading a G3R to a S8700 would require that all the circuit packs, port cards, etc, have a current Services Agreement on them for the system to

receive remote monitoring and EXPERT Systemssm. If there is no Support Coverage on the reused components at the time of the upgrade, maintenance on the reused components must be added, be effective immediately, and have a coterminous expiration with the upgraded component's Support Coverage.

If there is Support Coverage before the upgrade, it is important to ensure maintenance is added to new components as well as any uncovered equipment, to avoid a fragmented maintenance condition. Per the Fragmented Maintenance Policy, both new and uncovered components would also have maintenance effective immediately. Please refer to the following Policy for further information.

Global Fragmented Maintenance Policy

<https://enterpriseportal.avaya.com/ptlWeb/gs/services/SV0090/AllCollateral> (Avaya)

<http://portal.avaya.com/ptlWeb/gs/services/SV0090/AllCollateral> (Business Partner)

3. Avaya Warranty Coverage Language

Can be found on the Avaya Support Site

Warranty Policy:

https://support.avaya.com/css/appmanager/css/support?nfpb=true&pageLabel=WNContentPrivate&contentid=C20091120112456651010#wlp_WNContent_Private

4. Supporting Teams Responsibilities All Channels (i.e. GSD [Remote and Field Services], Customer Care,)

4.1 Global Support Services (GSS) Responsibility

DIRECT CUSTOMERS

Upon receiving a request for warranty support, GSS will open a service request and validate the warranty entitlement.

GSS will quote Non-Service Agreement Per Incident charges (T&M) for any work that is requested which is not covered under this warranty policy and where there is not an existing Services Agreement.

INDIRECT CUSTOMERS

Indirect customers will be directed to the channel partner where the equipment was purchased for warranty support unless the channel partner has sold and/or purchased Avaya Support Coverage (which includes warranty support to the end customer). For any support of the indirect channel, the warranty and Support Coverage should appear on the customer record so GSS can determine support. This requires Business Partners to complete registration process to affiliate the equipment sold to the customer's record.

Registration policy posted at: <http://portal.avaya.com/ptlWeb/services/SV0090/AllCollateral>
Page way down to policy section

Registration Process is described on support.avaya.com web site under More Resources > Equipment Registration.

https://support.avaya.com/css/appmanager/css/support?_nfpb=true&_pageLabel=WNContent_Private&contentid=C20091120112456651010#wlp_WNContent_Private

BUSINESS PARTNERS

Business Partners requesting warranty support should first contact their Distributor. SME Expert and Avaya Certified Partners may contact Avaya directly. Avaya will provide warranty support in relation to product defects. All support provided that is not directly related to a product defect will be billable at the current Non-Service Agreement per Incident rates.

4.2 Data Base Administration (DBA) team responsibility

DBA team should verify the customer has Support Coverage in SAP before turning on alarming.

4.3 Field Services

When a maintenance ticket is sent to the field via TWB3G, the technician will perform all necessary repairs and bill the appropriate Per Incidence Charges (T&M) for all labor provided if no valid Support Coverage has been purchased. Material would be covered under their Warranty policy if found to be defective and would not be billable to the customer regardless if a PWM contract/Support Coverage was purchased.

4.4 Customer Orders, Billing and Collections (COBC)

COBC minimizes fragmented maintenance and by reviewing coverage for any added/upgraded equipment. Maintenance coverage should be the same for like products. This is reviewed at time of registration for Indirect Channel or at time of upgrade order processing for Direct Channel. COBC should ensure that if there is no Support Coverage on the reused components at the time of the upgrade, maintenance on the reused components must be added, be effective immediately, and have a coterminous expiration with the upgraded component's Support Coverage.

If there is existing Support Coverage before the upgrade, it is important to ensure maintenance is added to the new components as well as uncovered equipment, to avoid a Fragmented



Maintenance condition. Per the Fragmented Maintenance Policy, the new and uncovered components would also have maintenance effective immediately.

4.5 Avaya Professional Services (APS) Responsibility

Follow existing processes for project implementation. However, it is the responsibility of the APS Project Managers to verify that the customer has Support Coverage before requesting alarm activation.

5. Related Documentation & Contacts

Related Documents:

AGS Warranty Support FAQ's and Collateral:

Avaya Enterprise Portal > Services>Product Support Services > Product Support>Maintenance Agreement>Sales Collateral>All Collateral>Policies
And
Global Sales View > Services Solutions > Maintenance > Software Support & Hardware Maintenance

Maintenance Agreement Documentation and Detail:

Enterprise Portal>Services (tab) > Service Offers by Competency > Product Support Services > Product Support > Maintenance Agreement>Sales & Ordering (tab) > Global Services Reference Library

Warranty Policy:

US Avaya Support Site -

<https://support.avaya.com/css/appmanager/css/support? nfpb=true& pageLabel=WNContent Private&contentid=C20091120112456651010#wip WNContent Private>

EMEA Refer to contracts for this region.

APAC Refer to contracts for this region. BP Master Services Agreements and Direct contracts

Canada Refer to contracts for this region.

CALA Refer to contracts for this region. You can find the regional contract templates at the [CALA International Contracting Website](#).

Change History

Author	Description	Status/Version	Date(dd/mm/yy)
Tammie Sisneros-Ulibarri	This is the final draft of AGS Warranty Support Policy	Final V1.4	10/20/2006
Sharon Bexley	Added verbiage to 2.1 to define Avaya "Standard" Warranty coverage.	V 1.5	7/23/08
Sharon Bexley	Deleted bullet points in section 2.1 as they were repetitive in section 2.2	V 1.6	10/2009
Vik Bhambri	SA update, T&M language update to assure T&M revenue is captured. Removed references to Post warranty & Enhanced warranty as US Day 1 billing policy negates these processes.	V 3.0	01/2011
Sharon Womack	Revised 2.2 based on federal and SLE legal input.	V3.1	3/2011
Sharon Womack	Updated Warranty Policy document link	V3.2	1/6/12

Avaya Marks



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