



Avaya Support Agreement Terms and Conditions

This document contains the terms and conditions (the “Terms and Conditions”) of the Maintenance Agreement executed by the parties and is made a part thereof. In the event of a conflict between these Terms and Conditions and the Maintenance Agreement or any master agreement between the parties, these Terms and Conditions shall control.

Definitions of Failures and SKC’s Response Interval*

<u>Definition of Failure</u>	<u>SKC Response Interval*</u>
Severity 1 Service Request: The Supported Product is totally out of service with no acceptable work around resulting in a loss of service affecting all users at a single site.	1 coverage hours
Severity 2 Service Request: The Supported Product is operating with severely reduced functionality causing significant impact to the End User Customer’s business operations, or the loss of service impacting more than twenty-five percent (25%) of all users at a single site.	2 coverage hours
Severity 3 Service Request: The Supported Product is operating with reduced functionality causing little or no impact to the End User Customer’s business operations, or the loss of service to less than twenty-five percent (25%) of all users at a single site.	Next business day by 5:00 pm
Severity 4 Service Request: The Supported Product is operating with full functionality and a service request for information on features, configuration or use of Supported Product needs to be tracked to completion.	Next business day by 5:00 pm
Class 1 Product Correction Notice: A major system failure due to product non-conformance with high probability of potential loss of system use or functionality and/or loss of customer information.	2 coverage hours
Class 2 Product Correction Notice: A moderate system failure with moderate probability of loss of system use or functionality and/or loss of customer information.	2 coverage hours
Class 3 Product Correction Notice: A minor system failure with low probability of potential loss of system use of functionality and/or loss of customer information.	Next business day by 5:00 pm

For purposes of the foregoing, for 24 x 7 Maintenance Agreements a “coverage hour” is the same as a clock hour and for 8 x 5 Maintenance Agreements, a “coverage hour” is any hour between 8 a.m. and 5 p.m. in the Customer’s local time zone Monday through Friday (except for SKC observed holidays). For example, for 8 x 5 Maintenance Agreements, if Customer is located in the central time zone and notifies SKC of a covered matter that has a two coverage hour response interval at 4:30 pm central time on a Friday, SKC shall have until 9:30 am central



time on the following Monday to respond (1/2 coverage hour on Friday and 1 ½ coverage hours on Monday).

* SKC'S RESPONSE INTERVALS SET FORTH ABOVE DEFINE SKC'S OBJECTIVES FOR REMOTELY RESPONDING TO A REQUEST FOR MAINTENANCE SUPPORT. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE MAINTENANCE SERVICES MAY REQUIRE THIRD PARTY ASSISTANCE. TO THE EXTENT THAT A THIRD PARTY IS REQUIRED TO PROVIDE MAINTENANCE SERVICES, RESPONSE INTERVALS DEFINED BY THE THIRD PARTY APPLY IN ADDITION TO THESE INTERVALS.

Avaya Support and Maintenance Terms and Conditions

1. Scope of Support and Maintenance Services.

- 1.1 Products Subject to Maintenance Services. The Support Agreement describes the Products subject to these Terms and Conditions. The parties hereto acknowledge and agree that any oral agreements between the parties in connection with the maintenance of any products by SKC shall be memorialized in writing. The products which are supported pursuant to a Maintenance Agreement may hereinafter be referred to individually as a "Product" and collectively as the "Products."
- 1.2 Repair or Replacement of Products. Maintenance responsibilities hereunder shall be to ensure that Products conform, in all material respects, to the specifications published by the manufacturer in connection with such Products. At its discretion, SKC may either provide parts and labor to repair a Product or may provide a replacement Product. Replacement Products may be new, factory reconditioned, refurbished, remanufactured or functionally equivalent and will be furnished only on an exchange basis. Returned Products that have been replaced by maintenance provider will become maintenance provider's property.

2. Exclusions from Maintenance Services.

- 2.1 Exclusions. Notwithstanding Section 1 herein to the contrary, the following are specifically excluded from coverage under the Maintenance Agreement:
 - i. Support of equipment or software other than the Products including, without limitation, any equipment or software interfacing with any Products;
 - ii. Data recovery services;
 - iii. Services associated with relocation of Products;
 - iv. Support of Products that have had their serial numbers altered, defaced or deleted;
 - v. Customized system features, configuration changes, or reports;
 - vi. Hardware or firmware upgrades or reprogramming to add additional capabilities or functionality to Products;

- vii. On-site support (if not explicitly covered in the Maintenance Agreement);
and
 - viii. Software upgrades (if not explicitly covered in the Maintenance Agreement).
- 2.2 Additional Exclusions. The Maintenance Agreement does not cover maintenance, repair or replacement resulting from any of the following:
- i. Theft, neglect, misuse, power failures or surges, fault or negligence of Customer (or any of Customer's employees, contractors or other agents) or causes external to the Products;
 - ii. Products that have been changed, modified or altered by Customer or any third party;
 - iii. Customer's failure to maintain a proper operating environment for any Product(s);
 - iv. Customer's failure to follow manufacturer's installation, operation or maintenance instructions;
 - v. Failure of products not covered under this Maintenance Agreement; or failure of Products covered by the Maintenance Agreement that are caused by the failure of a non-covered product;
 - vi. Any of the following force majeure conditions: fire, disturbances, acts of civil or military authorities or the public enemy, acts of God, tornado, hurricane, lightning and other inclement weather factors, electrical surges, fuel or energy shortages, acts or omissions of communications carriers or other causes beyond Customer's control, whether or not similar to the foregoing;
 - vii. Use of Products in violation of any license granted by a manufacturer or in a manner not consistent with such manufacturer's specifications or other user documentation; or
 - viii. Products that have not been designated by SKC as eligible for maintenance support. SKC reserves the right to add or delete eligible supported Products at its sole discretion.
- 2.3 Service Requests. Services provided by SKC to Customer for services excluded under the Maintenance Agreement are billable to Customer at SKC's then current rates. Any such services requests must be agreed upon by SKC in writing.

3. Customer Responsibilities

Customer will cooperate with SKC as reasonably necessary for SKC's performance of its services on the Products. Customer agrees to provide SKC authorized personnel access to Customer's premises where any Products will be repaired or replaced. Customer agrees to provide the proper environment and electrical and telecommunications connections for any repair or replacement of Products. Customer agrees to notify SKC of



any software/hardware upgrades, updates to, or additions of any new software and/or applications to the existing systems, if such upgrades and software/applications were purchased from an authorized dealer other than SKC.

- 3.1 Software and Firmware Updates. The labor to implement service packs, software and firmware updates are the responsibility of the Customer. Upon Customer's request, SKC will assist in the installation thereof at SKC's then current labor rates unless this service is included in the Service Agreement.
- 3.2 Avaya Log Files. If log files are required or requested by Avaya engineers for troubleshooting incidents on Avaya systems that run client and server logging, the Customer is responsible to obtain the required log(s) and submit the files to an Avaya-specified FTP site.
- 3.3 Permanent Remote Access. Customer must supply SKC with permanent remote administrator access to the switch for the duration of the Maintenance Agreement.

4. Documentation/Reports

Customer will document and report alleged malfunctions of Products (i.e., the failure of any Products to materially conform to the specifications published by the manufacturer in connection with such Products) to SKC in writing and in a reasonably detailed manner promptly following discovery of such malfunctions ("Defect Reports"). The Defect Reports must provide at least the following information: (i) Customer's name and location; (ii) an available telephone number and contact person for Customer; (iii) a detailed identification of the Products alleged to be malfunctioning; and (iv) a brief description and history of the malfunctions and any efforts to solve such malfunctions by Customer.

5. Invoicing and Payment

Customer shall pay SKC in accordance with fees and payment schedule specified in the Support Agreement and Master Agreement. SKC will invoice Customer for SKC's services under the Maintenance Agreement thirty (30) days in advance. Payment of any invoice is due within thirty (30) days from the date of the invoice. SKC shall have no responsibility whatsoever for performing maintenance services at any time in which Customer is delinquent in any fees due and owing to SKC. Support Advantage (if applicable) will commence and be chargeable as follows: Support will commence on the first day of the second month following Supported Products order closure. Support for additional Supported Products, including licenses, (after initial commencement of support) will commence on the first day of the month following order shipment for the additional Supported Products and licenses.

- 5.1 True-ups. SKC may perform true-ups to determine if additional hardware and/or software licenses have been added to supported Products and bill for any additional fees that are applicable.
- 5.2 Re-initiation. A re-initiation fee will apply to reinstate support when coverage has lapsed. The new support coverage is based on the total number of licenses, servers or gateways (as applicable based on the relevant billing metric) to be covered. The re-initiation fee is a one-time fee equal to 25% of the first year of the new support coverage. The applicable re-initiation fee will be invoiced and payable with the first billing of the new coverage. Note: 1) The re-initiation fee is subject to change at any time. 2) Re-initiation fees are not discountable. 3) Time and Materials (T&M) support is not available if a support contract has lapsed. 4) New support coverage sold to customers for products that have not had support coverage for more than 12 months are not subject to re-initiation fees.

6. Term and Termination

- 6.1 Term. The Maintenance Agreement shall commence on the Contract Start Date set forth in the Maintenance Agreement and continue for the term provided therein. Services will be renewed automatically for successive one year terms applying the then most similar current generally available support plan offering at the then current rates (based on then current system configuration), unless either party gives the other written notice of its intent not to renew at least 60 days prior to the expiration of the applicable initial or renewal term.
- 6.2 End of Support. SKC may discontinue or limit the scope of maintenance services for Products that SKC or the third party manufacturer has declared “end of life,” “end of services,” “end of support,” “manufacturer discontinue” or similar designation (“End of Support”). SKC targets posting of End of Support notifications at least six (6) months in advance of the End of Support date. End of Support will be effective as of the effective date of the End of Support notice. SKC also may provide End of Support notices by email to email addresses that Customer has registered with SKC. If Services are discontinued for a Product, it will be removed from the order and rates will be adjusted accordingly. For certain Products subjected to End of Support, SKC may continue to offer a limited set of maintenance services (“Extended Support”). Where SKC has chosen to do this, this description of Extended Support available and related fees will be available at the time of SKC’s notice. These notices will communicate information such as Extended Support eligibility, extended support alerts related to parts shortages, and end of Services coverage eligibility (including Extended Support).
- 6.3 Termination for Convenience. Customer may terminate this Agreement without cause at any time upon thirty (30) days written notice to SKC, subject to payment of a cancellation fee to SKC equal to the maintenance service charges which



would have been due for the remainder of the then-current term. In the event Customer terminates this Agreement, Customer shall not receive a refund of any fees paid to SKC prior to such termination. SKC may also terminate this Agreement without cause at any time upon thirty (30) days written notice to Customer. In the event SKC terminates pursuant to this Section 8.3, Customer shall receive a refund of any pre-paid fees not yet earned by SKC and shall have no further responsibility for fees to SKC following termination except fees accrued prior to termination.