

**SHIPPING INSTRUCTIONS**

Supplier is responsible for all incurred custom and brokerage charges if Avaya instructions are not followed. The supplier invoice must have the harmonized tariff schedule code (HTSUS) for each product shipped. All shipments imported into the U.S. must be cleared in Memphis TN by Avaya's U.S. Customs broker, CEVA Logistics 919-572-4948.

- For question regarding entries into the Port of New York, CEVA Logistics 919-572-4948
- For questions regarding entries coming south from Canada, which are cleared in, CEVA Logistics 919-572-4948
- For questions regarding entries coming north from Mexico, which are cleared in CEVA Logistics 919-572-4948
- When FedEx Express is the freight forwarder, Fed Ex Express will clear its own shipments in customs.

All shipments imported into Canada should be cleared by Avaya's Canada broker, Livingston International Inc, who can be contacted by email at [AvayaCanada@livingstonintl.com](mailto:AvayaCanada@livingstonintl.com). Please email general transportation-related questions to [transport@avaya.com](mailto:transport@avaya.com).

**INVOICE INQUIRIES**

To check your invoice status, please go to [www.avaya.com/commerce/supplier](http://www.avaya.com/commerce/supplier) PO Terms NAR 05-22-15.doc

**TERMS AND CONDITIONS** The following terms and conditions, together with the terms and conditions on any Attachments and the face of the attached Purchase Order form the entire agreement (hereinafter the "Agreement") between Avaya Inc. and its worldwide affiliates (collectively "Avaya") and the Supplier, and shall be deemed to be accepted by the Supplier upon commencement of performance hereunder. "Attachment" means the attachments listed below, the terms of which Supplier agrees to abide by. Unless attached to this Agreement, the Attachments can be found at <http://www.avaya.com/usa/about-avaya/doing-business/supplier-information/>. As of the effective date, the Attachments are as follows: (a) Travel Policy, (b) Vendor Privacy Standards, (c) Security Guidelines for Consultants, (d) Supplier Code of Conduct, (e) Income Tax Withholding Requirements and any agreed upon Statement of Work.

**ACCEPTANCE/ENTIRE AGREEMENT** - Acceptance of this offer to purchase by acknowledgment, shipment or other performance shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions of this Agreement. All previous offers by Supplier are hereby rejected. Acceptance of materials, software or services, payment or any inaction by Avaya shall not constitute Avaya's consent to or acceptance of any such terms. Upon acceptance, the terms contained in this Agreement shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and the order(s) and shall not be modified or rescinded, except by a writing signed by Supplier and Avaya. If a separate written agreement is referenced on the face of this order ("Prior Agreement"), the terms and conditions of the Prior Agreement shall supersede the terms and conditions of this Agreement to the extent there is a conflict or inconsistency. All invoice terms and conditions and other Supplier terms and conditions do not form part of this Agreement and are rejected and without effect. .Estimates or forecasts furnished by Avaya shall not constitute commitments. All material, software and services will be purchased/licensed on an "as ordered" basis. The provisions of this Agreement and any Prior Agreement supersede all contemporaneous oral agreements and all prior oral and written communications and understandings of the parties with respect to the subject matter of this Agreement with respect to this order. The relationship between Avaya and Supplier is that of customer and independent contractor. .

**ASSIGNMENT** - Supplier shall not assign or delegate any right, interest or obligation under this Agreement (excepting solely for moneys due or to become due) without the prior written consent of Avaya.

**CHANGES** - Avaya may at any time during the progress of the work require additions, reductions or deviations (all hereinafter referred to as a "Change"). No Change shall be considered as an addition, reduction or deviation from the work nor shall Supplier be entitled to any compensation for work done pursuant to or in contemplation of a Change, unless made pursuant to a written Change Order issued by Avaya.

**COMPLIANCE WITH LAWS AND REGULATIONS** - Supplier and all persons furnished by Supplier shall comply at their own expense with all relevant laws, regulations, ordinances and codes including, but not limited to, all anti-bribery/anti-corruption laws and regulations. These laws and regulations include, but are not limited to, the UK Bribery Act and the U.S. Foreign Corrupt Practices Act. Supplier shall not engage Avaya or Avaya employees in any behaviors prohibited by anti-bribery/anti-corruption laws and regulations, including any payments or other activity barred by these laws and regulations.

Supplier warrants to Avaya that the products supplied comply with all legal and regulatory requirements associated with substance restrictions and markings of electronic and electrical equipment, batteries, and packaging, (e.g. the EU Directives for RoHS, REACH, Batteries, Packaging, and WEEE; China RoHS; California Proposition 65; etc.). Supplier also agrees to provide to Avaya Certificates of Compliance regarding its compliance with the RoHS and REACH, disclose its use of any substances exempted by the EU RoHS Directive and its roadmap to comply, as well as provide updated documents as new substances are added to either of these Directives or changes occur in Supplier's process that alter the information previously disclosed.

**CONFIDENTIAL INFORMATION** - Supplier will preserve the confidentiality of Avaya's confidential information and will not disclose Avaya's confidential information except as needed to perform its express obligations under this Agreement or if required by law, regulation, or court order. Supplier will limit access to Avaya's confidential information only to employees and authorized subcontractors who need to have access in order to perform under this Agreement. If a disclosure of confidential information is required by

law, Supplier will give Avaya as much notice as is reasonably practicable prior to disclosing the confidential information. Upon termination of this Agreement, Supplier will promptly either return or destroy all confidential information.

**FORCE MAJEURE** - Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, act of God, or other causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors. Supplier's liability for loss or damage to Avaya's material in Supplier's possession or control shall not be modified by this clause. When a party's delay or nonperformance continues for a period of at least fifteen (15) days, the other party may terminate, at no charge, this Agreement or an order under the Agreement.

**GOVERNING LAW AND DISPUTE RESOLUTION**- This Agreement and any claim, controversy or dispute between the parties and/or their affiliates arising out of or relating to the Agreement ("Disputes") will be governed by the applicable governing law identified in the table below (Column B) as determined in accordance with the respective ordering Avaya entity in Column A, excluding choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods. With the exception of Disputes related to orders placed by Avaya Inc., if a Dispute cannot be resolved through negotiation within a reasonable period of time, the parties agree to finally resolve the Dispute through binding arbitration to be held in accordance with the Rules of Arbitration of the arbitration institution identified in Column C of the table below ("Rules") by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed pursuant to such Rules. The arbitration will be conducted in the English language (or such other language agreed to by both parties) at the venue identified in Column D of the table. The arbitrator shall not have the authority to limit, expand or otherwise modify the terms of the Agreement. The ruling by the arbitrator will be final and binding on the parties and may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order. In addition and notwithstanding the foregoing, either party shall be entitled to take any necessary legal action, including without limitation seeking immediate injunctive relief from a court of competent jurisdiction, in order to protect its intellectual property and its confidential or proprietary information (including but not limited to trade secrets).

**(A) AVAYA ENTITY NAMED IN THE ORDER -- (B) GOVERNING LAW APPLICABLE -- (C) ARBITRATION INSTITUTION -- (D) ARBITRATION VENUE**

- Avaya Inc. -- State of New York, United States (no arbitration)
- Avaya Australia Pty Ltd -- State of New South Wales, Australia -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya (China) Communication Co. Ltd -- People's Republic of China -- China International Economic & Trade Arbitration Commission (CIETAC) -- Beijing
- Avaya (Dalian) Intelligent Communications Co. Ltd -- People's Republic of China -- China International Economic & Trade Arbitration Commission (CIETAC) -- Beijing
- Avaya (Shanghai) Enterprises Management Co. Ltd -- People's Republic of China -- China International Economic & Trade Arbitration Commission (CIETAC) -- Beijing
- Avaya Hong Kong Company Ltd -- Hong Kong S.A.R. -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya India Pvt Ltd -- India -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya Japan Ltd -- Japan -- Japan Commercial Arbitration Association -- Tokyo
- Avaya Korea Ltd -- South Korea -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya Macau Lda -- Macau S.A.R. -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya (Malaysia) Sdn Bhd -- Malaysia -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya New Zealand Ltd -- New Zealand -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya Philippines, Inc. -- Philippines -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Avaya Singapore Pte Ltd -- Singapore -- Singapore International Arbitration Centre (SIAC) -- Singapore
- Sierra Asia Pacific Inc., Taiwan Branch -- Taiwan -- Arbitration Association of the Republic of China - Taipei
- Sierra Asia Pacific Inc., Thailand Branch -- Thailand -- Singapore International Arbitration Centre (SIAC) -- Singapore

- PT Sierra Communication Indonesia -- Indonesia -- Singapore International Arbitration Centre (SIAC)-- Singapore
- Other Avaya entities not listed above -- Singapore -- Singapore International Arbitration Centre (SIAC) -- Singapore

IDENTIFICATION - The use of any trade name, trademark, service mark, insignia, symbol, logo, or any other designation or drawing of Avaya requires the previous written consent of Avaya

INDEMNITY - At Avaya's request, Supplier agrees to indemnify, defend and hold harmless Avaya, its customers, employees, directors and officers and successors and assigns (all referred to as "Indemnified Parties") from and against any liabilities, losses, damages, claims, fines, penalties and expenses (including reasonable attorney's fees) that arise out of or result from: (1) injuries or death to persons or damage to property, including theft, in any way arising out of or caused or alleged to have been caused by the services performed by, or material provided by Supplier or persons furnished by Supplier; (2) any alleged or actual infringement, wrongful use, or misappropriation of any copyright, patent, trademark, trade secret or other intellectual property or proprietary right by any services, software or materials furnished under this Agreement; (3) assertions under Workers' Compensation or similar acts made by persons furnished by Supplier; (4) violation of Applicable Laws, and/or (5) any failure of Supplier to perform its obligations under this Agreement.

Without limiting the foregoing obligations, if any service, software or material furnished by Supplier, or use of any of the foregoing becomes, or Supplier reasonably believes any of the foregoing may become, the subject of an infringement, wrongful use, or misappropriation claim, Supplier shall, at its own expense and option: (i) procure for Avaya the right to continue to use the affected services, software materials in the manner contemplated by this Agreement; (ii) re-perform the service so as to avoid infringement, wrongful use, or misappropriation, provided the service as re-performed is reasonably satisfactory to Avaya; (iii) modify the services, software, Services or material (without material loss of functionality) so that it no longer infringes, wrongfully uses, or misappropriates any third-party intellectual property or proprietary right; or (iv) replace or modify the services, software or materials with a replacement or version that is non-infringing and non-misappropriating, provided that the replacement or modified version is substantially equivalent and reasonably satisfactory to Avaya; or (v) if none of the foregoing are commercially practicable to implement, refund to the Company two times the fees paid under the Agreement for the applicable service, software or material

Avaya shall give prompt notice of any such claims. Supplier shall not enter into or acquiesce to any settlement which would adversely affect Avaya without Avaya's prior written consent, which shall not be unreasonably withheld. Supplier shall keep Avaya advised of the status of the claims and the defense thereof and shall consider in good faith recommendations made by Avaya with respect thereto.

INSURANCE - Supplier, and any permitted subcontractors used by Supplier under this Agreement, will maintain the following minimum insurance limits and coverage during the term of the Agreement and for a period not less than two (2) years after the expiration or termination of this Agreement:

- All insurance required by any applicable law.
- Worker's Compensation and Employer's Liability insurance, covering each employee of the Supplier engaged in the performance of work under this Agreement, as follows:
  - Workers' Compensation – Statutory Limits
  - Employers Liability – If Compulsory.
- Commercial General Liability insurance, including coverage for contractual liability, products and completed operations, bodily injury and property damage with liability limits not less than \$1,000,000 per occurrence and annual aggregate.
- Automobile Liability insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under the Agreement, at compulsory limits.
- General Liability Insurance will designate Avaya, its Affiliates, and its directors, officers and employees as additional insureds.
- All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. Any other coverage available to Company will apply on an excess basis.

- Supplier and Supplier' subcontractors will furnish prior to the start of work a Certificate of Insurance to evidence the insurance requirement.

INVOICING FOR MATERIALS - Supplier shall: (1) render original invoice, or as otherwise specified in this Agreement, showing Agreement and order number, through routing and weight; (2) render separate invoices for each shipment within twenty-four (24) hours after shipment; and (3) mail invoices with copies of bills of lading and shipping notices to the address shown on this order. If prepayment of transportation charges is authorized, Supplier shall include the transportation charges from the FOB point to the destination as a separate item on the invoice stating the name of the carrier used. The materials shall be delivered free from all claims, liens, and additional charges whatsoever.

INVOICING FOR SERVICES - Supplier's invoices shall be rendered upon completion of the work and shall be payable when the work has been performed to the satisfaction of Avaya. The work shall be delivered free from all claims, liens, and charges whatsoever. Avaya reserves the right to require, before making payment, proof that all parties furnishing labor and materials for the work have been paid.

#### PROVISIONS APPLICABLE TO US GOVERNMENT CONTRACTS

##### Commercial Item Acquisition Flow-Downs.

This Agreement is subject to the requirements of Title 41 of the United States Code of Federal Regulations (CFR) §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. To the extent Avaya could utilize Solutions to perform its obligations under a U.S. Government prime contract or subcontract, Supplier certifies it will comply with the Federal Acquisition Regulation (FAR) clauses listed at Title 48 CFR 52.244-6 in effect at the time Avaya issues an Avaya PO, which are hereby incorporated by reference and made a part of the Agreement as if fully set forth herein. The current list of clauses contained in FAR 52.244-6 is specified along with the full text at <https://www.acquisition.gov/>. Supplier further certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any U.S. federal agency and shall immediately notify Avaya of any relevant change in status.

- i. The following additional FAR clauses also apply:
  - (a) 52.202-1 Definitions (Dec. 2001)
  - (b) 52.212-5 Contract Terms and Conditions required to Implement Statutes or executive Orders- Commercial items (Jan 2020)
  - (c) 52.222-54 Employment Eligibility Verification (Oct 2015)
  - (d) 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)

#### OWNERSHIP OF WORK PRODUCT.

All right, title and interest in and to any deliverables that result from the provision of services including, but not limited to any software (in source or object code format), documentation, table structures, forms, reports, visual or audio recordings, graphical designs, utilities, tools, methodologies, specifications, techniques, and or other materials or know-how developed by or on behalf of Supplier under this Agreement, whether prepared on or off Avaya premises, including any intellectual property rights therein (collectively "Deliverable Intellectual Property Rights"), shall become the sole and exclusive property of Avaya as a work made for hire. If the deliverables or Deliverable Intellectual Property are not considered works made for hire owned by Avaya by operation of law,

Supplier hereby fully and irrevocably assigns to Avaya the ownership of all rights, titles and interests in such items, including but not limited to copyrights, discoveries, formulas, processes, designs, trade secrets, patents, and other useful information and know-how, including any derivative works, enhancements, updates, improvements, or modifications thereto. Supplier agrees to perform, during and after the term of this Agreement, all acts deemed necessary or desirable by Avaya, its designees, or assignees to permit and assist Avaya, in evidencing, perfecting, obtaining, maintaining, and enforcing, Avaya's rights and/or Supplier's assignment with respect to such assigned rights in any and all countries. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in legal proceedings.

Supplier agrees to give Avaya, its designees, or assignees all assistance reasonably required to perfect such rights, titles and interests. Supplier agrees to disclose upon creation or promptly thereafter to Avaya all inventions, copyrights, discoveries, formulas, processes, designs, trade secrets, know-how or other intellectual property made, discovered or developed by Supplier alone or in conjunction with any other person or entity during the term of this Agreement that are based on, derived from or make use of any Confidential Information or any other information disclosed to or acquired by Supplier during the term of the Agreement and all such information shall be deemed Confidential Information.

#### PAYMENT TERMS

All invoices will be accumulated for a period from the 1st day of a calendar month to the last day of the calendar month ("Accumulation Period"). Company will initiate payment for undisputed invoices collected during the Accumulation Period in the first payment cycle of the month nearest to sixty (60) days following the end of the Accumulation Period.

SHIPPING - Supplier shall: (1) ship the material covered by this order complete unless instructed otherwise; (2) ship to the designated destination; (3) ship according to routing instructions given by Avaya; (4) place the order number on all subordinate documents; (5) enclose a packing memorandum with each shipment and, when more than one package is shipped, identify the package containing the memorandum; and (6) mark the order number on all packages and shipping papers. Adequate protective packing shall be furnished at no additional charge and all material purchased, repaired, replaced, or refurbished under this Agreement shall be packed in containers which meet industry best practices or applicable law, whichever is stricter. Shipping and routing instructions may be furnished or altered by Avaya without a writing. If Supplier does not comply with the terms of the FOB clause of this order or with Avaya's shipping or routing instructions, Supplier authorizes Avaya to deduct from any invoice of Supplier (or to charge back to Supplier), any increased costs incurred by Avaya as a result of Supplier's noncompliance.

SOFTWARE LICENSE GRANT - Supplier hereby grants to Avaya a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid-up license under all necessary intellectual property rights to: (i) use, make, execute, adapt, translate, reproduce, display, perform, and distribute (internally and/or externally) copies of the software licensed hereunder for Avaya's internal business purposes, and (ii) authorize others to do any, some, or all of the foregoing on behalf of Avaya.

SUPPLIER'S EMPLOYEES AND SUBCONTRACTORS - Supplier shall not delegate or subcontract any work or other obligation under this Agreement without the prior written consent of Avaya. Supplier shall be responsible to Avaya for all work performed by Supplier's subcontractor(s) at any tier. All persons furnished by Supplier shall be considered solely Supplier's employees or agents, and Supplier shall be responsible for payment of all unemployment, social security and other payroll taxes, including contributions when required by law. All Supplier personnel performing Services on Avaya or Avaya customer premises (Onsite Personnel) must comply with the Security Guidelines for Consultants available at <https://www.avaya.com/en/about-avaya/doing-business-with-avaya/> and as amended by Avaya from time to time and any other applicable requirements. To the extent permitted by local law, Supplier shall ensure that background checks are conducted on Onsite Personnel. The background checks performed must be of appropriate type and nature for the type of Services performed. Upon request Supplier will make available to Avaya copies of records to verify that background checks were conducted.

SUPPLIER'S INFORMATION - Supplier shall not provide under, or have provided in contemplation of, this Agreement any idea, data, program, material, technical, business or other intangible information, however conveyed, or any document, print, tape, disc, semiconductor memory or other information-conveying tangible article, unless Supplier has the right to do so, and Supplier shall not view any of the foregoing as confidential.

SURVIVAL OF OBLIGATIONS - The obligations and rights of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement including, but not limited to, the following Sections: Ownership of Work Product, Warranty, Limitation of Liability, Software License Grant, Indemnity and Confidential Information.

TAXES - Avaya shall reimburse Supplier only for the following tax payments with respect to transactions under this Agreement: state and local sales and use taxes or Value Added Taxes (or similar) as applicable. Taxes payable by Avaya shall be billed as separate items on Supplier's invoices and shall not be included

PO Terms NAR, version 08/21

in Supplier's prices. Avaya shall have the right to have Supplier contest any such taxes that Avaya deems



improperly levied at Avaya's expense and subject to Avaya's direction and control. Avaya will not reimburse Supplier for such taxes if Avaya advises Supplier that an exemption applies.

Avaya will not be responsible for any Taxes based or due on net income of Supplier. It is agreed that Avaya will not make payment to Supplier until the applicable Statements from the Income Tax Withholding Requirements Attachment are fully completed and returned to Company (including the provision of the relevant original tax certificate where reduced Double Taxation Treaty rates of withholding may be applied). Income Tax Withholding Requirements may be found at <http://www.avaya.com/usa/about-avaya/doing-business/supplier-information/> or such successor site as designated by Company. If Company is required by law to withhold taxes from any payment based on information provided by Supplier, then the amount of the payment due from Company to Supplier shall be equal to: (i) the payment which would have been due if no withholding tax was required, less (ii) the required withholding tax. If it is subsequently determined that any portion of any amount paid to the Supplier is subject to withholding taxes, Company will remit such withholding taxes and any applicable interest, late payment charges or penalties to the appropriate taxing authority and the Supplier will promptly reimburse Avaya for (i) the amount of such withholding tax and (ii) any such interest, late payment charges or penalties, if the failure or delay in withholding tax remittance was due, in whole or in part, to Supplier's or its representative's action or inaction.

**TITLE AND RISK OF LOSS** - Title and risk of loss and damage to material purchased by Avaya hereunder shall vest in Avaya when the material has been delivered at the FOB point. If this Agreement or an order issued pursuant to this Agreement calls for additional services to be performed after delivery, Supplier shall retain title and risk of loss and damage to the material until the additional services have been performed. If Supplier is authorized to invoice Avaya for material upon shipment or prior to the performance of additional services, title to material shall vest in Avaya upon payment of the invoice, but risk of loss and damage shall pass to Avaya when the additional services have been performed.

**TERMINATION** - Avaya may at any time terminate this Agreement or an order, in whole or in part, by written notice to Supplier. In such case, Avaya's liability shall be limited to payment of the amount due for work performed and all software and materials delivered up to and including the date of termination. Avaya shall immediately be reimbursed for any pre-payments made for unperformed services or undelivered materials or software.

**TOOLS AND EQUIPMENT** - Unless otherwise specifically provided in this Agreement, Supplier shall provide all labor, tools and equipment (the "tools") for performance of this Agreement. Avaya is not responsible for the safekeeping of Supplier's property on Avaya premises. Supplier shall take all precautions necessary to protect Avaya's equipment and other property from damage due to Supplier's performance of the work. Should Supplier actually use any tools owned or rented by Avaya, Supplier acknowledges that Supplier accepts the tools "as is, where is" and that Supplier shall have risk of loss and damage to such tools. Supplier agrees not to remove the tools from Avaya's or its customer's premises, to use tools only for the work hereunder, and to return the tools to Avaya upon completion of use, or at such earlier time as Avaya may request, in the same condition as when received by Supplier, reasonable wear and tear excepted.

**USE OF INFORMATION** - Supplier shall view as Avaya's property any idea, data, program, technical, business or other intangible information, however conveyed, and any document, print, tape, disc, tool, or other tangible information-conveying or performance-aiding article owned or controlled by Avaya, and provided to, or acquired by, Supplier under or in contemplation of this Agreement (Information). Supplier shall, at no charge to Avaya, and as Avaya directs, destroy or surrender to Avaya promptly at its request any such article or any copy of such Information. Supplier shall keep Information confidential and use it only in performing under this Agreement and obligate its employees, subcontractors and others working for it to do so, provided that the foregoing shall not apply to information previously known to Supplier free of obligation, or made public through no fault imputable to Supplier.

**WAIVER** - No failure to exercise and no delay or partial exercise of a right or power conferred upon a party under the terms of this Purchase order will operate as a waiver of such right or power.



WARRANTY - Supplier warrants to Avaya and its customers that software and material furnished will be new, merchantable, free from defects in design, material and workmanship and will conform to and perform in accordance with the documentation, specifications, drawings or other requirements. These warranties extend to the future performance of the software and material and shall continue for the longer of (a) the warranty period applicable to Avaya's sales to its customers of the software or material or (b) one year after the software or material is accepted by Avaya. Supplier also warrants to Avaya and its customers that services will be performed in a workmanlike manner in accordance with any applicable industry standards, specifications and/or Statement of Work. If material furnished contains manufacturers' warranties, Supplier hereby assigns such warranties to Avaya and its customers. All warranties shall survive inspection, acceptance and payment. Material, software and services not meeting the warranties will be, at Avaya's option, returned for or subject to refund, repaired, replaced or re-performed by Supplier at no cost to Avaya or its customers and with transportation costs and risk of loss and damage in transit borne by Supplier. Repaired and replacement software and material shall be warranted as set forth above in this clause.

LIMITATION OF LIABILITY - IN NO EVENT WILL AVAYA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF AVAYA HAS BEEN advised OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. IN NO EVENT WILL AVAYA'S aggregate LIABILITY TO SUPPLIER UNDER THIS AGREEMENT EXCEED THE FEES FOR THE APPLICABLE SERVICES, SOFTWARE OR MATERIALS.