



END USER LICENSE AND WARRANTY (General)
(United States)
For Customer Purchases from a Reseller

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

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

1. AVAYA WARRANTY

1.1 Avaya Warranty. Avaya warrants to End User that during the applicable warranty period, the Products will conform to and operate in accordance with the applicable “Documentation” in all material respects. The term “Documentation” means Avaya’s information manuals containing operating instructions and performance specifications that Avaya or its suppliers generally makes available to users of its Products and/or is delivered with the Products. Documentation does not include marketing materials. The Products are not fault-tolerant and are not designed, manufactured or intended for any use requiring fail-safe performance in which the failure of a Product could lead to death, serious personal injury, severe physical or environmental damage (“High Risk Activities”). This includes the operation of aircraft or nuclear facilities. End User agrees not to use, or license the use of, the Products in connection with any High Risk Activities

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

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

(ii) **Other Products:** with regard to Products that do not have an Avaya registration program available, the warranty period is the greater of (a) the Specified Warranty Period (as defined below) plus three (3) months from the Shipment Date (as defined above), or (b) the Specified Warranty Period beginning on the proof of purchase date from the authorized Avaya distributor (the “Distributor”) from which Reseller purchased the Product, not to exceed eighteen (18) months from the Shipment Date.

(iii) **Specified Warranty Period.** Unless a different period is specified in the applicable Order the “Specified Warranty Period” is (a) twelve (12) months for Hardware, beginning on the In-Service Date for Hardware installed by Avaya’s employees, independent contractors (including Resellers) and/or subcontractors and on the Shipment Date for all other Hardware and (b) 90 days for Software, beginning on the In-Service Date for Software installed by Avaya’s employees, independent contractors (including Resellers) and/or subcontractors and on the Shipment Date for all other Software. “In Service Date” means the date on which Avaya’s employees, independent contractors and/or subcontractors (including Resellers) install the Products at the End User’s premises. “Hardware” means the standard hardware products that End User orders or Avaya delivers under the Agreement. “Software” means the computer programs in object code form that End User orders or Avaya delivers under the Agreement, whether as stand-alone products or pre-installed on Hardware. Hardware or Software does not include any customized deliverables that Avaya creates specifically for End User

1.3 Warranty Exclusions. The warranties do not extend to any damages, malfunctions, or non-conformities caused by (i) use of the Products in violation of the license granted by Avaya or in a manner inconsistent with the Documentation; (ii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iii) any failure to follow installation, operation or maintenance instructions; (iv) failure to permit Avaya or its suppliers timely access, remote or otherwise, to Products; (v) failure to implement all new Updates (defined below) to Software; (vi) Products that have had their original manufacturer’s serial numbers altered, defaced or deleted; (vii) Products that have been serviced or modified by a party other than Avaya or a Reseller. An “Update” is a change in the software that typically provides maintenance correction only and is designated as a change in the digit to the right

of the second decimal point (e.g. n.y.[z]).

1.4 Products from Third Parties. End User’s decision to acquire or use Third Party Products is End User’s sole responsibility, even if Avaya or a Reseller helps End User identify, evaluate or select them. For purposes of this Agreement, “Third Party Products” shall mean any products manufactured by a party other than Avaya, and may include, without limitation, products ordered by End User from Reseller pursuant to Avaya’s recommendations. However, components of Avaya-branded Products are not Third Party Products if they are both: (i) embedded in Products (i.e., not recognizable as standalone items); and (ii) are not identified as separate items on Avaya’s price list, quotes, order specifications forms or Documentation. AVAYA IS NOT RESPONSIBLE FOR, AND WILL NOT BE LIABLE FOR, THE QUALITY OR PERFORMANCE OF SUCH THIRD PARTY PRODUCTS.

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

1.6 Geographic Scope. The warranty in this Section 1 shall apply only within the United States.

1.7 Disclaimers. EXCEPT AS SET FORTH IN THIS SECTION 1, NEITHER AVAYA NOR ITS SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES, AND AVAYA AND ITS SUPPLIERS DISCLAIM THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. AVAYA AND ITS SUPPLIERS DO NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS.

1.8 Warranty Procedures and Remedies. If a Product does not conform with the warranty above, End User shall notify Reseller in writing within the applicable warranty period, describing in reasonable detail how the Product failed to be in conformance and including evidence that the Product is under warranty. Avaya at its option will (i) repair or replace the nonconforming Product, or (ii) refund to the End User or the authorized Avaya distributor (“Distributor”) the purchase price and/or license fee paid to Avaya by Distributor upon the return of the nonconforming Product to Avaya. Under no event will Avaya be obligated to refund any amounts in excess of the purchase price and/or license fee paid to Avaya for the nonconforming Product. If Avaya elects to replace the nonconforming Product, End User shall return the nonconforming Product to Reseller in accordance with Avaya’s standard product return procedures. Replacement Products may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned Hardware that has been replaced by Avaya will become Avaya’s property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period. THESE REMEDIES ARE END USER’S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES END USER MAY HAVE AGAINST AVAYA OR ITS SUPPLIERS WITH RESPECT TO THE NONCONFORMANCE OF PRODUCTS.

2. SOFTWARE LICENSE

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

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2.6 Audit and Remote Access. At Avaya's request and upon reasonable notice, Avaya will have the right to inspect and audit End User's compliance with these license terms during normal business hours, but no more than once annually. End User will cooperate with the audit and will grant assistance and access to applicable records, materials, equipment, and personnel. In addition, End User will provide remote access to its systems to Avaya to enable Avaya to electronically audit End User's compliance with the license terms. If an audit reveals that the End User possesses or at any time possessed unlicensed copies of the Software or use of the Software beyond the licensed features or capacity restrictions, End User will pay Avaya the applicable license fees immediately upon request.

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

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mail or voice mail account in the name of a person or corporate function (e.g., webmaster or helpdesk), or a directory entry in the administrative database utilized by the Product that permits one user to interface with the Software. Units may be linked to a specific, identified Server.

2.7.3 Database License (DL). End User may install and use each copy of the Software on one Server or on multiple Servers provided that each of the Servers on which the Software is installed communicate with no more than a single instance of the same database.

2.7.4 CPU License (CP). End User may install and use each copy of the Software on a number of Servers up to the number indicated by Avaya provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the Software. End User may not re-install or operate the Software on Server(s) with a larger performance capacity without Avaya's prior consent and payment of an upgrade fee.

2.7.5 Named User License (NU). End User may: (i) install and use the Software on a single Designated Processor or Server per authorized Named User (defined below); or (ii) install and use the Software on a Server so long as only authorized Named Users access and use the Software. "Named User" means a user or device that has been expressly authorized by Avaya to access and use the Software. At Avaya's sole discretion, a "Named User" may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Product that permits one user to interface with the Product.

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

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