



**WARRANTY
(United States)**

For End User Purchases from a Reseller

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.