



**AVAYA LIMITED WARRANTY FOR PRODUCTS AND INSTALLATION SERVICES**

(United States Only)  
06/16/2005

**Warranty.** Avaya warrants to Customer that during the applicable warranty period, the Product will conform to and operate in accordance with the applicable Documentation in all material respects. To the extent that Avaya performs installation services with respect to the Products, Avaya warrants that those installation services will be carried out in a professional and workmanlike manner by qualified personnel.

**Warranty Period.** Unless a different period is specified in the applicable order, the warranty periods for Products and Installation Services are as follows: *Hardware:* twelve (12) months, beginning on the In-Service Date for Avaya-installed Hardware and on the Delivery Date for all other Hardware; *Software and software media:* ninety (90) days, beginning on the In-Service Date for Avaya-installed Software and on the Delivery Date for all other Software; *Installation Services:* thirty (30) days from the performance of the applicable installation services.

**Remedies.** *Products.* If the Product is not in conformance with the above warranty and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, Avaya at its option will: (i) repair or replace the Product to achieve conformance and return the Product to Customer; or (ii) refund to Customer the applicable Fees upon return of the non-conforming Product to Avaya. For Software warranty claims, Customer must provide Avaya with information in sufficient detail to enable Avaya to reproduce and analyze the failure and must provide remote access to the affected Products. 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 Returned Hardware that has been replaced by Avaya will become Avaya's property.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 are warranted as above for the remainder of the original applicable Product warranty period.

*Installation Services.* To the extent that Avaya has not performed Installation Services in conformance with the above warranty, and Avaya receives notice from Customer identifying the non-conformance within thirty (30) days of its occurrence, Avaya will re-perform the non-conforming Installation Services. If Avaya determines that re-performance is not commercially reasonable, Avaya will refund to Customer the Fees for the non-conforming Installation Services.

THESE REMEDIES WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NONCONFORMANCE OF PRODUCTS.

**Warranty Exclusions.** 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 by Avaya to the Customer 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) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (iv) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; (v) failure to implement all new released to Software provided or made available under the sales agreement; (vi) Products that have had their original manufacturer's serial numbers altered, defaced or deleted; and (vii) Products that have been serviced or modified by a party other than Avaya or an authorized Avaya reseller.

**Products from Third Parties.** Customer's decision to acquire or use products from third parties is Customer's sole responsibility, even if Avaya helps Customer identify, evaluate or select them. AVAYA IS NOT RESPONSIBLE FOR, AND WILL NOT BE LIABLE FOR, THE QUALITY OR PERFORMANCE OF SUCH PRODUCTS OR THEIR SUPPLIERS.

**Toll Fraud.** Avaya does not warrant that Products or Services will prevent Toll Fraud. Prevention of Toll Fraud is the responsibility of Customer. The term Toll Fraud means unauthorized use of telecommunications services or facilities accessed through or connected to Products.

**Warranty Procedures.** Products subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions, accompanied by evidence satisfactory to Avaya that the Products remain entitled to warranty protection. 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 rates.

**Disclaimers.** EXCEPT AS REFERENCED AND HEREIN, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES OR OTHERWISE RELATED TO THE SALES AGREEMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL WARRANTIES IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE ACTUAL SALES CONTRACT MAY CONTAIN FURTHER LIMITATIONS OR EXCEPTIONS, AS WELL AS A DESCRIPTION OF THE PARTIES' LIMITATIONS OF LIABILITY.

### **Definitions**

**"Delivery Date"** means the date on which Avaya or an authorized Avaya reseller delivers the Products: (i) to Customer's premises in the United States (Avaya-installed Products); or (ii) to a carrier for shipment (other Products). In the case of Software features that can be enabled by Avaya remotely or delivered via electronic means, "Delivery Date" means the date the features are enabled or the Software is downloaded to the target processor.

**"Documentation"** means Avaya's information manuals in printed or electronic form containing operating instructions and performance specifications that Avaya

generally makes available to users of its Products and Avaya delivers to Customer with the Products. Documentation also includes statements of work delivered by Avaya to Customer with respect to installation services. Documentation does not include marketing materials.

**"Fees"** means the purchase price, license and services fees and other charges owed by Customer to Avaya or the authorized Avaya reseller according to the applicable order specifications form and the terms of the sales agreement.

**"Hardware"** means the standard hardware products that Customer orders or Avaya or an authorized Avaya reseller delivers under the applicable sales agreement. Hardware does not include any customized deliverables created specifically for Customer on a time and materials basis or on a milestone basis.

**"In Service Date"** means the date on which Avaya or an authorized Avaya reseller notifies Customer that the Avaya-installed or reseller-installed Products are installed in good working order in accordance with applicable Documentation.

**"Products"** means any combination of Hardware, Software and Documentation.

**"Software"** means the computer programs in object code form that Customer orders or Avaya or an authorized Avaya reseller delivers under the applicable sales agreement, whether as stand-alone products or pre-installed on Hardware. Software does not include any customized deliverables created specifically for Customer on a time and material basis or on a milestone basis.