
Service Description

Device As a Service (DaaS)

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Version 6.2

1.0 About this Document

This Service Description is intended for Avaya customers (“Customers”). This Service Description includes an overview of the Device as a Service (“DaaS”) offer as well as details of specific aspects of the offer. Use of DaaS is governed by this Service Description and the terms and conditions of your written or online agreement with Avaya or an Avaya partner (“Agreement”). In the event of a conflict between the terms of this Service Description and the terms of the Agreement, the terms of this Service Description will prevail for DaaS solely to the extent of the conflict.

Avaya reserves the right to change this Service Description from time to time at its discretion. Avaya posts the most current Service Description at: <https://support.avaya.com/helpcenter/getGenericDetails?detailId=C2012112916262543043> or a successor link as designated by Avaya. Customer is responsible for periodically monitoring the foregoing link.

1.1. Delivery Models

Avaya DaaS is delivered by Avaya and the Avaya DaaS offer can be sold directly to Customers by Avaya, or through an Avaya authorized partner.

2.0 About Avaya DaaS

2.1. Overview

Avaya DaaS allows customers to obtain and use endpoint devices as a service without the need for upfront costs of capital expenditure as the endpoint device is owned by Avaya. Additionally, the DaaS offer includes support for when the device is faulty or requires replacement by leveraging Avaya’s Parts Replacement service.

2.2. Endpoint Devices

Customers can take advantage of the DaaS offer irrespective of whether their environment already includes Avaya endpoints or whether they are a greenfield location deploying endpoints for the first time.

The DaaS offer includes many of Avaya’s latest SIP devices and may add new devices as they are launched to the market. The offer currently includes:

- Avaya Essential Experience: J139, J159, J179, and J189
- Avaya Conferencing Experience: B109 Conference Phone, B129 Speaker Phone, B169 IP DECT Wireless Conference Phone, IP DECT SC Base Station, B179, B189 and B199
- Avaya Vantage Experience: K155v3, K175v3
- Huddle Room: CU360, OCC Hub, HC010, HC020, HC050 and Avaya Room Camera RC100

In addition, certain major accessories, such as button modules and the Vantage Experience optional handsets are included in the offer.

2.2.1. Lifecycle of Avaya End-points

It is possible that a product available at the time of the DaaS order would transition during the subscription term to End of Sale (EOS) and through to End of Manufacturer Support (EoMS) which typically occurs

three years after EOS. Avaya reserves the right to replace a Customer's existing endpoint device with equal or similar functionality should their existing endpoint device reach EOS. If a device has reached End of Service Support, for replacement purposes it will be treated as End of Manufacturer Support, above.

2.2.2. Non-Avaya End-points

ATA's, cell phones and or computers used to support Avaya soft clients, as well as any other non-Avaya end points, are not included under Avaya's DaaS offer.

2.3. Shipping Lead Times and Export/Customs Additional Days

Endpoint shipment will follow standard country lead times plus additional days required for countries requiring export documentation. Please refer to the information below.

The Net Lead Time for the US is 3 days. The Net Lead Time for Canada is 6 days. Net Lead Time in other countries will be provided upon request.

Avaya may charge the Customer outgoing freight charges, but is not obligated to do so.

3.0 Support for Endpoint Devices

Avaya will perform support as part of the DaaS offer which includes remote technical support and parts replacement.

The Avaya support obligations are expressly conditional upon the products:

- Being properly installed per Avaya product specification
- Not being subject to unusual mechanical stress or unusual electrical or environmental conditions
- Not being subject to misuse, accident or disasters including, without limitation, fire, flood, water, wind, lightning, or other acts of God

3.1. Remote Technical Support for Endpoint Devices

Avaya will provide remote technical support and trouble shooting 24 x7 for those devices covered under a DaaS subscription.

During the applicable subscription term, Avaya will provide helpline support to Customers which includes answering any general usability questions regarding software or products and providing advice to help the Customer achieve a working solution. This may include directing Customers to sections of the documentation that may answer their question(s), clarifying the documentation, or recommending possible training courses.

The Customer has 24x7 around-the-clock access to an Avaya Service Center via the website (<http://support.avaya.com>) or telephone to request software and (where applicable) device support. Avaya may require that only Avaya-authorized Customer contacts are eligible to request support, verify the identity of Customer contacts requesting support and limit the number of authorized contacts. Avaya's remote support, including all electronic and telephone communications, is provided in the English language.

3.2.Exclusion from DaaS Endpoint Device Remote Technical Support

The following exclusions apply to the items included under DaaS support in addition the conditions listed in Section 3.0 above:

- Programming, administration or configuration changes
- Third party integration or applications
- Acts of nature
- Customer network outages and/or service providers issues
- Avaya installation of customer or partner installable patches
- Any customized system features, configuration changes, or reports
- The provision or installation of hardware upgrades or reprogramming to add additional capabilities or functionality to the covered device
- Services and all troubleshooting support not directly attributable to a fault in a covered device (including faults in the Customer's own network or the public network).

3.3.Parts Replacement for Endpoint Devices; Customer Return of Endpoint Devices

Customers, as part of the DaaS offer, will be entitled to invoke advance replacement of any endpoint device covered by a DaaS subscription. Replacement parts may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent.

Avaya requires that only authorized Customer contacts or authorized channel partners are eligible to request advance replacement of parts.

The authorized Customer contact or authorized channel partner must provide the Avaya Service Center with the following information when requesting a part:

- Avaya-provided Sold To
- Customer contact information
- Avaya description of the requested part
- Description/severity of the problem

Avaya may initiate additional troubleshooting and diagnostics via telephone or on-demand remote connection to confirm the component/device is inoperative. Avaya will confirm if the replacement part is a Critical Component or a Non-Critical Component. A replacement part will be shipped per the table set forth in Section 3.3.1 below.

Shipment and transportation of the advance replacement part will be coordinated using standard shipping services.

International shipments require customs clearance procedures that may delay scheduled delivery of the advance replacement part.

Avaya will ship the replacement part as detailed in Section 4.3, Delivery, of Section 10, Other Terms and Conditions, of this Service Description.

The Customer will ship the identified faulty part back to Avaya (DDP Incoterms 2010 unless otherwise agreed) at Avaya's expense to arrive within thirty (30) calendar days of issuance of an Avaya case number by Avaya in accordance with Avaya's then-current returned materials authorization (RMA) procedure as detailed in Section 3.4 below, using industry-standard material handling processes including the use of Electrostatic Discharge (ESD) preventive measures and protective packaging provided by Avaya.

If Avaya does not receive the returned part within thirty (30) calendar days of shipping a replacement part

to the Customer, the returned part does not match the part replaced by Avaya, the returned part does not match Avaya's registration record, or the returned part is not eligible for advance replacement, Avaya will invoice the Customer for the then-current list price of the non-returned devices, without deduction for depreciation. Failure to return defective parts may result in the suspension of future advanced parts replacement support from Avaya. If the defective part is returned to Avaya after the thirty (30) calendar day period, no credits or refunds will be issued against the invoice created.

Devices returned to Avaya for non-conformance issues, dead on arrival or epidemic failure conditions, and for which Avaya finds no errors or non-conformance after required testing, will be designated as No Trouble Found ("NTF"). For devices which are tested and determined not to be defective and do not require repair, Avaya will bill the Customer a NTF repair price. If the Supported Product was advance replaced, Avaya will retain the NTF Supported Product in addition to charging the NTF repair price.

Avaya reserves the right to suspend parts replacement under the circumstances of unusually high returns within a subscription greater than 1% of the number of endpoint devices under subscription, in order to investigate potential causes of failure.

3.3.1. Parts Coverage Hours

Avaya will use commercially reasonable efforts to arrange shipment of an advance replacement part according to the following chart.

Parts Next Business Day
If the request is received before 5:00 p.m. local site time during Standard Business Hours*, the replacement part is shipped to arrive the following business day.
If the request is received after 5:00 p.m. local site time during Standard Business Hours*, the replacement part is shipped to arrive in two (2) business days or later if a different delivery date is requested.

* Monday through Friday (or any other local period of five (5) consecutive working days according to local custom) between the hours of 8:00 a.m. and 5:00 p.m. in the time zone where the covered devices are located, excluding Avaya observed holidays (a list is available upon request).

3.3.2. Exclusions from Parts Coverage

The following exclusions apply to parts coverage in addition to the conditions listed in Section 3.0 above:

- Hardware replacement for damages or malfunctions caused by: (1) actions of non-Avaya personnel or the attachment of products not supported by Avaya; (2) failure to follow manufacturer's installation, operation, or maintenance instructions; (3) failure of products not covered under this Service Description; (4) abuse, misuse, or negligent acts of non-Avaya personnel; or (5) repair or modification of the product in any manner by Customer or its representatives, shall not be covered.
- Replacement of parts that are consumables, accessories or minor materials, including, but not limited to: batteries and headsets, wall brackets, rack mounting and other hardware kits, face plates, bezels, blank panels, designation strips, technical documentation, labels, and removable media.
- The provision or installation of hardware upgrades or reprogramming to add additional capabilities or functionality to covered devices.
- Onsite support. If the Customer's requirements necessitate an on-site technician, Avaya will dispatch a field technician to the Customer's site (where geographically available) subject to the Customer's express approval of time and material charges using Avaya's then current Maintenance

Per Incident rates, where available and appropriate.

Services that cannot be provided due to the Customer's failure to fulfill the Customer responsibilities detailed in the Customer Responsibilities section of this Service Description.

3.4. Contacting Avaya for Parts Replacement Support (RMA Procedure)

For parts replacement related support of endpoint devices covered under the DaaS subscription, Customer will contact the Avaya Service Center at <https://support.avaya.com>.

For information about the parts replacement process please refer to the following link:

<https://support.avaya.com/public/index?page=content&id=PRCS100597>

3.5. Device Endpoint Software Upgrade Policy

Customers are required to keep endpoint device software current and up-to-date using the latest available service packs and software releases for the endpoint devices found at <http://support.avaya.com>.

Customers have access to Product Correction Updates ("Update") issued by Avaya. An Update can be a Product Correction Notice (PCN), minor software or firmware update or service pack. Avaya will notify the Customer via <http://support.avaya.com> of any Avaya-recommended Updates.

At a minimum, if Avaya support is required the endpoint devices must be first upgraded to the latest available device software level.

4.0 Customer Responsibilities

Customer must provide the following in connection with DaaS:

- Customer-deployed Avaya environment which has completed onboarding and has been onboarded, certified and ready for production/live use.
- Customer has completed registration of the Avaya environment with remote connectivity including SAL gateway with external Internet access for remote connectivity.
- Any premises elements used in conjunction with the endpoints provided under the DaaS offer such as Application software, Platforms, Gateways and/or Local Survivable Nodes have already been registered and under Avaya maintenance support contracts.
- In advance of ordering the DaaS subscription, Customer must have determined what additional Avaya Services (implementation / configuration or enhanced maintenance or managed services) they require and these must be contracted and ready for production/live use.
- Implementation and configuration work required to enable the endpoint device to be brought into service. If the Customer requires additional on-site support or configuration support then this will be subject to additional charges from Avaya and/or an Avaya authorized partner. Customer has the option to use Avaya's standard Device Enrollment Service.

Customer is solely responsible for obtaining all inbound and/or outbound connectivity to Avaya. Customer shall provide or contract directly with third party telecommunications service providers for all connectivity.

5.0 Customer Training

Training is excluded from the Avaya DaaS offer. Any training services to be provided will be custom quoted and procured.

5.1. Customer Lab Environment

The DaaS offer can be used to cover device endpoints to be used in a lab environment.

Note: This does not relieve the Customer from its obligations to ensure that the devices can register and connect with Avaya back end systems.

6.0 Subscription Terms and Conditions

6.1. Subscription Length

Customers have their choice of subscription length, to best suit their business needs.

There are three options for the duration of the subscription:

- 12 months (1 year)
- 36 months (3 years)
- 60 months (5 years)

6.2. Renewal of Subscription

The DaaS subscription agreement will renew at the end of the initial term of coverage and any renewal term at then-current rates unless either party provides written notice of its intent not to renew such coverage at least 30 days prior to the renewal date. For Customers located in the United States or Canada, the renewal term duration will be the same duration as the expiring subscription. For all other Customers, the renewal term duration will be for one (1) year.

6.3. Cancellation

Avaya does not offer fee-free early cancellation options for the DaaS offer. In the case of early subscription cancellation, Customers must provide 30 days' advance written notice, and pay a lump sum payment (this is known as the early termination fee) per the schedule below, and must return the applicable devices:

- Fifty percent (50%) of the Fees owing for the remainder of the entire Term of the Order.

In the event of subscription cancellation, endpoint devices must be returned to Avaya, or at Avaya's option may be requested to be recycled in an environmentally sustainable way, with proof of recycling provided to Avaya. Avaya Reverse Logistics will contact the contract holder within 5 business days of cancellation to coordinate the return of endpoints. Packing materials such as boxes and pallets may be provided at no expense to the customer.

If Avaya does not receive the devices within 30 calendar days of subscription cancellation, the Customer will need to must provide a new purchase order number to Avaya's asset recovery team and Avaya will invoice Customer for the then-current list price of the non-returned devices, without deduction for depreciation.

6.4. End of Subscription Term

When the then current subscription term expires the subscription agreement will renew to a new at the then-current pricing unless the Customer or Avaya provides written notice of its intent not to renew thirty (30) days before expiration. For Customers located in the United States or Canada, the renewal term duration will be the same duration as the expiring subscription. For all other Customers, the renewal term

duration will be for one (1) year. In the event a party elects not to renew the subscription, the endpoint devices must be returned to Avaya.

Customers, at the end of the then current term, will also have the option to renew their subscription under new contract terms, with Avaya's latest available devices.

Endpoint devices of end of term subscriptions where Customer or Avaya has given notice of its intent not to renew must be returned to Avaya. Avaya Reverse Logistics will contact the contract holder, generally within 5 business days of termination, to coordinate the return of endpoints. Upon Customer's request, Avaya will provide packing materials such as boxes and pallets at no expense to the Customer.

Avaya will pay the return freight.

If Avaya does not receive the device within 30 calendar days of subscription termination, the returned device does not match the device provided by Avaya, or if the returned device does not match Avaya's registration record, the Customer must provide a new purchase order number to Avaya's asset recovery team and Avaya will invoice Customer for the then-current list price of the non-returned devices, without deduction for depreciation.

Avaya reserves the right to require environmentally sustainable recycling of the device and demonstration of a certificate of destruction, in lieu of device return, as and when determined by Avaya.

6.5. Changes to Type of Endpoint during Term

6.5.1. Uplift to Higher Value Endpoint Device

If a Customer would like to change devices during a subscription term, it is possible to do so, subject to availability. Customer can get a new higher value device, going from, for example a J139 to a J179. The new device would have a new monthly rate associated with it. The subscription term length would remain the same by default, though Customer may request a longer subscription term.

Uplift to a higher value device requires the return of the previous device. Early termination fees are waived in this scenario. A new subscription is established for the new devices and that subscription would have an expiration date coterminous with any devices which were not uplifted unless Customer requests a longer term.

6.5.2. Downgrade to Lower Value Endpoint Device

If a Customer would like to downgrade the devices they have subscribed to a lower priced device, it is possible to do so subject to payment of the early termination fee set forth in Section 6.3 above. Similar to the uplift case described above, the existing devices would be returned, however the early termination fee would not be waived in this case. A new subscription would be established with a co-terminus date of any devices remaining under the original contract.

6.6. Adding Devices to an Existing Subscription

Avaya will allow the addition of devices to an existing subscription. The additional devices will have the same expiration date as the original subscription.

7.0 Toll Fraud, PCI Compliance, and HIPAA

7.1. Toll Fraud

“Toll Fraud” is the unauthorized use of your telecommunications system or service by an unauthorized party (for example, a person who is not a corporate employee, agent, subcontractor, or is not working on your company's behalf). If Toll Fraud occurs, it can result in substantial additional charges for your telecommunications services. Avaya and its affiliates are not liable for Toll Fraud.

7.2. HIPAA and PCI Compliance

Avaya DaaS is not designed to be compliant with HIPAA or PCI. For our compliant solutions, including Avaya OneCloud Private hosted in a Customer data center, please contact Avaya for further information.

7.3. Emergency Service Notice and Disclaimer

For information regarding emergency calling or third party emergency services, including but not limited to 911 and E911 service, please refer to the specific product documentation available from Avaya for those products. For example, for J100 phones refer to the J100 product documentation, for Vantage refer to the Vantage product documentation.

IF CUSTOMER USES OR ACCESSES THE AVAYA DAAS, CUSTOMER WILL ACCEPT THE RESPONSIBILITY OF IT AND ITS END USERS USING DAAS IN COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING, BUT NOT LIMITED TO, THE TELEPHONE CONSUMER PROTECTION ACT AND ITS ASSOCIATED REGULATIONS PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION, AND APPLICABLE STATE TELEMARKETING LAWS AND REGULATIONS AS WELL AS APPLICABLE CALL RECORDING LAWS.

CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT IT WILL BE FULLY RESPONSIBLE FOR MAKING OR INITIATING CALLS USING DAAS AND THAT AVAYA PLAYS NO ROLE IN PURCHASING NUMBERS OR CALL LISTS FOR CUSTOMER OR DETERMINING WHEN OR WHETHER CUSTOMER CALLS A NUMBER. CUSTOMER FURTHER ACKNOWLEDGES THAT AVAYA DOES NOT DRAFT OR EDIT THE CONTENT OF ANY MESSAGE DELIVERED BY CUSTOMER DURING A CALL MADE USING AVAYA'S DAAS.

8.0 For Further Assistance

If you have questions regarding your Avaya DaaS subscription, please contact your Avaya Sales Account Manager or your supporting Avaya Authorized Channel Partner.

9.0 Additional Terms and Conditions

The following additional terms and conditions apply to the DaaS Services.

1. DEFINITIONS AND INTERPRETATION

The following terms will have the meanings assigned to them below:

1.1. “Authorized Country” means the countries in which the Customer is authorized to use DaaS.

- 1.2. **“DaaS”** means the Avaya ‘Device as a Service’ offer of licensing on a time-bound subscription service basis the use of certain DaaS Devices by Avaya or Resellers to Customers in an Authorized Country for a periodic fee.
- 1.3. **“DaaS Device” or “Device”** means one of the Avaya telephone handset devices and other related hardware listed in the DaaS Service Description available for license for use by Avaya or Reseller to Customer in accordance with the terms and conditions of this Service Description.
- 1.4. **“DaaS Customer” or “Customer”** means an end user customer purchasing DaaS from Avaya or a Reseller solely for internal business use and not for resale, sublease or sublicense.
- 1.5. **“DaaS Fee” or “Fee”** means a recurring subscription-based fee payable by Customer to Avaya or a Reseller for a time-bound license to use the DaaS Devices and related Support Services as described in this DaaS Service Description.
- 1.6. **“DaaS Order” or “Order”** means an order for DaaS issued by Customer to Avaya or a Reseller under this DaaS Service Description.
- 1.7. **“DaaS Software” or “Software”** means software made available by Avaya or Reseller subject to subscription-based fees that enable Avaya or Reseller to provide DaaS to Customer.
- 1.8. **“Delivery Date”** means: (i) for DaaS Devices, the date on which Avaya or Reseller delivers the DaaS Devices to the named delivery point in accordance with the applicable Incoterm as set out in this Service Description; or (ii) for DaaS Software that can be enabled by Avaya remotely or delivered by electronic means, the date on which Avaya or Reseller delivers the license key or any other tool allowing the features to be enabled, or the date on which the DaaS Software is downloaded to the target processor.
- 1.9. **“Documentation”** means Avaya's information manuals in printed or electronic form containing operating instructions and technical specifications that Avaya or its suppliers generally make available to users of its Products, excluding marketing materials.
- 1.10. **“Early Termination Fees”** means the fees payable by Customer due to an early termination of a DaaS Order as described in Section 12.2.
- 1.11. **“Reseller”** means a company authorized by Avaya to provide DaaS directly to Customers.
- 1.12. **“Support Services”** means the support services for DaaS Devices described in Section 9 below, which are incorporated into DaaS and are not sold separately.
- 1.13. **“Term”** means the term of the DaaS Order and any renewal terms thereof, as further detailed in Section 12.1 below. during which Avaya licenses the use of the DaaS Devices and related Support Services on a time-bound subscription basis subject to timely payment of DaaS Fees to Avaya or Reseller.
- 1.14. **“UCC”** means the Uniform Commercial Code as in effect in the state of New York from time to time.

2. AUTHORIZATION

Subject to the terms and conditions of this Service Description, Avaya or Reseller grants Customer a non-exclusive, non-transferable, limited license to the use of certain DaaS Devices, Software and related Support Services in an Authorized Country solely for its own internal business purposes. Any DaaS ordered is provided on a subscription basis only subject to timely payment of the applicable Fees.

3. DOCUMENTS AND DAAS ORDERS

3.1. DaaS Orders. Customer shall issue all Orders in accordance with the DaaS Service Description and the commercial sales terms and conditions between Avaya or Reseller and the Customer as specified in the Order. Customer shall explicitly reference the DaaS Service Description on any Order and use the Order form, if provided by Avaya or Reseller. If an Order is not submitted based on a form provided by Avaya, Customer shall also reference any other details that Avaya or Reseller may reasonably require from time to time. All Orders are subject to acceptance by Avaya or Reseller. Each Order is deemed to incorporate by reference this DaaS Service Description.

3.2. Initial and Subsequent DaaS Orders. Customer shall issue an initial Order. The initial Order shall include the specified type(s) and number of Devices and the subscription 12-month, 36-month or 60-month Term length. Customer may submit subsequent Orders. All Orders will be based on Avaya's or Reseller's then current DaaS Fees for the Devices and may be subject to Early Termination Fees and other terms and conditions as set forth in the then current DaaS Service Description and Avaya's or Reseller's quotation.

4. TITLE; SECURITY INTEREST; RISK OF LOSS; DELIVERY

4.1 Title and Security Interest. The parties intend that this Service Description constitutes a true lease under the UCC and other applicable law and not a sale of the Devices subject to a security interest under Article 9 of the UCC or other applicable law to secure the purchase price of the Devices. Notwithstanding any agreed delivery term, title and all interest to Devices remain with Avaya or its assignee at all times. Customers do not acquire ownership, title, property, right, equity or interest in the Devices, other than leasehold interests solely as lessee subject to all the terms and conditions of this Service Description. If the Order requires the Reseller to attach the Devices to the Customer's network, such attachment will not be deemed to change the nature of the Devices, ownership or other interests therein of Avaya or its Assignee, as applicable. However, if a court of competent jurisdiction should decide differently, to the extent that the Customer may have any right, title or interest in or to the Devices, Customer hereby grant Avaya, a security interest in and a lien and charge on its present and future rights, title and interest in the Devices (including all hardware, all Software, and all substitutions, additions, accessions, replacements, upgrades, products and proceeds thereof, all whether now existing or hereafter arising). Customer shall execute and file all such documents, and take all such other steps, as Avaya may deem necessary or advisable to effect, evidence, validate, perfect or protect Avaya's (and any Assignee's) ownership interests, security interests, liens and charges in the Devices. Customer authorizes Avaya and its agents to file financing statements to give public notice of Avaya's interest in the Devices. Customer waives, to the extent permitted by applicable law, any right to receive copies of any financing statements, financing change statements, verification statements, or copies of other notices or filings made by Avaya at any time in connection with this Service Description. Avaya may display notice of its ownership by affixing to the Devices identifying stencil, plate or any other indicia of ownership.

4.2 Risk of Loss. Risk of loss will pass to Customer upon delivery. Customer will keep the Devices free and clear of all levies, liens and encumbrances arising by or through Customer, and hereby consents to the filing of informational statements by Avaya or its Assignee to give notice of such ownership. Customer will be responsible for, and bear the entire risk of loss, theft, destruction or damage to DaaS Devices, excluding only those caused by the willful misconduct of Avaya or Reseller, or its personnel (collectively "Loss"). If a Loss occurs, Customer will promptly notify Avaya or Reseller in writing.

4.3 Delivery. Devices will be delivered directly to the Customer by Avaya or an Avaya affiliate, except when Avaya or Reseller and Customer mutually agree upon another method of delivery as specified in the Order. Unless Avaya provides Reseller or Customer with express written confirmation of a different delivery term, all deliveries of Devices will be made CIP [named place of destination] (INCOTERMS 2010). Notwithstanding the agreed delivery term, title to the Devices will remain with Avaya, and Avaya or Reseller may charge Customer for shipping and handling charges for the delivery of the Devices to Customer which may be reflected as a separate line item on Avaya's or Reseller's invoice.

5. CUSTOMER RESPONSIBILITIES

5.1. DaaS Setup and Support. Customer is at all times responsible for: (i) the architecture, design, configuration and capacity management of the DaaS and other architectural requirements to accommodate the expected number of Customers in compliance with Avaya's reference architecture and similar requirements; (ii) installation, configuration, support coverage, and other activities in relation to the delivery, deployment, and support of DaaS including updating Software to the current versions and releases; (iii) provision, at Customer's own cost, of SIP trunking (if applicable) and all hardware, equipment,

software, and services as may be necessary for the deployment and provision of DaaS. Customer may contract, at their discretion and for additional fees, support resources from Avaya or Reseller.

5.2. Security. At all times during the Term, Customer is solely responsible for the security and safeguarding of DaaS and the Devices, including compliance with any applicable security, safeguarding and similar requirements.

5.3. Integration into Network Environment. Customer is solely responsible for ensuring all Customer facilities, software, equipment, network, trunking and services, other than the Devices, are compatible and available for installation of the Devices. Customer is responsible for the integration of DaaS and/or any of its components with Customer's network environment and any interoperating hardware, software or systems.

5.4. Cooperation. At no cost to Avaya or Reseller, Customer shall, in a timely manner: (i) provide Avaya or Reseller with interface and other information regarding access to third party products, DaaS or the Customer's network, and necessary third party consents and licenses to enable Avaya's or Reseller's performance and fulfillment of its obligations; (ii) provide Avaya or Reseller, their agents and/or subcontractors with access to the Devices at the Customer's premises and remotely; (iii) provide Avaya or Reseller with all credentials, passwords and other information that may be necessary to enable Avaya or Reseller to access the Devices and usage monitoring application, whether remotely or on-site; (iv) secure all necessary approvals, consents and performance required in order for Avaya or Reseller to perform its obligations and exercise its rights under the DaaS Order; (v) for each DaaS Order, provide Avaya or Reseller the Customer name and Term; and (vi) cooperate in all reasonable ways with Avaya and Reseller in relation to the performance of their obligations, including: (a) in the diagnosis, investigation and correction of any reported incident; (b) providing Avaya or Reseller any further information that they may reasonably require to fulfill its obligations under Customer's Orders; and (c) keeping backup or archival copies of Customer's Orders, databases and computer records in accordance with commercially reasonable computing practices.

5.5. Customer will not remove the Devices from its premises without the prior written approval of Avaya or Reseller. Customer will allow Avaya or Reseller, or their agents and subcontractors, to enter the Customer's premises at all reasonable times to locate and inspect the state and condition of the Devices. Customer will at its expense keep and maintain the Devices in a good state of repair, normal wear and tear excepted, and will use the Devices only for their intended purpose and follow Avaya's instructions regarding the use and support of the Devices.

6. COMPLIANCE WITH LAWS AND REGULATORY REQUIREMENTS

6.1. COMPLIANCE WITH LAWS AND REGULATIONS. CUSTOMER SHALL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING COMPLIANCE WITH ANY LAWS, REGULATIONS, TAXES, FEES OR OTHER REQUIREMENTS RELATED TO THE SUBLICENSING, RENTING, LEASING, SUBLEASING, USE, MARKETING AND PROVISION OF DAAS AND DEVICES, AND ANY REGULATIONS PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE U.S., AND ANY STATE PUBLIC UTILITY COMMISSION OR OTHER GOVERNMENT AGENCIES IN THE INDIVIDUAL U.S. STATES, AS WELL AS SIMILAR, CORRESPONDING GOVERNMENTAL AGENCIES IN OTHER COUNTRIES AND LOCALITIES INCLUDING WITHOUT LIMITATION, CANADA. WITHOUT LIMITING THE FOREGOING, CUSTOMER SHALL: (I) COMPLY WITH ALL APPLICABLE DATA PRIVACY LAWS AND REGULATIONS; AND (II) PROVIDE ANY APPLICABLE NOTICES TO AND OBTAIN ANY APPLICABLE CONSENT FROM CUSTOMERS' USERS.

7. DAAS FEES; INVOICING AND PAYMENT

7.1. DaaS Fees. Fees for the provision of DaaS will be as set forth on the accepted Order. Unless otherwise stated in the DaaS Service Description or accepted Order, Fees are quoted on a per Device per month basis, expressed in U.S. Dollars and exclusive of any and all taxes.

7.2. Changes of Fees. Unless otherwise agreed to in writing by Avaya or Reseller, Avaya or Reseller may increase Fees, add or delete Device types and/or modify Customer's entitlements under each Device type by providing Customer a 60 days' prior written notice, without a need for a formal amendment of this Service Description or the Agreement or Order. Avaya or Reseller may also decrease Fees for the provision of DaaS without a need for a formal amendment to this Service Description or the Agreement or Order or advance notice to or the prior consent of Customer, but Avaya or Reseller shall provide written notification of any such changes and their effective date. Any such change will apply prospectively as of the date indicated in Avaya's or Reseller's notification only to (i) new initial Orders and subsequent Orders; (ii) Orders for changes in the types of Devices and (iii) and Orders that are renewed.

7.3. Invoicing. Unless otherwise stated in the applicable DaaS Service Description or Avaya's or Reseller's quotation, Fees will be calculated and invoiced monthly in arrears. Invoicing for each Order will start at the beginning of the month following the Delivery Date of that Order.

7.4. Consent to Disclosure. As necessary and to the extent permitted by applicable law, Customer agrees that Avaya or Reseller may disclose to third parties information related to the use of DaaS and the Software by Customers as it may be necessary to determine compliance with this Service Description or for the calculation or auditing of royalty or other third party software licensing payments.

8. SOFTWARE LICENSE

8.1. Software License Terms and Updates. Avaya grants Customer a license to use Software and Documentation in accordance with the Avaya Global Software License Terms which are posted at <http://support.avaya.com/LicenseInfo>. If use of DaaS requires Customer to download Avaya software or if Avaya software is otherwise made available to Customer, such software is licensed pursuant to (i) the terms and conditions made available to Customer when Customer downloads or installs the software portion of DaaS, or (ii) if no such terms and conditions exist, then the applicable Global Software License Terms (or such successor site as designated by Company) as of the Delivery Date will apply, for the sole purpose of using DaaS, in accordance with these terms or Service Description, and solely for the duration of the DaaS license period. It is possible that software may automatically download and install updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to allow such updates to be promptly downloaded and installed as part of Customer's use of DaaS.

8.2. Customer agrees that on the conclusion of the Term Customer shall: (i) cease and desist all use of the Software and related Documentation; (ii) in accordance with Avaya's or Reseller's instructions, irretrievably delete, return and/or destroy any Software installed or downloaded at Customer's site or on its Devices or otherwise made available to or accessible to Customer, as well as any related Documentation; and (iii) promptly certify compliance with the foregoing requirements to Avaya or Reseller. Upon Avaya's or Reseller's request, Customer shall promptly provide such certification to Avaya or Reseller and acknowledges and agrees that Avaya or Reseller may share it with its applicable licensors.

9. SUPPORT SERVICES FOR DAAS DEVICES

Avaya will provide the support services set forth in Section 3.0, Support for Endpoint Devices, of the main body of this Section Description above.

10. INDEMNIFICATION

Customer shall defend, indemnify, and hold Avaya, its affiliates, Resellers, and their respective directors, officers, employees and agents, harmless from any and all losses, claims, actions, damages, costs, taxes, expenses (including attorney's/legal fees and court costs), fines, penalties, sanctions, interest or other monetary remedies imposed by a governmental or regulatory body, arising from or in connection with: (i) Customer's failure to comply with applicable law or its security or confidentiality obligations; (ii) any warranties, representations, commitments or protections granted by Customers in connection with the subject matter of this Service Description or DaaS; or (iii) government assessments, and/or regulatory fees, together with interest and penalties, imposed on Reseller or Avaya, its affiliates, and/or their respective

suppliers as a result of Customer's failure to report and remit any government assessments, and/or regulatory fees applicable to DaaS. The obligations under this Section will survive termination or expiry of this Service Description.

11. DISCONTINUATION

At any time during the term of this Service Description, Avaya may discontinue the licensing of any generally available offerings, DaaS, Devices, Support Services or Software, or modify generally available offerings, including the underlying DaaS Service Description, without liability to Customer or any other person or entity. Avaya shall notify Customer in accordance with the then current discontinuation policy of such end of license date or modification for DaaS, Devices, Support Services, Software or generally available offerings by posting the relevant information on Avaya's website or by written notice to Customer. Avaya's current Product lifecycle policy is located at <http://support.avaya.com> or a successor site as designated by Avaya from time to time.

12. TERM AND TERMINATION

12.1. Term of DaaS Orders. Unless otherwise stated in the DaaS Service Description or an accepted Order the initial Term of any Order will start on the Delivery Date and will end 12 months, 36 months or 60 months thereafter as specified in the Order. All Orders will renew for subsequent Terms at Avaya's or Reseller's then current Fees for the DaaS, unless either party gives written notice to the other party of its intent not to renew no later than 30 days in advance of the end of the Term. For Customers located in the United States or Canada, the renewal term duration will be the same duration as the expiring subscription. For all other Customers, the renewal term duration will be for one (1) year. The Term of any subsequent Order will be co-terminus with the Term of the underlying initial Order, including any renewal period. Notwithstanding the foregoing, Orders may be terminated by Customer in accordance with this Service Description, subject to Customer's payment of Early Termination Fees.

12.2. Early Termination Fees. In case of an early termination of an Order, Customer shall pay Avaya or Reseller the Early Termination Fees set out in the main body of this DaaS Service Description, except that no Early Termination Fees will apply in relation to any Order terminated for Avaya's or Reseller's uncured material breach in accordance with Section 12.4. Avaya or Reseller may set off the Early Termination Fees against any amounts due by Avaya or Reseller to Customer under this Service Description or otherwise, subject to a written notification to Customer.

12.3. Termination for Convenience. Any termination for convenience shall be subject to Customer's payment of all Fees due up until the effective date of termination and the applicable Early Termination Fees detailed above; and any such termination will be effective on the last day of the last month in the termination notice period. In case of an early termination by Customer for its convenience, Avaya or Reseller will be under no obligation to refund to Customer any prepaid amounts.

12.4. Termination for Breach. Either party may terminate an underlying Order by written notice to the other party, effective immediately upon receipt, if the other party fails to cure any material breach of this Service Description and/or Order within a 30 day period after having received a written notice from the non-breaching party detailing the breach and requesting the breach to be cured. In the event Avaya or Reseller terminate for Customer's breach, Customer shall pay Avaya Early Termination Fees. Avaya or Reseller may terminate any underlying Order by written notice to Customer effective immediately upon receipt if: (i) Customer has otherwise interfered with Avaya's ability to correctly track the usage of DaaS, (ii) any Devices are levied against, seized or attached and such levy, seizure or attachment results from or is related to an action brought by a third party against Customer, or (iii) User becomes insolvent, or voluntary or involuntary proceedings by or against Customer are instituted in bankruptcy or under any insolvency law, or a receiver or custodian is appointed for Avaya, to the extent permitted by law. If Customer becomes insolvent, or voluntary or involuntary proceedings by or against Customer are instituted in bankruptcy or under any insolvency law, this Service Description and/or any underlying Order will not

be treated as an asset of Customer, as applicable, after the exercise of Avaya's termination right in accordance with this Section.

12.5. Effects of Termination. Termination or expiry of any Order will be deemed to terminate all DaaS usage and Software licenses granted under that Order. Upon termination or expiry of this Service Description for any reason, Avaya or Reseller shall direct Customer to immediately return all Devices to Avaya as set forth in Section 12.6 and permanently destroy all copies of Software and any related materials, including Documentation, in Customer's possession or control and, upon Avaya's or Reseller's request, certify such destruction in writing. Rights of termination under this Service Description will be without prejudice to any accrued rights or liabilities of either party to the other arising out of this Service Description.

12.6. Return of DaaS Devices. Upon expiration or termination of DaaS as described in this Service Description or an Order, Customer shall: (i) de-install, inspect and properly pack the Devices, and (ii) return the Devices at Avaya's risk and expense, freight prepaid, to Avaya's facility as specified in the DaaS Service Description. Avaya's acceptance of the return of the Devices is not a waiver by it of any claims it may have against Customer nor a waiver of claims for latent or patent damage to the Devices. Customer shall return the Devices to Avaya within 30 days of the expiration or termination of the Service Description or Order, and if the Devices are not returned or are not returned in the same condition as at the delivery to Customer, normal wear and tear excepted, the Customer will pay to Avaya an amount equal to the list price of the Devices at the time of replacement, without deduction for depreciation. For orders between Reseller and Customer, Customer hereby grants to Avaya a third party beneficiary right under the order between Reseller and Customer to enforce the Customer's obligations under Sections 12.2 and 12.6. Additionally, Avaya may repossess the Devices (by entering upon the Customer's premises, if necessary) without liability for trespass, or responsibility with respect to the Devices or to any article attached to the same and recover from Customer all damages sustained by Avaya as a result thereof.

13. NOTICES.

Unless specified elsewhere in this Service Description, any notice to Avaya, Reseller or Customer will be in writing in English (notwithstanding the language of this Amendment) and addressed to: (i) Avaya at the address set forth below (or to any other address that Avaya may designate from time to time in accordance with this Section 14); or (ii) Reseller or Customer at any address that they may designate from time to time in accordance with this Section 14. Notices will be delivered by: (a) personal delivery; (b) courier or first class mail (with all fees or postage prepaid); (c) facsimile (with confirmation of transmission); or (d) an e-mail of a duly signed PDF document (with receipt confirmed). Notices will be deemed to have been given, as applicable, on the earlier of: (1) the date of receipt; (2) two working days after sending by courier; (3) five working days after first class posting; or (4) next working day after sending by facsimile or email.

FOR AVAYA:

Attention: Vice President, Law
 Avaya Inc.
 2605 Meridian Parkway, Suite 200
 Durham, NC 27713
 FACSIMILE: 408-562-3749
 Email: lglnoticescomm@avaya.com