

## MASTER AGREEMENT

Seller is a leading provider of products and services for converged communication networks;

Purchaser wishes to purchase certain products and/or services from Seller;

Seller and Purchaser desire to specify the terms and conditions that will apply to those transactions:

Now therefore, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **AGREEMENT SCOPE.** Products and services provided under this Agreement shall be furnished by Seller on an as-ordered basis. Specific requirements and relevant terms for orders of products and services may be set forth in an individual order (“Order”), sales order (“Sales Agreement”), service order (“Service Agreement”), carrier order (“Carrier Agreement”) or other documents mutually agreed to between Seller and Purchaser, (may also be referred to individually or collectively a contract (“Contract”). Each executed Sales Agreement shall be subject to the terms of this Agreement and deemed to be appended to this Agreement.
2. **ACCEPTANCE.** Purchaser shall be deemed to have accepted the products and services sold hereunder if Purchaser has not given to Seller a written notice of rejection, describing the basis for rejection, within 10 business days after delivery.
3. **CANCELLATION.** Unless otherwise stated in an executed Contract, Purchaser may cancel accepted orders on unopened products and/or services only with a 30% restocking fee due upon cancellation. Cancellation must be made in writing by Purchaser and received by Seller before shipment of products and commencement of services, except for software, which cancellation must be given to and received by Seller at least thirty (30) days prior to shipment of such software.
4. **CONFIDENTIALITY**
  - 4.1 **CONFIDENTIAL INFORMATION.** “Confidential Information” means any and all technical and non-technical information of the disclosing party, that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including but not limited to work product, work in process, software code, documentation, products, product plans, designs, costs, prices, discounts, services, business opportunities, business plans, customers, suppliers, the terms of the Agreement, and other material or information related thereto. Information communicated verbally shall be treated as Confidential Information if designated by the disclosing party as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after verbal disclosure. Confidential information does not include materials or information that: (i) is generally known by third parties as a result of no act or omission of the receiving party; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information and without restriction on disclosure; (iii) was already known by the receiving party prior to receiving it from the disclosing party and was not received from a third party in breach of that third party’s obligations of confidentiality; (iv) was independently developed by the receiving party without use of Confidential Information of the disclosing party; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, and provided that the receiving party promptly notifies the disclosing party of the pending disclosure in writing so that the disclosing party may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, the receiving party will provide reasonable assistance to the disclosing party where the disclosing party attempts to obtain a protective order. This Section will survive the termination of the Agreement.
  - 4.2 **CONFIDENTIAL INFORMATION PROTECTION.** Each party will protect the secrecy of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. Neither party will use or disclose the other party’s Confidential Information, except as permitted in this Agreement and only for the purpose of performing obligations under the Agreement. The confidentiality obligations of each party under the Agreement will survive any expiration or termination of the Agreement or of any order for three (3) years after the termination or expiration of this Agreement. Upon termination of the Agreement, each party will cease all use of the other party’s Confidential Information (except for software and related documentation in accordance with the applicable license granted under the Agreement) and will promptly return, or at the other party’s request, destroy all Confidential Information, including all copies, notes or extracts, (whether in hard-copy form or on intangible media, such as electronic mail or computer files) in the receiving party’s possession.
5. **EXCLUSIVE REMEDY/LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, Seller’s liability for breach of this Agreement, or breach of any warranty, express or implied, found to have been made in connection with this Agreement, shall be to repair or replace, at its option, any defective hardware or software, sold hereunder. Seller shall have no liability whatsoever to Purchaser if computer software or computer hardware sold hereunder is subsequently upgraded, or is otherwise used with software or hardware that was not used with the software and/or hardware sold hereunder at the time of installation, or if any such software or hardware has been serviced by anyone other than Seller. In no event or circumstances shall either party be liable to the other party for any indirect, special, incidental or consequential damages, including without limitation, loss of revenues or profits, business interruption costs, loss of data for any reason or software restoration, or damages relating to Purchaser’s procurement of substitute products or services, whether in an action in contract, tort (including strict liability), breach of warranty, or otherwise, arising out of or in connection with the products or the provision of services under this Agreement, even if each such party has been advised of the possibility of such damages. In no event will either party’s total cumulative liability in connection with this Agreement from all causes of action of any kind, exceed the any amount paid by Buyer hereunder in the six (6) months preceding the claim.

6. **DELIVERY.** Purchaser acknowledges that delivery dates or timelines provided by Seller are best estimates only and not a guarantee, although every reasonable effort shall be made by Seller to meet Purchaser's delivery expectations.
7. **DISCONTINUED EQUIPMENT.** Seller may discontinue providing services with respect to products for which it can no longer readily obtain repair parts or technical assistance from the manufacturer of such product(s).
8. **FORCE MAJEURE.** Seller's performance hereunder shall be excused if such nonperformance or delay of performance is due to causes beyond the reasonable control of Seller, including but not limited to acts of God, acts of the public enemy, any acts of any government, fires, war, riots, terrorism, floods, epidemics, quarantine restrictions, insurrection, strikes, labor shortage, materials shortage or freight embargoes. Any delay in performance due to a force majeure occurrence shall extend the period for performance for the duration of the delay.
9. **AUDIT RIGHTS.** Seller or an independent auditor acting on their behalf, may audit Purchaser in connection with billing under this Agreement and/or in order to determine compliance with this Agreement. Purchaser agrees to allow reasonable on-site access during normal business hours and remote access to any information or data and each system configuration containing software, on-site and/or remotely, for any actions reasonably required to conduct such audits.
10. **INVOICING AND PAYMENT.** For orders containing only products, payment is due 100% upon product order or, upon credit approval of the Purchaser, within thirty (30) days from date of Seller's invoice, unless otherwise agreed in writing by Seller. For purchases pursuant to a Sales Agreement, Purchaser agrees to pay Seller 50% of the hardware and/or software value at signing of the Contract, 50% upon delivery of the hardware and/or software, 100% of the recurring services upon contract creation and 100% of professional services upon acceptance of the services (if any such services are included) pursuant to such Contract, plus any applicable taxes, and shipping and handling charges unless otherwise agreed to in writing by an authorized representative of Seller management. Seller will invoice Purchaser all fees as provided in the applicable purchase order. Purchaser will pay all bank charges, taxes, duties, levies and other costs and commissions associated with any bank wire transfer or other means of payment.
  - 10.1 **LATE CHARGES.** Any overdue and unpaid, and non-disputed portion of the fees will bear interest, compounded at one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is less. Seller may suspend licenses and performance of orders for which payment is overdue until the overdue amounts are paid in full. Purchaser will reimburse Seller for reasonable attorneys' fees and any other costs associated with collecting delinquent payments. Purchaser will have one hundred and twenty days (120) from the date of Seller's invoice to dispute any late charges before they will be considered valid.
  - 10.2 **TAXES.** Purchaser will pay or reimburse Seller for all applicable sales, services and other taxes (excluding taxes on Seller's net income) levied upon the sale and/or license of Products and performance of services under the Agreement unless Purchaser is exempt and provide Seller with a valid tax exemption certificate prior to Seller's invoice date.
11. **MANUFACTURER/THIRD PARTY WARRANTY.** The services and/or products (i.e. hardware or software,) sold or licensed (in the case of software) to Purchaser may be subject to a manufacturer or other third party warranty ("Third Party Warranty"), The terms and conditions of the Third Party Warranty may be available to Purchaser at <http://lantana.com/Eula> or its successor site or by specific request to Seller. Purchaser acknowledges that Seller is not a party to any such warranty. Any rights or remedies that Purchaser may have pursuant to said warranty are against the manufacturer or other third party directly, and are not assertable against the Seller. SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD OR LICENSED HEREUNDER. PURCHASER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION BY THE SELLER WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER, EXCEPT AS ARE EXPRESSLY CONTAINED HEREIN. ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT, HOWSOEVER ARISING ARE HEREBY DISCLAIMED.
12. **NON-SOLICITATION OF PERSONNEL.** Purchaser acknowledges that employees of Seller are valuable assets of Seller and that the loss of an employee would cause significant damage or irreparable harm to Seller and cause Seller to entail substantial costs for replacement. At the same time, the parties understand that such costs and damages would be difficult, if not impossible, to determine precisely. Therefore, the parties expressly agree that during the term of this Agreement and at any time during a one (1) year period following the termination of this Agreement by either party for whatever reason, Purchaser shall not directly or indirectly, (i) encourage any employee of Seller, who became known to Purchaser by virtue of such employee's providing services to Purchaser under this Agreement ("Seller Personnel"), to terminate his or her employment with Seller or to diminish his/her services with Seller or (ii) recruit or solicit for hire or hire any Seller Personnel for employment with Purchaser. In the event Purchaser breaches or violates any terms of this paragraph, Purchaser agrees to pay, as liquidated damages and not by way of penalty, a sum of seventy-five percent (75%) of such Seller Personnel's total annual salary at the time such encouragement, recruitment or solicitation for recruitment or hire occurred. Payment of such damages shall not exclude Seller from seeking any and all other remedies available in law, in equity or otherwise, including an action for injunctive relief against the threatened breach of this provision or the continuation of any such breach by the Purchaser.
13. **PROFESSIONAL SERVICES.** Seller may provide professional services as requested by the Purchaser. General scope of Seller professional services is further outlined in an Appendix to this Agreement. The specific professional service requirements, specifications and/or scope of work, including any labor or travel charges, shall be set forth in a specific Sales Agreement.
  - 13.1 **SERVICE CLAIMS.** If services provided are in connection with a problem that is covered by a Third Party Warranty, then such services shall not be billed out at Seller's then-prevailing hourly rate, to the extent of the Third Party Warranty coverage. Please refer to your manufacturer or third party provided documentation for scope of such warranty coverage. Any labor or travel provided that is not covered under the Third Party Warranty or where services provided are not covered under a Third Party Warranty then such services and all labor and travel will be billed out at Seller's then-prevailing hourly rate.
14. **PURCHASER RESPONSIBILITY.** Purchaser shall use its best efforts to cooperate with Seller in connection with Seller's performance or carrying out its duties hereunder, and shall refrain from any act or omission that could frustrate Seller's performance. In that regard, but not by way of limitation, Purchaser shall designate one employee for each location at which services are expected to be rendered under this Agreement,

with full authority to act for Purchaser in the event that Purchaser's input is required in order to affect any aspect of the services provided hereunder.

**15. PURCHASER WARRANTY**

**15.1 PROPER LICENSING.** Purchaser represents and warrants to Seller that Purchaser has properly licensed all software being used by its organization and shall hold Seller harmless from any claims or suits premised upon breach of any third party's proprietary rights with respect to such software.

**15.2 PROPER BACKUP (Where Applicable).** Purchaser represents and warrants to Seller that Purchaser's system has been properly backed up prior to the commencement of any services provided by Seller. Purchaser acknowledges that the Seller shall not be liable whatsoever, under any circumstances or for any reasons, for any damages suffered by Purchaser in connection with or as a result of improper backup or data which has not been backed up.

**16. SHIPPING.** Product shall be shipped FOB Seller's place of business, by common or contract carrier, or in the case of drop shipment, FOB manufacturer's or distributor's place of business, by common or contract carrier. Freight charges shall be Purchaser's responsibility. "Delivery," as used in this Agreement shall be deemed completed upon delivery of the products to the common or contract carrier.

**17. SOFTWARE.** For any software product or product containing software sold or licensed to Purchaser and any related documentation provided to Purchaser under this Agreement, Purchaser agrees to comply with the applicable manufacturer End User License Agreement, which may be located at <http://lantanacom.com/Eula> or its success site. For all Avaya specific software Purchaser agrees to comply with all Avaya software End-User License Agreements ("EULA") or other licenses as detailed at <https://support.avaya.com/LicenseInfo> or its successor site. Purchaser acknowledges that Seller is not a party to any such End User License Agreement. Any rights or remedies that Purchaser may have pursuant to said license agreement are against the licensor of the software directly and are not assertable against the Seller. Purchaser acknowledges the software product is licensed and not sold to Purchaser under this Agreement and that Purchaser owns only the media or the hardware on which the software is stored or resides.

**18. MANUFACTURER SOFTWARE SUPPORT.** Manufacturer software support is provided to Purchaser as defined per transaction on the Sales Agreement. The terms and conditions of the specific manufacturer software support is available upon request and typically in the form of a Service Agreement Supplement (SAS) document.

**19. SUSPENSION OF PRODUCTS AND/OR SERVICES.** Seller may, at its option, suspend providing products and/or services hereunder in the event that the Purchaser is delinquent on payment of any outstanding invoices.

**20. TERMINATION.** Each party shall have the right to (a) terminate this Agreement for convenience and without cause upon thirty (30) days' prior written notice to the other party, provided that any orders accepted shall not be affected by such termination or (b) terminate this Agreement default or indefinitely suspend an accepted order or provided services in the event of (i) material breach of this Agreement by the other party which is not remedied within thirty (30) days after written notice of such breach or (ii) the other party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns its assets for the benefit of creditors.

**21. GENERAL**

**21.1 ASSIGNABILITY.** Seller may delegate all or any part of, its duties hereunder to a subcontractor.

**21.2 ATTORNEY FEES.** In the event of any disputes or litigation between the parties arising from this Agreement or in any way related to the transaction(s) pursuant to this Agreement, the prevailing party shall be entitled to recover from the other party, its actual reasonable attorney fees incurred in connection therewith, in addition to any other relief awarded.

**21.3 BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the parties, and their respective heirs, successors, personal representatives, beneficiaries and assigns.

**21.4 CHOICE OF LAW; JURISDICTION.** The laws of the State of Texas (excluding any laws that direct the application of another jurisdiction's law) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or any order placed under it. The parties agree that all disputes arising hereunder shall be adjudicated in the courts in Dallas, Texas, and Purchaser hereby agrees to submit to the personal jurisdiction of such courts.

**21.5 LEGAL ACTION.** Any legal action arising in connection with this Agreement must be filed within two (2) years after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

**21.6 NOTICES.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient as designated in writing from time to time.

**21.7 NO THIRD PARTY BENEFICIARIES.** This Agreement is for the benefit of Purchaser and Seller and does not provide any third party (including Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

**21.8 PUBLICITY.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or to the pricing or provision hereunder without the prior written consent of the other party.

**21.9 INDEPENDENT CONTRACTOR.** Each party is an independent contractor. Neither party controls the other, and neither party nor its Affiliates, employees, agents or contractors are Affiliates, employees, agents or contractors of the other party under this Agreement.

**21.10 INDEMNIFICATION.** Purchaser will hold harmless and indemnify Seller, its employees, agents, shareholders, officers, directors, successors and assigns from any and all claims, damages, liabilities, costs, settlements, penalties and expenses (including attorney's

fees and settlement fees) arising out of or relating to any suit, action, proceeding, arbitration, subpoena, claim or demand brought or asserted by a third party ("Claim"), including but not limited to, Avaya, arising out of or relating to a breach of the End User License Agreement. Seller shall promptly inform Purchaser of any Claim (threatened or actual), filed against Seller and Seller shall have the sole right, but not the obligation, to conduct and control the defense of any such suit or proceeding for which Purchaser shall provide the aforementioned indemnification. If Purchaser should fail to defend or settle a suit, proceeding, or indemnification claim filed against Seller at any time after demand by Seller, then Seller shall have the right to do so without prejudice to any claims that Seller may have against Purchaser for indemnification pursuant to this agreement or otherwise. This section shall survive termination of this Agreement

**21.11 COMPLIANCE WITH LAWS AND REGULATIONS.** PURCHASER SHALL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS IN THE TERRITORY, INCLUDING, WITHOUT LIMITATION, COMPLIANCE WITH ANY LAWS, REGULATIONS, TAXES, FEES OR OTHER REQUIREMENTS RELATED TO THE USE, MARKETING AND PROVISION OF CLOUD PRODUCTS AND OTHER REGULATED SERVICES AND THE PROVISIONING, HOSTING, USING, INSTALLING, DE-INSTALLING, ACTIVATING, DEACTIVATING AND DE-COMMISSIONING OF THE HOSTED IP OFFICE INFRASTRUCTURE (OR ANY PORTION THEREOF) AT PURCHASER'S OR END-USERS' PREMISES AND ANY REGULATIONS PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE U.S., AND ANY STATE PUBLIC UTILITY COMMISSION IN THE INDIVIDUAL U.S. STATES, AS WELL AS SIMILAR, CORRESPONDING GOVERNMENTAL AGENCIES IN OTHER COUNTRIES AND LOCALITIES. WITHOUT LIMITING THE FOREGOING, PURCHASER SHALL, AND SHALL CAUSE ITS END-USERS TO (I) COMPLY WITH ALL APPLICABLE DATA PRIVACY AND CALL RECORDING LAWS AND REGULATIONS AND (II) PROVIDE ANY APPLICABLE NOTICES TO AND OBTAINING ANY APPLICABLE CONSENTS FROM END-USERS.

**21.12 ENTIRE AGREEMENT.** This Agreement (including any appendices, exhibits, schedules, Sales Agreements, Orders or statement of works to this Agreement) constitutes the entire agreement between the parties relating to the sale of the products or services, and supersede all prior oral or written proposals, understandings, representations, warranties, covenants, and communications between the parties, and may not be explained or governed by any prior course of dealings between Seller and Purchaser or by trade custom or usage. No modification, addition, or amendment shall be binding unless in writing and signed by both parties.

**21.13 ORDER OF PRECEDENCE.** The terms of this Agreement govern all purchases for products and services that Seller may sell to Purchaser while this Agreement remains in effect. When special terms and conditions are included in a specific Contract, such special terms and conditions take precedence over any inconsistent term of this Agreement, but only with reference to the transaction governed by said Contract and shall have no other force or effect. The parties acknowledge that preprinted provisions on any Purchaser purchase order, acknowledgment or invoice shall be deemed deleted and of no effect whatsoever.

**21.14 INTERPRETATION AND CONSTRUCTION.** In this Agreement, unless the context expressly requires otherwise: (i) a reference to the singular includes the plural and vice versa; (ii) the headings are inserted for convenience only and will not affect the interpretation of this Agreement; (iii) whenever the words "include", "includes", "including" or "in particular" (or similar derivatives) are used, they are deemed to be followed by the words "without limitation"; (iv) no inference shall be drawn from the fact that one party drafted the contract and the rule of ambiguities shall not apply to the interpretation of this agreement.

**21.15 INTELLECTUAL PROPERTY.** Seller does not grant any intellectual property rights to Purchaser or its end-user. All such intellectual property ownership rights remain with, and are retained by, Seller and/or the applicable licensor.

**21.16 SEVERABILITY.** Any provision or portion of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the provision and the remainder of the Agreement shall remain in full force and effect to the extent permitted by law.

**21.17 SURVIVABILITY.** Obligations and rights under this Agreement or the specific Contract, that is expressed or by their nature and context would reasonably continue beyond the termination, cancellation or expiration of this Agreement or the specific Contract (including those in the Sections entitled Non Solicitation of Personnel, Confidentiality Information, General) shall survive the termination.

**21.18 WAIVER.** The waiver by either party of a breach of any provision hereunder shall not operate or be construed as a waiver of any subsequent breach of that or any other provision.

**22.** This Agreement has the following appendix which are hereby incorporated into this Agreement by this reference:

- APPENDIX A – GENERAL STATEMENT OF WORK
- APPENDIX B – MAINTENANCE AND SUPPORT SERVICES
- APPENDIX C – CARRIER SERVICES
- APPENDIX D – CLOUD SOLUTIONS

## Appendix A

### General Statement of Work

This General Statement of Work set forth the general terms and conditions for certain services (i.e. installation, consulting, programming and training) that are available for purchase by Purchaser from Seller, with specific requirements to be further defined or specified in an individual Order or a Sales Agreement, which shall be subject to the Agreement.

All terms used and not otherwise defined shall have the meaning given such terms in the Agreement.

#### 1. GENERAL REQUIREMENTS

**1.1. POINT OF CONTACT:** Purchaser will designate an authorized single point of contact to receive and approve all applicable documents ("Contact") from Seller.

**1.2. SELLER:** Seller will provide a project manager as a single point of contact for Purchaser. The project manager's responsibilities shall include: (i) Planning, coordinating, executing and documenting all installation requirements and activities; (ii) Conducting project meetings; (iii) Receiving and processing all project change order(s), if applicable. (iv) Providing timely project status to the designated Purchaser contact.

**2. SITE PREPARATION.** It is Purchaser's responsibility to provide adequate floor plans or blueprints or other documents as necessary to Seller in order for Seller to properly perform the services hereunder. All floor plans provided should be clearly marked with the required information, generally including: room numbers, end-user names, extension numbers, and wiring/station jack numbers and set type and adjuncts. It is also Purchaser's responsibility to prepare its site, at its expense, for the new equipment in accordance with the instruction provided by Seller. This includes site preparation for complete hardware installation of all applicable equipment and wiring. It is Purchaser's responsibility for ordering any and all required services from the local exchange carrier or data network provider. Seller does not take responsibility for ordering or contracting for any such service unless otherwise expressly agreed to by Seller in Seller's proposal to Purchaser or for ensuring that Purchaser's current and new service is installed and in good working order prior to the commencement of any work to be performed by Seller. In addition, all information regarding telephone lines and/or such third party services must be forwarded by Purchaser to Seller project manager. In order for Seller to provide efficient support and to be able to alarm in to remote maintenance and testing center, if applicable, Purchaser must provide an analog dedicated line to the modem on the equipment or another approved means of communication. Questions or discussion on this item should be directed to the Seller Project Manager assigned to your implementation.

**3. DATA COLLECTION.** Seller will assist the Purchaser with the responsibility of data collection required for programming the new system.

**3.1. Responsibilities and Activities Associated with Data Collection:** Purchaser shall provide a single point of contact (Project Coordinator) to the Seller's provisioning team to act as the primary contact person for the Seller's Project Manager. The Purchaser's Project Coordinator should also possess the authority to make decisions on their behalf concerning the installation and implementation of the new system. Depending on the size and/or complexity of the project, it may be desirable for the Purchaser to provide Departmental Coordinators to assist the Project Manager. On average, each Departmental Coordinator should be responsible for about 20-30 users to ensure that the correct equipment is assigned for each end-user, as well as special features that help best meet the needs of each person. This data collection must be completed 10 business days prior to install date. Revisions to the data collected will not be accepted 5 business days prior to date of install.

**3.2. Purchaser Participation.** If purchaser chooses not to participate in the station review and data collection process and requests that the Seller's implementation team take full responsibility for that task or the Seller's provisioning team deems that the data collected by the Purchaser is grossly inadequate or inaccurate, Seller will complete data collection at the then prevailing Seller hourly rates.

**4. SOFTWARE CUSTOMIZATION.** After Purchaser and the Seller's provisioning team have performed the data collection task, the software translations can be completed. Upon mutual agreement that the Purchaser's collected information is complete and all requested and purchased features and functionality are included, the Purchaser's information is loaded into the system software one time. If Purchaser initiates additional changes at any point after agreeing that the information provided is complete, additional charges may be levied. The Seller will have the right to charge for the time and costs incurred by the Seller's provisioning team at Seller's then prevailing hourly rates.

**5. NETWORK ASSESSMENT.** If the solution is an IP-enabled system, a basic network readiness assessment, provided by the Seller for a fee, is required. The basic network readiness assessment cannot record and report every error that may be occurring on Purchaser's network. Additional troubleshooting and/or further analysis may identify other issues. Seller can provide these services at an additional charge. Purchaser will be responsible to ensure that any network problems are referred to Purchaser's network service provider and resolved before Seller's implementation date. If Purchaser chooses to obtain a network assessment from another party, a VVoIP Network Readiness Assessment for Third Party Template must be completed for each project, approved, and provided to Seller ten (10) business days prior to implementation.

**6. RFA OR PLDS INSTALLATION.** Seller may provide installation of a system license file through the use of Avaya's RFA or PLDS systems. The scope of this installation is limited to the procurement and activation of the license on Purchaser's associated system(s) and final registration of licenses to appropriate manufacturer. This does not include configuration or programming changes to any system. If configuration or programming changes are needed by Purchaser, then Seller will present a change order, as defined in this Agreement.

**7. INSTALLATION SCHEDULE.** Schedule for installation of equipment will be set by Seller Project Manager in consultation with Purchaser. Every effort will be made to accommodate specific dates requested by Purchaser. Agreed upon installation date will be considered firm 14 days prior to that date ("Firm Date"). Purchaser's system will be unavailable during cutover and testing. Cutover and testing will be completed in a single phase, unless otherwise noted in the Sales Agreement. If a multi-phase implementation is requested by the Purchaser, after the Sales



Agreement is approved, additional charges will apply for each resource involved in the cutover. The Project Manager will submit a change order with additional charges to the Purchaser when applicable. All invoicing and payment will be set forth in the Sales Agreement and/or change order.

8. **DELAYS AND RESCHEDULING.** Any delays in installation schedule after firm date, caused by Purchaser, may result in additional charges at Seller's then regular or overtime hourly rate. Significant delays may result in project being rescheduled at discretion of Seller Project Manager.
9. **TRAINING**
  - 9.1. **Training Room Setup (If applicable).** Training room set-up, including the installation of any necessary extra wire, is the responsibility of the Purchaser; if the Purchaser fails to make the training room ready according to the Seller's direction, the Seller may charge the Purchaser for any expenses incurred to prepare the room including any installation and de-installation of endpoints, if applicable. Training translations should be from real endpoints; any custom training translations, requested by the Purchaser, are subject to additional fees. The Seller Project Manager will determine all additional charges associated with training room set-up and an appropriate change order will be completed.
  - 9.2. **End User Training (If applicable).** End User Training may vary with systems based on the number of end points and complexity of configuration. Generally, end-user training will be provided in groups of 10-15 users for 45 minutes per group. Console training will be provided as applicable. The Seller Project Manager will create a customized training program that will meet your company's needs.
  - 9.3. **Basic System Administration Training (If applicable).** Basic System Administrator Training will be provided for one to two hours, unless otherwise noted in the Sales Agreement.
10. **HELP DESK (if applicable).** On the first day of service, Seller will manage a Help Desk which will be staffed by the Purchaser's project coordinator (or representative) and at least one Seller representative. Seller will manage the Help Desk for up to four (4) hours then turn over the operation to the Purchaser. If the Purchaser requires Help Desk coverage beyond the four (4) hours, additional charges will apply at Seller's then hourly rate per representative. Depending on the size and complexity of the new system being installed, the Seller Project Manager may, at his/her discretion, provide additional hours/days of Seller staffed Help Desk at an additional charge to the Purchaser. The Help Desk will receive reports of trouble from Purchaser's department coordinators. A trouble ticket will be filled out and given to the appropriate Seller personnel. Requests for changes from users will be referred to the Purchaser's Project Coordinator for resolution.
11. **POST-CUTOVER SUPPORT.** Seller will provide free remote administrative support during Seller normal business hours for one (1) business day after implementation of each project. During the period of free remote administrative support, Seller will provide initial response within two (2) hours. Purchaser shall be required to pay for charges incurred by Seller to dispatch a technician to the Purchaser's site or if work is requested outside of Seller's business hours. For all other times after the first day of free remote support, the Purchaser must contact Seller's Service department for further support or dispatch of technician, at 817-606-3323 or email support@lantana.com, which will be billable at Seller's then hourly rate.
12. **CHANGE ORDER.** Seller will provide all equipment and services detailed in a Sales Agreement for each project. Any work not included in the Sales Agreement must be negotiated before implemented. Both Purchaser and Seller must agree upon any changes made to the Sales Agreement in writing and these agreed to changes must be signed by both parties. Seller will not act on a change order unless authorized by Purchaser's Contact and the Seller's Project Manager.
13. **CANCELLATIONS AND POSTPONEMENTS.** Purchaser's Contact and Seller's Project Manager will set an installation schedule ("Timeline") during the initial project kickoff for each Sales Agreement. Any postponement or cancellation of the Timeline by Purchaser's Contact within ten (10) business days of the agreed to start date will result in a postponement or cancellation charge representing the lesser of \$ 5,000.00 or 50% of the installation pricing and any actual associated travel expenses.
14. **PROJECT CLOSURE.** When all work for a project is believed to be completed, Seller's Project Manager will submit to the Purchaser's Contact a project closure form. Purchaser's Contact will have five (5) business days to review, approve or dispute, in writing, the project closure. If no written notice of dispute or rejection from the Purchaser's Contact is received by Seller, the implementation shall be deemed accepted and completed in accordance with the Purchaser's specifications, at which time Purchaser shall be invoiced by Seller in accordance with the terms and conditions set forth in the Sales Agreement.

## Appendix B

### Maintenance and Support Services

The additional service terms and conditions set forth for certain Maintenance and Support Services (“Support Services”) (i.e. Enterprise Assist, Hardware Maintenance, and Technician on Demand) that are available for purchase by Purchaser from Seller, with specific requirements to be further defined or specified in an individual Order, Service Agreement, or a Sales Agreement, which shall be subject to the Agreement.

- 1. CONTRACT PERIOD.** All Support Services will be for an initial term as specified on the specific Sales Agreement. All Sales Agreements, except Technician on Demand, will be renewed automatically for successive one (1) year terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the applicable initial or renewal term.
- 2. SUPPORT OPTIONS AND EQUIPMENT.** Seller provides various services dependent upon the product and option selected by Purchaser and indicated on the appropriate Sales Agreement. All of Seller’s current service options are available upon request. Repair parts or replacement equipment may be new, remanufactured or refurbished at the discretion of Seller. The removed equipment or parts will become the property of Seller. You may report problems 24 hours a day, 7 days a week by telephone to Seller’s service number. If you request services to be performed other than under the selected service option on the appropriate Sales Agreement, Seller may agree to provide such services at Seller’s then current charges.
- 3. SERVICE EXCLUSIONS.** Support Services does not cover repair for damages or malfunctions caused by: (i) actions of non-Seller installed equipment or software; (ii) Purchaser’s failure to follow product specific written Manufacturer installation, operation or maintenance instructions including Purchaser’s failure to permit Seller timely remote access to the product; (iii) failure of products not serviced by Seller; (iv) abuse, misuse or negligent acts of non-Seller personnel; or (v) force majeure conditions as stated in the Agreement. In addition, Seller is not obligated to service if there is modification of the product(s). Purchaser agrees to notify Seller prior to moving a product. Additional charges may apply if Seller incurs additional costs in providing service as a result of a move of a product.
- 4. LICENSE FOR SPACE AND EQUIPMENT.** As defined in the Sales Agreement, Seller grants Purchaser a license to occupy space (“Space”) as Seller designates to locate certain of Purchaser’s equipment and to interface with such cables, computers, or other equipment as Seller designates, at Seller’s Co-location facilities pursuant to the particular Sales Agreement. This Agreement and a Sales Agreement convey only a license to occupy the Space.
- 5. DEFAULT AND REMEDIES**
  - 5.1 DEFAULT OF SERVICE AGREEMENT.** Purchaser will be in default (“Default”) of the Service Agreement if they fail to pay any charges when due or fail to perform or observe any material term or condition of this Agreement, if such failure shall continue unremedied for thirty (30) days after receipt of written notice thereof from Seller.
  - 5.2 REMEDIES.** In addition to any other remedies available to Seller at law, equity or otherwise, if Purchaser is in Default under any Service Agreement or this Agreement and fails to correct such Default within seven (7) days of such Default first occurring, Seller may suspend all support services under all Service Agreements, disconnect and/or repossess any Services under all Service Agreements, and restrict Purchaser’s access to the Space (if applicable) until such time as Purchaser cures such Default. In addition to any other remedies available to Seller at law, equity or otherwise, if Purchaser is in Default under any Service Agreement or this Agreement and fails to correct such Default within thirty (30) days of such Default first occurring, such event will constitute a material breach of this Agreement, and Seller may terminate this Agreement, subject to the appropriate portion of the Agreement, and all Service Agreements upon written notice to Purchaser. Additionally, Purchaser will also have the right to sell or retain possession of and use (or, at Seller’s option, remove and store at Purchaser’s expense) all or any portion of the equipment under all Service Agreements without any cost, obligation or liability of Seller up to the amount specified in the appropriate section of the Agreement..
- 6. SERVICE AGREEMENT CANCELLATION/TERMINATION.**
  - 6.1 CANCELLATION OF HARDWARE MAINTENANCE SERVICE AGREEMENT.** Either before or after commencement of the Service Agreement, Purchaser may terminate Service Agreement coverage upon thirty (30) days written notice and: (i) payment of termination charge equal to fifty percent (50%) of the monthly charges for twelve (12) months or fifty percent (50%) of the charges for the period remaining, whichever is less; or (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of fifty percent (50%) of the price for a twelve (12) month period or fifty percent (50%) of the price of the remaining term, whichever is less.
  - 6.2 CANCELLATION OF ENTERPRISE ASSIST CORE OR USER AGREEMENT.** Purchaser may terminate Enterprise Assist service coverage upon thirty (30) days written notice and : (i) payment of termination charge equal to eighty percent (80%) of the monthly charges for twelve (12) months or eighty percent (80%) of the charges for the period remaining, whichever is less; or (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of eighty percent (80%) of the price for a twelve (12) month period or eighty percent (80%) of the price of the remaining term, whichever is less.
  - 6.3 CANCELLATION OF PREPAID TECHNICIAN ON DEMAND.** Purchaser may terminate the Technician on Demand Agreement upon thirty (30) days written notice. Seller will refund amount equal to the original contract value minus all used hours multiplied by the then Seller hourly rate and all trip charges multiplied by the then Seller trip charge. Seller will refund or credit the pro rate price.

PURCHASER ACKNOWLEDGES THAT THE TERMINATION CHARGE SET FORTH IN THE SECTION TITLED “SERVICE AGREEMENT CANCELLATION/TERMINATION” IS A REASONABLE ESTIMATE OF DAMAGES TO BE SUFFERED BY SELLER AS THE RESULT OF THE TERMINATION OF

THE SERVICE AGREEMENT, WHICH AMOUNTS ARE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH TERMINATION CHARGE IS NOT INTENDED AS A PENALTY BUT AS LIQUIDATED DAMAGES.

- 7. DAMAGES.** Neither Party will be liable to the other for any indirect, incidental, special, consequential, exemplary or punitive damages (including without limitation, damages for lost profits, lost revenues or the cost of purchasing replacement services) arising out of the performance or failure to perform under this Agreement or any Service Agreement with the exception of damages resulting from Purchaser's failure to timely vacate the Space in accordance with the Agreement. Notwithstanding the foregoing, nothing in this Agreement or any Service Agreement will be construed as limiting the liability of either party for personal injury or death resulting from the negligence or willful misconduct of a party or its employees, agents, representatives or contractors.
- 8. EFFECT OF EXPIRATION OR TERMINATION.** Upon the effective date of expiration or termination of this Agreement and all Service Agreements the following provision will apply:

  - 8.1** Seller will immediately cease providing services under all Service Agreements.
  - 8.2** Purchaser will immediately pay all amounts due and owing by Purchaser to Seller under this Agreement and the Service Agreements, including cancellations charges, in full.
  - 8.3** To the extent the equipment under any Service Agreement has not been sold or possessed by Seller pursuant to this Agreement, Purchaser will remove from the Space all of the equipment and any other Purchaser property within ten (10) days of the termination date (but only after all payments due to Seller have been made). If Purchaser does not remove such property (or cannot remove such property because of payments being outstanding to Seller) within such ten (10) day period, then Seller may move any and all such property to storage and charge Purchaser for the cost of such removal and storage, without any cost, obligation or liability of Seller to Purchaser. If Purchaser does not pay all amounts due to Seller and remove such property from the Space or storage within thirty (30) days of the termination date, Seller may liquidate and sell the property, including any equipment, in any reasonable manner and apply any proceeds against amounts due to Seller by Purchaser without any payment, obligation or liability to Purchaser.
  - 8.4** Neither party will have any further obligation or liability under the Service Agreement and this Agreement other than as specifically set forth in the Service Agreement and this Agreement. Nothing in this subsection will relieve either party of any obligation that arose prior to the expiration or termination date of this Agreement, or of those obligation that impose a continuing obligation on a party including, without limitation, the indemnification and confidentiality provisions of this Agreement. All representations, warranties, and covenants of each party will survive the termination of this Agreement and the Service Agreement.
- 9. PRICING ASSUMPTIONS.**

  - 9.1 TRUE-UP.** Number of users or ports may be recalculated per quarter to actual number of users or ports and billing will be adjusted accordingly.
  - 9.2 NEW EQUIPMENT/SITES.** All new equipment and sites may change monthly billing at time of purchase and may incur an upfront purchase charge.
- 10. Purchaser Responsibilities.**

  - 10.1 CONNECTIVITY/ACCESS.** Purchaser must provide Seller with remote access to all covered systems and onsite access to all covered systems as needed or requested by Seller. Remote access is typically provided via Avaya Secure Access Link (SAL) or Lantana System Control. For all onsite work, Purchaser must provide Seller with appropriate timely access.
  - 10.2 SELLER'S CO-LOCATION FACILITY.** If Sales Agreement consists of housing equipment in Seller's co-location facility, it is the responsibility of Purchaser to provide network connectivity to Purchaser's other sites. Any management of the above mentioned network connectivity and connectivity to Purchaser's other sites is the sole responsibility of Purchaser. Seller is not liable for connectivity to Purchaser's network or to the Purchaser's network Service Provider unless otherwise stated in the Sales Agreement.
  - 10.3 TELEPHONY SERVICE.** Unless otherwise specifically specified, it is the full responsibility of Purchaser to provide and maintain all services associated with the Public Switched Telephone Network (PSTN) and data network connectivity. This responsibility includes but is not limited to 911 emergency calling, local, and long distance.
  - 10.4 SYSTEM CONTROL.** Unless otherwise specified in the Sales Agreement, Purchaser will provide a server with the appropriate provided specs for the System Control application.
- 11. ENTIRE APPENDIX.** This Appendix constitutes the entire understanding of the parties with respect to Support Services and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to Support Services and will not be contradicted or supplemented by any prior course of dealing between the parties.



## Appendix C

### Carrier Services

#### 1. INTRODUCTION

**1.1. OVERVIEW OF DOCUMENTS.** This Appendix and the following additional documents (collectively, the “Carrier Agreement”) shall apply to all services and equipment Seller provides Purchaser pursuant to this Carrier Agreement (“Carrier Services”) and shall continue in effect so long as Carrier Services are provided under this Agreement:

- 1.1.1. PRICING SCHEDULES.** A “Pricing Schedule” means a pricing schedule or Sales Agreement (including related attachments) or other document that is attached to or is later executed by the parties and references this Agreement. A Pricing Schedule identifies the applicable Carrier Services, the pricing (including discounts and commitments, if applicable) for such Carrier Services and the term during which such Carrier Services are purchased (“Pricing Schedule Term”).
- 1.1.2. TARIFFS.** “Tariffs” are documents containing the descriptions, pricing and other terms and conditions for a Service that Seller or its Affiliates file with regulatory authorities. Tariffs can be found at the appropriate provider’s website.
- 1.1.3. ACCEPTABLE USE POLICY.** Acceptable Use Policy (“AUP”) applies to (i) Carrier Services provided over or accessing the Internet and (ii) wireless (*i.e.*, cellular) data and messaging Carrier Services. The AUP, for a specific provider, can be provided upon request.
- 1.1.4. USE OF SERVICE.** Purchaser and/or anyone acting through it may not resell Services or use Services for: (a) traffic aggregation; (b) its own end users and/or customers as a telecommunications or any other kind of provider; (c) sending calls that originate from a location other than the local calling area associated with the Purchaser’s service location; or (d) sending large volumes of calls from or to areas that are high-cost (areas with access costs greater than regional Bell operating company access costs) or to a toll-free number. Additionally, no more than ten percent (10%) of Purchaser’s calls may be six (6) seconds or less and/or no more than forty percent (40%) of call attempts may be uncompleted per trunk group and/or DSO/DSO equivalent. For violations of this Section, Seller or its suppliers may: (w) immediately terminate Carrier Services; (x) charge Purchaser long-distance charges and an additional price per minute; (y) charge Purchaser any additional amounts necessary to recoup administrative costs and charges from other carriers; and/or, (z) require Purchaser to pay for the excessive use immediately and make a deposit.
- 1.1.5. SERVICE GUIDES.** “Service Guides” are documents containing the descriptions, pricing and other terms and conditions for a Service not covered by a Pricing Schedule or Tariff. Service Guides may be found at <http://www.lantanacom.com/eula> or upon specific request.

**1.2. PRIORITY OF DOCUMENTS.** The order of priority of the documents that form this Carrier Agreement is: Pricing Schedules; this Agreement; the AUP; Service Guides; and Tariffs; provided that, Tariffs will be first in priority in any jurisdiction where applicable law or regulation does not permit contract terms to take precedence over inconsistent Tariff terms.

#### 2. SELLER DELIVERABLES

- 2.1. SERVICES.** Seller will provide Carrier Services to Purchaser, subject to the availability and operational limitations of systems, facilities and equipment.
- 2.2. EQUIPMENT.** Carrier Services may be provided using equipment owned by Seller or its providers. Equipment may be located at a Purchaser Site (“Equipment”), but title to the Equipment will remain with Seller or its providers. Seller will require the Purchaser to provide electric power for the Equipment and to keep the Equipment physically secure and free from liens and encumbrances. Purchaser shall bear the risk of loss or damage to Equipment at Purchaser Sites (other than ordinary wear and tear) except to the extent caused by Seller or its providers. For fixed wireless Carrier Services, Purchaser has the additional material obligations to: (a) obtain “roof rights” and make available all evidence of same to Seller or its suppliers; (b) provide space for Seller or its supplier’s equipment at the Carrier Service locations, no further than three hundred (300) feet from Purchaser’s router or switch interface; and, (c) provide internal building conduit to allow Seller or its suppliers the ability to rod/rope to the point of demarcation. Seller or its suppliers shall not be liable for any reasonable alterations or necessary work to the Carrier Service locations that are required for installation and removal of Seller or its supplier’s equipment.
- 2.3. SOFTWARE AND PURCHASED EQUIPMENT.** Any software or Purchased Equipment that is furnished to Seller for use by Purchaser will be governed by the written terms and conditions applicable to such software and Purchased Equipment. Title to such software remains with Seller or its supplier. Purchaser must comply with all such terms and conditions, and they take precedence over this Carrier Agreement as to such software. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SELLER OR ITS SUPPLIERS HAVE NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON PURCHASED EQUIPMENT OR SOFTWARE NOT MANUFACTURED OR CREATED BY SELLER

#### 3. PURCHASER RESPONSIBILITIES

**3.1. ACCESS RIGHT.** Seller will require Purchaser to provide Seller or its suppliers with timely access to property and equipment they control at their Site(s) as reasonably required for the Carrier Services at no cost to Seller. Purchaser will also obtain, at their expense, timely access for Seller or its suppliers as reasonably required for the Carrier Services to property controlled by third parties, such as a landlord. Seller or its suppliers will coordinate with and, except in an emergency, rely on Purchaser to grant or obtain consent to enter upon Purchaser’s property and premises, as applicable, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, inspect, replace and remove Service Components and the right to use ancillary equipment space within a building to connect a Purchaser’s Site to Seller or its supplier’s network. Purchaser must provide Seller or its suppliers timely information about and access to Purchaser’s facilities and equipment as Seller or its suppliers reasonably requires to provide the Carrier Services, subject to reasonable security policies. Purchaser has the responsibility to furnish any conduit, holes, wireways, wiring, plans,

equipment, space, power/utilities and other items as AT&T reasonably requires for the Carrier Services and to obtain any necessary licenses, permits and consents (including easements and rights-of-way). Sites must be ready for Seller or its suppliers to perform its work according to agreed upon schedules.

- 3.2. SAFE WORKING ENVIRONMENT.** Sites at which Seller or its suppliers installs, maintains or provides Carrier Services must provide a safe working environment, free of Hazardous Materials and be reasonably suitable for the Carrier Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. Seller or its suppliers shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.
- 3.3. USERS.** Purchaser will cause other Users to comply with this Carrier Agreement and is responsible to Seller and its suppliers for Users' use of any Service unless expressly provided to the contrary in an applicable Service Publication.

#### **4. TERM, BILLING, AND PRICING**

- 4.1. TERM AND RENEWAL.** This Carrier Agreement is in effect on the date identified in the Sales Agreement and will continue for the term set forth in the Sales Agreement from the last date that Carrier Services are installed (the "Term"). Upon expiration of the Term, this Carrier Agreement will automatically renew for successive one-year terms (each, a "Renewal Term").
- 4.2. PRICING.** The prices listed in a Pricing Schedule or Sales Agreement will take precedence over the corresponding prices set forth in any otherwise applicable Service Publication. The Pricing Schedules shall be in effect until the earlier of (a) the expiration of the applicable Term, or (b) until changed by Seller as set forth herein. Seller reserves the right to increase or decrease the monthly recurring charges, terms and conditions of rate cards from time to time and such changes shall become effective on the day that is 30 days after such changes were first made available to Purchaser. Except as set forth in a Pricing Schedule, no promotion, credit, discount or waiver set forth in any other Service Publication will apply.
- 4.3. ADDITIONAL CHARGES AND TAXES.** Prices set forth in a Pricing Schedule may be exclusive of and Purchaser will pay all taxes (excluding those on Seller's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from Purchaser's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Carrier Services, except to the extent Purchaser provides a valid exemption certificate prior to the delivery of Carrier Services. To the extent required by law, Purchaser may withhold or deduct any applicable taxes from payments due to Seller, provided that Purchaser will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish Seller with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that Seller may claim any applicable credit. Purchaser shall pay all charges if Seller or its suppliers are required to extend the demarcation point, delay installation due to Purchaser, or undertake special construction.
- 4.4. BILLING.** Installation occurs and billing at a location begins on the earlier of (i) the date Seller or its suppliers makes Carrier Services available to Purchaser for its use (which may be the date administrative access to certain software-based Carrier Services is granted to Purchaser); or (ii) the date that Carrier Service would have been available for use by Purchaser if Purchaser had fulfilled its obligations required to provision and install the Carrier Service.
- 4.5. MOVES.** If Purchaser moves, it must provide at least ninety (90) days' advance written notice and pay applicable installation charges and increased monthly service charges for the new location. If Seller or its suppliers cannot serve the new location, cannot install Carrier Service at the new location due to Purchaser's failure to provide enough notice, or Purchaser terminates due to the move, cancellation charges or liquidated damages pursuant to this Agreement shall apply.

#### **5. SUSPENSION AND TERMINATION**

- 5.1. TERMINATION OF CARRIER AGREEMENT.** This Carrier Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding or makes an assignment for the benefit of its creditors.
- 5.2. TERMINATION OR SUSPENSION.** The following additional termination provisions apply:
- 5.2.1. MATERIAL BREACH.** If either party fails to perform or observe any material warranty, representation, term or condition of this Carrier Agreement, including non-payment of charges, and such failure continues unremedied for 30 days after receipt of notice, the aggrieved party may terminate the affected Carrier Service or Service Components and, if the breach materially and adversely affects the entire Carrier Agreement, terminate the entire Carrier Agreement. If Purchaser is in breach, Seller may elect to suspend (and later terminate) the affected Service Components and, if the breach materially and adversely affects the entire Carrier Agreement, suspend (and later terminate) the entire Carrier Agreement.
- 5.2.2. INTERNET SERVICES.** If Purchaser fails to rectify its own, or effect the rectification by a User of a violation of the AUP within 5 days after receiving notice from Seller, Seller may suspend the affected Service Components. Seller reserves the right, however, to suspend or terminate the affected Service Components immediately when: (i) Seller's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) Seller is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) Seller reasonably determines that (a) it may be exposed to sanctions, liability, prosecution or other adverse consequences under applicable law if Seller were to allow the violation to continue; (b) such violation may harm or interfere with the integrity, normal operations or security of Seller or its supplier's network or networks which is interconnected or may interfere with another customer's use of services or the Internet; or (c) such violation otherwise presents an imminent risk of harm to Seller or its suppliers, Seller's or its supplier's customers or their respective employees.
- 5.2.3. FRAUD OR ABUSE.** Seller may terminate or suspend an affected Carrier Service or Service Component either with respect to an individual User of Purchaser or with respect to Purchaser taken as a whole, and, if the activity materially and adversely affects the entire Carrier Agreement, terminate or suspend the entire Carrier Agreement, immediately by providing Purchaser with such

advance notice as is reasonably practicable under the circumstances if Purchaser or a User: (i) commits a fraud upon Seller or its suppliers; (ii) uses the Carrier Service to commit a fraud upon another party; (iii) unlawfully uses the Carrier Service; (iv) abuses or misuses Seller or its supplier's network or Carrier Service; or (v) interferes with another customer's use of Seller or its supplier's network or services.

**5.2.4. INFRINGING SERVICES.** If the options described in the Agreement (Infringing Services) are not reasonably available, Seller may at its option terminate the affected Carrier Services or Service Components without liability other than as stated in the Agreement (Seller's Obligations). In addition to these termination rights, if Seller or its suppliers determine that providing Carrier Services is not economically or technically feasible or because underlying facilities leased from third parties are no longer available due to legal/regulatory changes, Seller has the right to terminate Agreement either prior to installation or on 60 days' notice after installation.

**5.2.5. HAZARDOUS MATERIALS.** If Seller or its suppliers encounters any Hazardous Materials at a Site, Seller may terminate the affected Carrier Services or Service Components or may suspend performance until Purchaser removes and remediates the Hazardous Materials at Purchaser's expense in accordance with applicable law.

### **5.3. EFFECT OF TERMINATION.**

**5.3.1.** Termination or suspension by either party of a Carrier Service or Carrier Service Component does not waive any other rights or remedies a party may have under this Carrier Agreement and will not affect the rights and obligations of the parties regarding any other Carrier Service or Carrier Service Component. In the event of a termination of this Carrier Agreement by Seller or its suppliers for cause, Seller shall also have the rights set forth to ensure continuity of Carrier Services to End User Customers.

**5.3.2.** If a Carrier Service or Carrier Service Component is terminated, Purchaser will pay all amounts incurred prior to the effective date of termination.

**5.3.3.** In the event of a termination, the terms and conditions of this Carrier Agreement will survive solely with respect to any Pricing Schedule executed by the parties prior to such termination for the remaining term of such Pricing Schedule.

### **5.4. CARRIER SERVICE CANCELLATION/TERMINATION CHARGES.**

**5.4.1.** If Purchaser or Seller terminates a Carrier Service or Service Component prior to Cutover, Purchaser will pay the greater of (i) any termination or cancellation charges set out in a Pricing Schedule or Service Publication, or (ii) in the absence of such specified charges, will reimburse Seller for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination, and three (3) months of monthly recurring charges.

**5.4.2.** If Purchaser or Seller terminates a Carrier Service or Service Component after Cutover, Purchaser will pay applicable termination charges as follows: (i) 100% of the monthly recurring charges for the terminated Carrier Service or Service Component multiplied by the months remaining in a Term or Renewal Term; (ii) if termination occurs before the end of an applicable Term or Renewal Term, any associated credits or waived or unpaid non-recurring charges; and (iii) any charges incurred by Seller from a third party due to the termination.

PURCHASER ACKNOWLEDGES THAT THE TERMINATION CHARGE SET FORTH IN THE SECTION TITLED "CARRIER SERVICE CANCELLATION/TERMINATION CHARGES" IS A REASONABLE ESTIMATE OF DAMAGES TO BE SUFFERED BY SELLER AS THE RESULT OF THE TERMINATION OF THE SERVICE AGREEMENT, WHICH AMOUNTS ARE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH TERMINATION CHARGE IS NOT INTENDED AS A PENALTY BUT AS LIQUIDATED DAMAGES.

**6. IMPORT/EXPORT CONTROL.** Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under this Carrier Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations. Purchaser is responsible for each of its Users use, distribution, transfer or transmission of any equipment, services, software or technical information provided under this Carrier Agreement (even if incorporated into other products), and in connection therewith will require a similar covenant and agreement in all contracts with its Users that they and their Users will not distribute, transfer or transmit any equipment, services, software or technical information provided under this Carrier Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations..

### **7. DEFINITIONS**

**7.1. "AFFILIATE"** of a party means any entity that controls, is controlled by or is under common control with such party.

**7.2. "CUTOVER"** means the date Purchaser's obligation to pay for Carrier Services begins.

**7.3. "DAMAGES"** means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

**7.4. "EFFECTIVE DATE"** of a Pricing Schedule means the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law

**7.5. "MINIMUM RETENTION PERIOD"** means the Minimum Retention Period identified for a Service Component in a Pricing Schedule or Service Publication during which Purchaser is required to maintain service to avoid the payment (or repayment) of certain credits, waived charges or amortized charges.

**7.6. "PURCHASED EQUIPMENT"** means equipment or other tangible products Purchaser purchases under this Carrier Agreement, including any replacements of Purchased Equipment provided to Purchaser. Purchased Equipment also includes any internal code required to

operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Purchaser on which Software is stored.

**7.7. "SERVICE COMPONENT"** means an individual component of a Service provided under this Carrier Agreement.

**7.8. "SERVICE PUBLICATIONS"** means Pricing Schedules, Tariffs, Service Guides and the AUP.

**7.9. "SITE"** means a Purchaser's physical location, including a collocation space on, Seller's or its Affiliate's or subcontractor's property, where Seller or its suppliers installs or provides a Service at the request of Purchaser or its Affiliate.

**7.10. "USER"** means anyone who uses or accesses any Service provided to Purchaser.

**8. ENTIRE APPENDIX.** This Appendix constitutes the entire understanding of the parties with respect to Carrier Services and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to Carrier Services and will not be contradicted or supplemented by any prior course of dealing between the parties.

## Appendix D

### Cloud Solutions

In addition to the foregoing terms, the following additional terms and conditions apply specifically to the Lantana Cloud Solutions product offerings (“Cloud Products”):

- 1. TERM AND RENEWAL.** Services will be for an initial term as specified on the specific Sales Agreement. All Sales Agreements will be renewed automatically under one of the following: (i) Sales Agreements for an initial term of one (1) year or longer will renew for successive one (1) year terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, (ii) Sales Agreements for an initial term of less than one (1) year will renew for successive one (1) month terms applying the then most similar current generally available support plan offering for the applicable supported products and then current rates, unless either party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the applicable initial or renewal term.
- 2. MINIMUM LICENSE REQUIREMENTS.** All Sales Agreements with an initial term longer than one (1) year, Purchaser must maintain a license quantity level no less than eighty percent (80%) of the original purchased license quantity. For all Agreements with an initial term less than one (1) year, no minimum license requirement exists. If requested licenses are below the minimum license requirement, Purchaser will be invoiced for the minimum license quantities.
- 3. AVAYA SOFTWARE.** For all LC Voice services, Purchaser agrees to comply with all applicable Avaya software End-User License Agreements (“EULA”) or other licenses as detailed at <http://support.avaya.com/LicenseInfo> or its successor site. Purchaser shall immediately notify Seller or Avaya of any breach of the Avaya EULA immediately upon becoming aware of such breach and Purchaser agrees and understands such a violation would lead to an immediate termination of Purchaser’s access to the Cloud Products and right to use the software. Purchaser agrees, warrants and represents that at end of its term, it shall return and/or destroy any software installed or downloaded at its site or on any of its devices or otherwise made available or accessible by Purchaser, and Purchaser will certify compliance with the foregoing requirements. Upon Seller’s or Avaya’s request, Purchaser shall promptly provide such certification.
- 4. TERMINATION.** Breach of this Agreement by Purchaser will result in immediate termination of Purchaser’s ability to purchase and receive Cloud Products. In case of termination of this Agreement for any reason, Seller shall de-activate Purchaser’s software licenses and instances allocated to Purchaser. Seller or its suppliers may terminate this Agreement without cause by written notice to Purchaser: (i) effective immediately upon receipt, if Purchaser materially breaches the Agreement; and (ii) at any time for convenience upon 60 days advance written notice with the effective date of termination at the end of the calendar month. Seller or its suppliers may, at any time, terminate an order for convenience upon 30 days advance written notice to Purchaser with the effective date of termination at the end of the calendar month.
- 5. EFFECTS OF TERMINATION.** Termination or expiry of this Agreement will be deemed to terminate all orders, including any orders issued by Purchaser to initiate support services coverage, and all software licenses purchased pursuant to this Agreement. Termination or expiry of an order will be deemed to terminate all licenses granted under that order. Upon termination or expiration of a license for any reason, Purchaser will immediately permanently destroy all copies of software and any related materials in Purchaser’s possession or control and upon Seller’s request, certify such destruction in writing. Upon termination or expiry of this Agreement and within sixty (60) days from such date, Seller will permanently remove and destroy any Purchaser specific licenses, instances, and information associated to Cloud Products. Rights of termination under this Agreement will be without prejudice to any accrued rights or liabilities of either party to the other arising out of this Agreement. Provisions concerning indemnification, limitation of liability, termination, payment (to the extent there are any outstanding payments or fees owed to Seller) and any other terms which, by their nature, are intended to survive termination or expiration of this Agreement or any order will survive any termination or expiration of this Agreement and any Order.
- 6. CLOUD SOLUTIONS CANCELLATION/TERMINATION CHARGES.** Either before or after commencement of the Cloud Solutions Agreement, Purchaser may terminate coverage upon thirty (30) days written notice with the effective date at the end of a calendar month and: (i) payment of termination charge equal to eighty percent (80%) of the monthly charges for the period remaining (ii) for prepaid agreements, Seller will refund or credit the pro rate price of the remaining term less a termination charge of eighty percent (80%) of the price the remaining term.

PURCHASER ACKNOWLEDGES THAT THE TERMINATION CHARGE SET FORTH IN THE SECTION TITLED “CLOUD SOLUTION CANCELLATION/TERMINATION CHARGES” IS A REASONABLE ESTIMATE OF DAMAGES TO BE SUFFERED BY SELLER AS THE RESULT OF THE TERMINATION OF THE SERVICE AGREEMENT, WHICH AMOUNTS ARE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, AND THAT SUCH TERMINATION CHARGE IS NOT INTENDED AS A PENALTY BUT AS LIQUIDATED DAMAGES.

- 7. NETWORK CONNECTIVITY AND SECURITY.** Purchaser is responsible for ensuring its network and connectivity to any Cloud Products meet the minimum necessary criteria needed in the hosting model. Seller will not be liable for any network or connectivity issues resulting from failure of Purchaser to comply with this section. Purchaser is solely responsible for the security of the Cloud Products. Purchaser agrees to implement security measures, commercially reasonable for use of the Cloud Products, including but not limited to, encryption technologies, password and user ID requirements, and procedures regarding the application of security patches and updates. Seller shall not be liable for any unauthorized access. Purchaser shall pay all fees for Cloud Products accessed through Purchaser’s account, including all fees resulting from unauthorized use.
- 8. Overage Charges.** Cloud Product pricing includes sufficient bandwidth for normal usage of Cloud Products. In the case of excessive network bandwidth usage by Purchaser, Seller reserves the right to charge Purchaser overage charges in an amount determined by Seller. Some of the Cloud Products have usage limits defined per Sales Agreement. Purchaser will be responsible for all overage amounts. Unless otherwise specified, all domestic overage charges will be at \$.03 per minute.



9. **CLOUD PRODUCTS SLA.** Service Level Agreement (“SLA”) governs the use of the Cloud Products services under the terms of the Agreement and the relevant Contract(s) between Seller and Purchaser and is incorporated into the Agreement by reference. This SLA applies separately to each of Purchaser accounts and only if Purchaser receives the relevant services. Seller may update, amend, modify or supplement this SLA from time to time. Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the Agreement. In the event of any conflict between this SLA and the Agreement, the Agreement will govern.
10. **DEFINITIONS**
- 10.1. “LC Voice” means Purchaser Cloud PBX service including all real-time and other voice services, fax, conferencing services and SIP trunking.
- 10.2. “LC Voice Fees” means the fees associated with the services for the monthly billing period.
- 10.3. “Data Center Network” means the portion of the Seller cloud network extending from the network egress point of Purchaser LC Voice service to the outbound port of the data center border router.
- 10.4. “Scheduled Maintenance” means maintenance that is announced at least ten (10) business days in advance, and that does not exceed sixty (60) minutes in any calendar month.
- 10.5. “Service Availability” means Network Availability and LC Voice Availability. Seller will use commercially reasonable efforts to provide 99.9% Network Availability and 99.9% LC Voice Availability on a calendar-month basis.
- 10.6. “Network Availability” means the monthly uptime percentage excluding scheduled maintenance that Seller guarantees during any monthly billing cycle.
- 10.7. “LC Voice Availability” means the functioning of all LC Voice Services including telephony and conferencing services that have a direct impact on new call attempts and call completions that Seller guarantees during any monthly billing cycle. Secondary capabilities, such as voicemail availability, are not included in LC Voice Availability.
11. **SCHEDULED MAINTENANCE.** In order to maintain performance and security of the services, Seller performs Scheduled Maintenance within its published maintenance windows. This may require specific services to be suspended during the maintenance period. Loss of Service Availability due to Scheduled Maintenance will not be included in the calculation of Service Availability. Seller will use commercially reasonable efforts to notify Purchaser in advance of any Scheduled Maintenance that may adversely affect Purchaser use of the services
12. **EMERGENCY MAINTENANCE.** Seller may need to perform emergency maintenance, including security patch installation or hardware replacement. Seller will not be able to provide Purchaser with advanced notice in case of emergency maintenance. Loss of Service Availability due to emergency maintenance will be excluded from calculations for Service Availability.
13. **911 LIMITATIONS.** Seller does not validate addresses entered by end users for the location of the devices they use, whether these are physical devices, softphones, or mobile apps. Accuracy of location information for use in emergency response via E911 or any other means is the sole responsibility of the end user.
14. **LC VOICE SERVICE.** Seller will use commercially reasonable efforts to provide the services as defined by the plan or plans purchased or subscribed to under Purchaser account.
- 14.1. **GEOGRAPHIC BASED AVAILABILITY.** Access to cloud products is available in North America. If Purchaser has a need to access the services outside of North America, Purchaser must provide a written request to Seller detailing the country and business case. The written request will be reviewed and may be enabled based solely at Seller’s discretion.
- 14.2. **INTERNATIONAL CALLING.** The LC Voice price per user does not include calling outside of the United States. All calls outside of the United States will be billed at the then appropriate rate and duration for the particular country or region. Purchaser will be responsible for all charges due to these transactions.
- 14.3. **AVAILABILITY CALCULATIONS.** To calculate Service Availability, Seller uses a 1 of 3 combination of methods, including analyzing logs from both Sellers’ event monitoring system and the actual affected infrastructure components. Seller will match these findings with client reports to determine the actual timeframe. Any loss of Service Availability less than five (5) minutes in duration will not be included in the calculation of Service Availability.
- 14.4. **AVAILABILITY EXCLUSIONS.** Loss of Service Availability caused by (i) issues beyond Sellers’ reasonable control, including, without limitation, denial of service or similar attacks, mail bombs, DNS resolution, domain name expiration, hardware failure, Internet availability, Purchaser portion of the network, IP transit provider issues, SYN attacks or any other Force Majeure Event; or (ii) any loss of Services related to periods of time where customer premises equipment is being replaced or repaired; or (iii) any issues related to the Services due to number porting, whether inbound or outbound; or (iv) Loss of Service Availability lasting less than 24 hours, (v) other issues addressed in this SLA, will be excluded from Service Availability calculations.
- 14.5. **AVAILABILITY CREDIT.** If Service Availability under Purchaser account for any monthly billing cycle falls below the level set forth in the above Section, Seller may issue a credit (“Service Availability Credit”). The credits will be verified for validity and will be subject to other conditions herein. The Service Availability Credit will be calculated at rates specified within the schedule included in the “Service Availability Credit” section of the Cloud Services Schedule.
- 14.6. **AVAILABILITY CREDIT REQUEST AND PAYMENT PROCEDURES.** To request a Service Availability Credit, (a) Purchaser account must be in good standing with Seller, (b) Purchaser must open a technical support ticket reporting an apparent service interruption within seventy-two (72) hours of the event, and (c) Purchaser must send an email or written Service Availability Credit request to the Seller billing department no later than the month immediately following the month for which Purchaser is requesting a Service Availability Credit. Service Availability Credit requests must include Purchaser account name and Purchaser primary site address and the dates and specific times for which Purchaser is requesting Service Availability Credits. Seller will compare information provided by Purchaser to the data referenced in the appropriate Section above. A Service Availability Credit may be issued only if Seller confirms from such data that a Service Availability Credit is available. Seller will calculate the Service Availability Credit based on the type of particular LC Voice product for which Service Availability was below the prescribed level, the LC Voice Fees for the particular Service and the percentage of overall individual Service affected.

**14.7. LIMITS ON SERVICE AVAILABILITY CREDIT AND SOLE EXCLUSIVE REMEDIES.** Subject to Purchaser valid submission of a Service Availability Credit request and the other conditions herein, if Service Availability under Purchaser account for any calendar month is below 99.9%, Seller may issue a credit in accordance with the below table. The total Service Availability Credit due to Purchaser for any LC Voice services affected may not exceed fifty percent (50%) of the monthly LC Voice Fees charged for use of the LC Voice service during the month for which the Service Availability Credit is to be issued. Only one (1) Service Availability Credit is available in any given calendar month. Credits are applicable only toward use of the Service and are not convertible into cash or any type of refund. Notwithstanding anything set forth in the Agreement or this SLA, the Service Availability Credit described in this Section will be Purchaser sole and exclusive remedy in connection with any loss of Service Availability as described in such section or breach by Seller of the Agreement or this SLA.

Service Availability	Amount of the credit as a percentage of monthly fee
99.0% to 99.9%	3% of monthly fee credited
98.0% to 98.99%	5% of monthly fee credited
95.0% to 97.99%	10% of monthly fee credited
90.0% to 94.9%	25% of monthly fee credited
89.9% or below	2.5% credited for every 1% or lost availability up to the maximum total penalty limit

**15. LC FAX SERVICE.**

**15.1. INBOUND SERVICE LEVELS.** Faxes sent to a Purchaser’s dedicated DID (Direct Inward Dial) will be routed to user’s account within five (5) minutes of completion of transmission 99.5% of the time during any thirty (30) day period. Routing includes delivery by email, API services, or viewable in the web interface. Seller shall provide fax tone on any Seller fax number 99.99% of the time (with respect to ported numbers, this is only applicable to numbers that have been confirmed as ported successfully onto a Seller-managed circuit).

**15.2. OUTBOUND SERVICE LEVELS.** Seller will provide delivery of fax documents to any fax G3 device on the PSTN or directly on Seller’s LC Fax service. Seller will dial the intended recipient’s fax number within five (5) minutes of receiving the document 99.5% of the time in any thirty (30) day period and within fifteen (15) minutes of receiving the document 99.8% of the time in any thirty (30) day period.

**15.3. CORE FAX COMPONENT UPTIME.** Seller’s core fax services which include fax drivers, rendering engines, email gateway, API services and other core components necessary for the sending and receiving of fax transmissions will be available no less than 99.99% of the time in any thirty (30) day period.

**16. RESPONSE INTERVALS.** Seller will provide normal business hour service response based on four business impact levels defined in the table below as Critical, High, Medium, and Low. These responses are measured from time Purchaser opens a service ticket with Seller either through email (support@lantacom.com), customer portal, or telephone (817-606-3323). All service requests above Medium should be opened via telephone for immediate response. All responses will begin with remote diagnostics

Severity Level	Level Definition	Response Interval	Resolution Interval
Critical	25% or More of Business Impacted	2 Business Hour	No Guarantee but best effort
High	Department or Executive User Impacted	4 Business Hours	No Guarantee but best effort
Medium	Single User Impacted	8 Business Hours	No Guarantee but best effort
Low	Features affecting a Single User	16 Business Hours	No Guarantee but best effort

**17. ENTIRE APPENDIX.** This Appendix constitutes the entire understanding of the parties with respect to Cloud Products and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to Cloud Products and will not be contradicted or supplemented by any prior course of dealing between the parties.