

This Agreement (“Agreement”) is between Consistacom, Inc., a Michigan corporation (“Provider”) and _____, a _____ corporation (“Customer”).

Whereas, Customer owns or leases one or more Avaya Communication Manger (“CM”) telephone switching systems (including the predecessor Definity and MultiVantage brands); and

Whereas, Provider has developed a family of documentation, analysis and compliance services under the trade name of Vector Vision™ Technology Services; and

Whereas, Provider further possesses the expertise and ability to remotely perform its’ Vector Vision™ Technology Services with respect to CM telephone switching systems;

Now, Therefore Customer and Provider agree as follows:

1 Services

- 1.1 The Vector Vision™ Technology Services (“Services”) to be provided to the Customer by Provider are described in Provider’s Technology Services Circular #3, dated April 1, 2008, the applicable portions of which are attached to and included herein as Exhibit 1.1.
- 1.2 Provider’s obligation to undertake the Services set forth in Exhibit 1.1 will begin only upon its receipt and written acceptance of Provider’s Order Form properly executed by Customer. The Order Form covering the Services is attached to and included herein as Exhibit 1.2.
- 1.3 In the event that Customer requires the use of its purchase order form to order Services, the Customer acknowledges and agrees that unless Provider, in writing, specifically accepts such terms they are rejected and will be of no force and effect between the Parties.

2 Payment and Terms

- 2.1 Fees for all Services ordered by Customer under this Agreement are set forth in Exhibit 1.1.
- 2.2 Customer will be invoiced during the term of this Agreement for Services ordered as agreed to by the Parties and set forth in the applicable Order Form.
- 2.3 To dispute an invoice Customer must notify Provider in writing and by means of confirmed delivery within forty-five (45) business days of the invoice date.
- 2.4 Undisputed invoices are due within thirty (30) business days from the invoice date. Customer will be responsible for payment of any fees, taxes or other charges associated with payment by wire transfer.
- 2.5 Overdue invoices may be assessed interest compounded at one and on-half percent (1.5%) per month, or, the maximum rate allowed by law if less.
- 2.6 Provider may suspend performance for any Service for which payment is overdue until the overdue amount is paid in full. In the event that Provider must institute legal action to collect a delinquent account, Customer will reimburse Provider for costs of collection including reasonable attorney fees.
- 2.7 All fees quoted exclude taxes. Customer will pay or reimburse Provider for sales, service or other taxes (but excluding taxes on Provider net income) levied upon the sale or licensing of products or services provided under this Agreement. If Customer claims exemption from such taxes, it must provide Provider with the appropriate tax exemption certificate prior to Provider’s invoicing date.
- 2.8 If this Agreement is cancelled pursuant to Section 4 herein, except as provided in Section 2.9, Customer will receive a pro-rated refund for any pre-paid Services scheduled but not yet performed minus a 25% cancellation fee levied against services ordered but not completed.
- 2.9 The initial fee (if any) to establish connectivity with Customer’s network is not refundable unless connectivity cannot be established, or, the Agreement is cancelled prior to any connectivity work being performed.

3 Delay

- 3.1 After discussions with Provider, Customer will specify any data collection periods that may be required by either the Order Form or Exhibit 1.1. Customer is responsible for meeting all scheduled dates associated with preparing its data network and CMs for access by Provider to begin the Services ordered. Delays by Customer will automatically extend any due dates specified by Customer in its Order Form. For every 1 calendar day Customer delays meeting its preparation dates, Provider will have 1.5 additional calendar days to meet any data collection or other completion dates.

3.2 In the event that either party is delayed or hindered in or prevented from the performance of any required act by reason of strikes, lockouts, power failures, energy shortages, lack of availability of communication services or network facilities, fire, terrorism or other reason of a similar nature not the fault of the party delayed, then performance of that act will be excused for the period of the delay and the period for the performance of that act will be extended for an equivalent period.

4 Term and Termination

4.1 The term of this Agreement is for three (3) years beginning on the effective date set forth below.

4.2 Either party may cancel this Agreement by giving the other not less than thirty (30) calendar days written notice. Cancellation, or any other notice necessitated under this Agreement, will be sent by confirmed delivery as follows:

If to the Customer: _____

If to Provider: Hosted Services Manager
Consistacom, Inc.
P.O. Box 293
Houghton, MI 49931

4.3 If Customer fails to meet its preparation dates required under Section 3.1 and the applicable Order Form by more than thirty (30) calendar days, Provider is relieved of any remaining delivery obligations and may, at its sole option, treat this Agreement as terminated. In such an event Provider will provide written notice by confirmed delivery to the Customer, but is relieved from the thirty (30) calendar days requirement under Section 4.2.

5 Warranties and Disclaimers

5.1 Provider warrants to Customer that Services will be performed in a professional and workmanlike manner, in accordance with any specifications set out in the Technology Services Circular included as Exhibit 1.1.

5.2 In addition to its own software, Provider uses third party software in the creation and/or application of some of its Services. Provider represents and warrants that it has all the rights and licenses necessary to allow it to use such third party software without restriction to provide the Services for Customer. Provider further represents and warrants that all software when delivered to Customer will not contain any mechanisms within it that will interfere with the Services provided in this Agreement, or any malicious code, program, or other internal component which could damage, destroy or alter any data or other information accessed through or processed by the Software.

5.3 Software and Services that violate the foregoing warranties will be, at Provider's sole option, returned for or subject to refund, replaced or re-performed by Provider at no cost to Customer. Replaced software and re-performed Services shall be warranted as set forth above.

5.4 EXCEPT FOR ITS EXPRESS WARRANTIES IN SECTIONS 5.1 AND 5.2, AND EXCEPT FOR ANY DESCRIPTIONS CONTAINED IN EXHIBIT 1.1, PROVIDER MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE, OF ANY SERVICE OR PRODUCT PROVIDED UNDER THIS AGREEMENT.

5.5 The provisions of this Section 5 will survive termination of this Agreement.

6 Intellectual Property

- 6.1 Provider grants to Customer a perpetual, limited, non-exclusive, royalty-free license to use Provider intellectual property to the extent that such Provider intellectual property is contained in the Services, or, necessary for the use and operation of the Services. Customer may not: exploit Provider's intellectual property for gain; further distribute Provider's intellectual property; create derivative works from or provide use of same to users who are not licensed by Provider; make copies of, alterations in, or, grant sublicenses, leases or other rights to Provider's intellectual property. Except for the limited non-exclusive license granted to Customer by this Agreement, Provider retains all rights, title and interest in and to Provider intellectual property.
- 6.2 Provider will indemnify and save harmless Customer including its officers, directors and employees from and against any losses, damages, liabilities, fines, penalties and expenses (including reasonable attorney fees) that arise out of or result from any and all claims of infringement of any intellectual property right which is related by circumstances to the existence of this Agreement or performance under or in contemplation of it.

7 Liquidated Damages and Limitation of Liability

- 7.1 Inasmuch as damages sustained by either party due to a claim arising out of or in connection with the providing of Services under this Agreement, or the claimed violation of any provision of this Agreement, would be difficult, if not impossible, to determine, the parties agree to the payment of liquidated damages, not as a penalty but as the amount which the injured party would suffer by reason of any such claim.
- 7.2 The total aggregate amount of liquidated damages payable under this Agreement for all claims to an injured party will not exceed the smaller of: (i) \$15,000.00, or, (ii) two times the actual fees paid by Customer under this Agreement for all Services invoiced in the twelve months prior to the date of the claim.
- 7.3 In no event will either party have liability for loss of profits, or incidental or consequential damages, or, for loss of general revenues, loss of data or toll fraud.
- 7.4 Any claim for liquidated damages under this Agreement must be made promptly upon its occurrence, but in any event not later than forty five (45) calendar days after the Agreement terminates or it will be deemed waived.

8 Confidentiality

- 8.1 Provider and Customer may enter into a non-disclosure agreement. Such an agreement, if any, will be attached hereto as Exhibit 8.1. In absence of a separate non-disclosure agreement between Provider and Customer this Section 8 will apply.
- 8.2 Provider will protect all confidential or proprietary information and data ("Confidential Information") disclosed by Customer in connection with this Agreement. For purposes of this Agreement Confidential Information is defined to be: (i) information and data both parties acknowledge and understand that they individually have developed, use and maintain including, without limitation, trade secrets, training materials, product information, personnel information, operating procedures, marketing information, profit and loss information, product costs, gross profit margins, selling strategies, supplier information and customer information; (ii) the intellectual property of both parties; (iii) connection information, including login IDs and passwords, (iv) raw CM configuration data that may be collected, (v) all reports generated by any Services process, and (vi) the existence of the relationship between Provider and Customer.
- 8.3 All Confidential Information will remain the property of the disclosing party. Unless authorized by the disclosing party in writing, such Confidential Information : (i) will be treated in confidence by the receiving party and used only for purposes of its performance under this Agreement; (ii) will not be reproduced or copied in whole or in part, except as necessary for use as authorized herein; and (iii) will, together with any copies thereof, be returned or destroyed at the disclosing party's request. Both parties will ensure that their employees, subcontractors, agents, consultants and other representatives who are involved in the performance of this Agreement will comply with this Section 8.

- 8.4 The above conditions do not apply to Confidential Information to the extent it: (i) is in the receiving party's possession at the time of disclosure without the receiving party's breach of any legal obligation; (ii) becomes known to the receiving party through disclosure by sources other than the disclosing party who have the legal right to disclose such Confidential Information; (iii) is independently developed by or for the receiving party without reference to or reliance upon the disclosing party's Confidential Information; or (iv) is required to be disclosed by the receiving party to comply with applicable laws or governmental regulations, provided the receiving party provides prior written notice to the disclosing party and takes reasonable and lawful actions, as specified by and at the expense of the disclosing party, to avoid and minimize the extent of such disclosure.
- 8.5 Except for anonymous summarized statistical results of certain auditing data amalgamated from multiple Services customers, Provider will not use directly or indirectly any of Customer's Confidential Data for its own benefit or for the benefit of any other person, firm or company in a manner inconsistent with the purpose of this Agreement. Customer has the option to withhold its statistical results from the aggregate by giving written notice to Provider at any time during the term of this Agreement. If Customer elects to withhold its statistical results it will not have any right of access to the aggregate statistical information compiled by Provider.

9 Assignment

- 9.1 This Agreement will be binding upon the parties and their respective successors and assigns. Provider may, without the consent of Customer, transfer or assign any of its rights and obligations hereunder to any corporation which, directly or indirectly, controls or is controlled by Provider, or, to any corporation succeeding to all or a substantial portion of Provider's business or assets, provided that Provider will not be released from any of its obligations under this Agreement and providing further that any such transferee or assignee agrees in writing to assume all the obligations of Provider hereunder.
- 9.2 Except as provided in Section 9.1, neither party may, without the other's prior written consent, which will not be unreasonably withheld, transfer or assign any of its rights or obligations under this Agreement. Any transfer or assignment or attempt thereof, in violation of this Section 9.2 will be null and void.

10 Governing Law and Dispute Resolution

- 10.1 This Agreement will be governed by the laws of the State of Michigan, both as to interpretation and performance.
- 10.2 Any claim or other dispute arising under or with respect to this Agreement that cannot be resolved by the parties will be submitted to binding arbitration in accordance with the commercial dispute rules of the American Arbitration Association.
- 10.3 Arbitration proceedings will be conducted in Houghton County, Michigan unless otherwise agreed to by the parties.
- 10.4 The decision or award is subject to Section 7 of this Agreement and will be final and binding upon the parties. Any arbitration award may be entered as a judgment or order in any court of competent jurisdiction.

11 Miscellaneous

- 11.1 Provider will not disclose any relationship with the Customer without written permission from the Customer.
- 11.2 This Agreement constitutes the entire agreement of the parties and supersedes any and all prior agreements or understandings, written or oral, between them.
- 11.3 Section headings are for purposes of convenient reference only and will not affect the meaning or interpretation of any provision of this Agreement.
- 11.4 If any provision of this Agreement, or the application of any such provision, is held invalid, the remainder of this Agreement, and the application thereof, will not be invalidated or affected thereby.
- 11.5 This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Both parties agree that the receipt of a facsimile signature in the space provided below will represent final execution and acceptance of the terms and conditions contained in this Agreement. Any copy of this Agreement made by reliable means such as photocopy or facsimile, shall be considered an original.

- 11.6 Any notice required or permitted by this Agreement shall be in writing and shall be deemed to be sufficiently given if delivered by hand or if sent by courier, receipt requested, or by registered mail, postage prepaid, addressed to the addresses set forth in Section 4.2, or, to such other address as may be furnished for such purpose by notice duly given.
- 11.7 The failure of either party to enforce any right resulting from breach of any provision of this Agreement by the other party shall not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

In Witness Whereof, the parties have executed this Agreement effective as of the _____ day of _____, 200__

 Customer Business Name

 Authorized Representative

 Title

Consistacom, Inc.

 Authorized Representative

 Title

- Attachments:
- Exhibit 1.1 Vector Vision Technology Services Circular #3
 - Exhibit 1.2 Executed Order Form
 - Exhibit 8.1 Optional Non-Disclosure Agreement. Refer to section 8.1 of this Agreement

Please fax this signed Agreement to Consistacom at 906-483-0950
 -OR-
 Send a scanned copy of this signed Agreement to serviceorders@consistacom.com
 For assistance completing this Agreement, please call Consistacom at 906-483-2641