



**AVAYA INC.**  
**CORPORATE GOVERNANCE GUIDELINES**  
***Adopted July 22, 2003***  
***and as amended through July 22, 2004***

**1. PURPOSE**

The Board of Directors (the "Board") has adopted these Corporate Governance Guidelines (the "Guidelines") to address significant corporate governance issues. The Board's Governance Committee is responsible for overseeing and reviewing the Guidelines and reporting and recommending to the Board any changes to the Guidelines. These guidelines shall be posted on the Company's website accessible to investors.

**2. BOARD COMPOSITION**

**2.1 Independence**

A majority of the members of the Board shall meet the criteria for independence as required by any applicable law and the listing standards of the New York Stock Exchange (NYSE). As required by the proposed NYSE listing standards, no director shall qualify as independent unless the Board determines the director has no direct or indirect material relationship with the Company (including any subsidiary that is consolidated in the Company's financial results). In making a determination whether a director is independent, the Board shall apply at least the following standards (the "Independence Standards"):

- A director who is an employee, or whose immediate family member is an executive officer of the Company, is not independent until three years after the end of such employment relationship.
- A director who receives, or whose immediate family member receives, more than \$100,000 per year in direct compensation from the Company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.



- A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the Company is not independent until three years after the end of either the affiliation or the employment or auditing relationship.
- A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the Company's present executives serves on that company's compensation committee is not independent until three years after the end of such service or the employment relationship.
- A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from the Company for property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million or 2% of such other company's consolidated gross revenues, in each case is not independent until three years after falling below such threshold.
- A director who is, or whose immediate family member is, an officer, director or trustee of a not-for-profit organization that received contributions from the Company during the organization's most recent fiscal year equal to or greater than the lesser of \$50,000 and one percent of the organization's total annual donations.

Note: During the first year immediately following the effective date of the NYSE's proposed listing standards on director independence, the "look back" period referenced above shall be one year and thereafter shall be three years.

In the event that a director has a business or other relationship with the Company (including the relationships described below under "Disclosure of Relationships") other than the relationships described in the Independence Standards, the Board shall make its determination whether such director is independent based on the particular facts and circumstances of the relationship.

The Company shall disclose in its proxy statement (i) the Independence Standards; (ii) a statement whether each director meets the Independence Standards; (iii) any determination by the Board that a compensatory relationship meeting the criteria of the first bullet of the Independence Standards is immaterial and the basis for that determination; and (iv) any determination by the Board that a director with a business or other relationship with the Company, as described in the preceding paragraph, is independent and the basis for that determination.



## **2.2 Disclosure of Relationships**

It shall be the responsibility of each director and prospective director to disclose to the Board any relationship that could impair his or her independence or any conflict of interest with the Company. Relationships that should be disclosed may include, among others, affiliations of a director or prospective director or an immediate family member (defined as a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home) of a director or prospective director with a (1) customer, supplier, distributor, dealer, reseller or other channel partner of the Company; (2) lender, outside legal counsel, investment banker or consultant of the Company; (3) a significant stockholder of the Company; (4) charitable or not-for-profit institution that has received or receives donations from the Company or (5) competitor or other person having an interest adverse to the Company. Each director shall complete an annual questionnaire providing information necessary for the Company to assist the Board in reconfirming each director's independence and making any required disclosures in the Company's proxy statement.

## **2.3 Chairman/Lead Director**

The Board shall elect a Chairman, who may be an employee of the Company, an independent director or another outside director. The Chairman shall have the duties assigned by the Company's By-laws or, from time to time, by the Board.

The Board also shall designate a Lead Director who shall be either (1) an independent director who is serving as non-executive chairman of the board, (2) if there is no such director, the Chairman of the Governance Committee, or (3) another independent director selected by the independent directors. The Lead Director shall set the agenda for and preside over an executive session (described in Section 17) to be held in conjunction with each regular meeting of the Board and at such other times as the Lead Director shall determine. The Lead Director shall, among other duties determined by the Board, confer regularly with the Chief Executive Officer, communicate feedback from the Board regarding the performance of the Chief Executive Officer, assist the Chief Executive Officer with issues that concern the Board and be well-informed about the senior management of the Company and the plans for their succession. In the absence of another immediate successor acceptable to the Board, the Lead Director may, if requested by the Board, function as interim CEO in the event of an emergency or the unexpected departure or disability of the CEO.



### **3. NOMINATION OF DIRECTORS**

#### **3.1 Role of the Governance Committee**

The Governance Committee is responsible for recommending to the whole Board nominees for election to the Board. In accordance with the Company's By-Laws, nominees recommended by the Committee for election to the Board may be elected by the Board to fill a vacancy or may be recommended by the Board for election by the shareholders.

#### **3.2 Qualifications of Directors**

In evaluating candidates for election to the Board, the Governance Committee shall take into account the qualifications of the individual candidate as well as the composition of the Board as a whole.

Among other things, the Committee shall consider (1) the number of other boards on which the candidate serves, including public and private company boards as well as not-for-profit boards, (2) other business and professional commitments of the candidate, (3) the need of the Board for directors having certain skills and experience, and (4) the diversity, in the broadest sense, of the directors then comprising the Board.

The Committee shall, in making a recommendation regarding the reelection of an existing member of the Board for an additional three-year term, consider the director's tenure, as provided in paragraph 6.2, and make an assessment of the director's past contributions and effectiveness as a Board member and his or her ability to continue to provide future value to the Board.

#### **3.3 Service on Other Boards**

While the Board has not established a maximum number of board memberships for current directors or nominees to the Board, the commitments of a director or candidate to other board memberships will be considered by the Governance Committee in assessing an individual's suitability for election or reelection to the Board. It is the sense of the Board, as a guideline, given the current duties of boards of directors of public companies, (1) that for a director who is not a chief executive officer or other senior officer of a public company, membership on up to four additional boards of public companies would not impair the effectiveness of such director and (2) for a director who is employed as such an officer, membership on two boards of directors in addition to the Board of his or her employer would not impair the effectiveness of such director.



### **3.4 Process for Additional Board Memberships**

A director who desires to serve on another public company board shall notify the Lead Director, Chairman of the Board and General Counsel of the Company before accepting the appointment to that board and provide information requested by the General Counsel in order to enable the Lead Director and the Chairman of the Board to determine that the additional directorship does not impair the director's independence. The General Counsel will report to the Lead Director and Chairman of the Board his or her advice as to whether the appointment may impair the director's independence or raise other legal issues. In addition, the Chief Executive Officer of the Company shall obtain the approval of the Board before accepting a directorship with another public or private for-profit company.

## **4. SIZE**

The size of the Board shall be fixed from time to time as determined by the Board in accordance with the Company's Certificate of Incorporation, and shall not be comprised of less than three members. It is the sense of the Board that, given the Company's size and the need for diversity of Board experience, a Board consisting of approximately ten (10) directors is appropriate for the Company's needs, although the size of the Board shall be assessed regularly in light of the Company's needs. The Board may elect directors to any class of the Board, subject to keeping the classes as nearly equal in number of directors as practicable. In the event that all classes contain an equal number of directors, the Board shall assign new directors to the class next standing for election at an Annual Meeting of Shareholders. The Governance Committee will consider proposals by shareholders of qualified nominees that are submitted in accordance with the Company's By-Laws.

## **5. DIRECTOR COMPENSATION REVIEW**

The Compensation Committee will review annually the director compensation program and recommend any changes to the Board for approval. The Committee will seek, among other factors, a compensation program that aligns the Board with the long-term interests of the Company's shareholders, compensates directors fairly for their work and promotes ownership by the directors of Company stock. The Committee will obtain advice on competitive compensation practices and may retain an outside consultant for this purpose. The Committee shall provide for pro-rated compensation treatment for directors who are appointed to the Board other than coincident with the Company's Annual Meeting of Shareholders.



## **6. DIRECTOR TENURE**

### **6.1 Retirement from the Board**

Unless waived by the Board at the request of the Chairman of the Board, a director shall retire from the Board immediately prior to the Annual Meeting of Shareholders that occurs in the calendar year of his or her 72nd birthday.

### **6.2 Number of Terms**

While the Board has not established a fixed maximum term for a director, the Governance Committee shall consider a director's tenure in making a recommendation to the Board whether or not a director shall be nominated for reelection to another three-year term. In particular, the Committee shall consider factors such as the director's continued productivity, the value to the Company of retaining an experienced director and the disruption to board effectiveness that can result from changes of board personnel that are too frequent or extensive. It is the sense of the Board, as a guideline, that three 3-year terms of service (or a total of nine years) would be an appropriate limit for balancing these competing factors, but that the Committee has discretion to determine a shorter or a longer term of service as it deems appropriate.

## **7. DIRECTOR RESPONSIBILITIES**

### **7.1 General**

It is the responsibility of the directors to exercise their best business judgment when acting on behalf of the Company and its shareholders, being able to rely on the honesty and integrity of the Company's senior management and its outside advisors and auditors. Directors must act ethically at all times and adhere to the applicable provisions of Avaya's Code of Conduct, *Operating with Integrity*.

### **7.2 Trading in Company Securities**

The directors shall adhere to the Company's policy on trading in securities of the Company and to specific guidance provided by the Secretary as to periods when directors should refrain from trading in the Company's securities.



### **7.3 Conflicts of Interest**

It is the practice of the Board not to waive a conflict of interest for any executive officer. In the event that any executive officer of the Company has an unavoidable conflict of interest or seeks a waiver of any other provision of the Code of Conduct for which a waiver may be obtained, the officer shall notify the Secretary, who shall arrange for the Board to consider the request. The waiver shall be granted only if approved by the Board.

Because of the business relationships that a director may have outside of the Company, it is possible that an actual or potential conflict of interest may develop as a result of actions contemplated by the Company or another person. In the event a director has an actual or potential conflict of interest with respect to a matter involving the Company, whether or not under consideration by the Board, the director shall inform the Board, which shall determine what action, if any, is required, including whether the director should recuse himself or herself from discussion or voting with respect to the matter. In the case of a conflict of interest that is of an ongoing and material nature, the director may be asked to tender his or her resignation.

### **7.4 Governance Review**

At least annually, the Board shall review the governance structure of the Company, including, among other items, its rights plan, the classified board, other provisions of its charter and by-laws affecting governance, other arrangements containing provisions that become operative in the event of a change in control of the Company, governance practices and the composition of the Company's shareholder base.

## **8. ATTENDANCE AND MEETING MATERIALS**

Directors are expected to attend Board meetings and Committee meetings on which they serve in order to best fulfill their responsibilities. Meeting materials will be provided to the Board prior to a scheduled meeting. Directors are responsible for reviewing these materials in advance of the meetings.

## **9. DIRECTOR ORIENTATION**

Upon election, directors will be presented with orientation and reference materials to familiarize them with the Company's senior management and independent auditor, Code of Conduct, insider trading policy, and other compliance programs. The Company shall include in the board's regular agenda updates regarding its products and



technology, including projects in research and development, competitors and commercial relationships. The Company shall also make available senior managers and other employees of the Company in order to better acquaint individual directors with the Company's business.

## **10. BOARD COMMITTEES**

### **10.1 Committee Designation and Composition**

The Board has an Audit Committee, a Governance Committee, Compensation Committee, Strategy Committee and a Finance Committee (the "Committees"). All members of the Committees (other than the Strategy and Finance Committees) shall meet the independence requirements as defined by the New York Stock Exchange, the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder. Any director may serve as a member of the Strategy and Finance Committees or as their chairs.

The Board may establish or maintain additional committees as necessary or appropriate. Committees may meet in separate, concurrent, sessions in the interest of allowing more time for each committee meeting.

Each Committee shall adopt a Charter, which it shall review annually, making modifications as appropriate. The Committee shall determine in its Charter whether it shall implement a process for evaluating its effectiveness annually or on some other interval.

Each Committee shall determine who shall attend any session, or part of a session, of each meeting and whether the Committee wishes to conduct any of its proceedings in an executive session that includes only Committee members.

Committee members serve one-year terms and are appointed by the Board upon recommendation of the Governance Committee.

### **10.2 Committee Compensation**

The Board, upon the recommendation of the Compensation Committee, shall fix the compensation of each committee member and may provide different compensation for members and chairs of the various committees.



## **11. AUDIT COMMITTEE**

Other than director fees, Audit Committee members may not receive any additional compensation from the Company. All members of the Audit Committee shall meet the independence requirements of the NYSE and the SEC and financial literacy requirements of the NYSE, as provided in the Audit Committee Charter. It is the objective of the Board that at least one member of the Audit Committee at any time shall qualify as an "audit committee financial expert" as defined by the rules and regulations of the SEC.

Audit Committee members may not sit on the audit committees of more than three public companies, unless the Board determines that such service would not impair the ability of such member to effectively serve the Company's Audit Committee and the Company discloses such determination in its proxy statement.

## **12. BOARD MEETINGS AND AGENDAS**

The Board shall be responsible for its agenda, which shall include an annual review of strategy, financial and capital plans and R&D activity, along with quarterly updates on the performance and plans of each of the Company's major businesses, as well as matters on which the Board is legally required to act. At the July Board meeting, the CEO will propose for the Board's consideration other key issues to be discussed during the course of the upcoming fiscal year. Board members are encouraged to submit their ideas to the CEO in advance of the meeting. Based upon this input, the Chairman will, in conjunction with the Lead Director, establish a schedule of major agenda items for the year. The Secretary will publish the agenda and distribute materials in advance of each Board meeting. Each Board member may suggest the inclusion of items on the agenda at any time.

The agendas and meeting minutes of the Committees will be shared with the full Board. The Chairman of each Committee, with the support of members of management, will develop the Committee meeting agendas taking into account the views of the Committee members.

## **13. MANAGEMENT ATTENDANCE**

The Board welcomes the regular attendance of senior officers of the Company at Board meetings to provide insight and updates into items being addressed by the Board and to provide high potential managers exposure to the Board. The Board may invite other members of management as it deems appropriate.



## **14. EVALUATIONS AND SUCCESSION PLANNING**

At least twice during each fiscal year, the Compensation Committee will review the goals and objectives and the performance of the Chief Executive Officer and provide an evaluation to the Board. As part of this process, the Committee will seek feedback on the CEO's performance from other members of the Board and incorporate it in the evaluation of the CEO.

The Chief Executive Officer will review with the Board annually succession planning and management development, including the assessment of senior officers considered potential successors to certain senior management positions, including the position of Chief Executive Officer.

## **15. BOARD SELF-ASSESSMENT**

Self-assessment of the performance of the Board will be conducted annually and will be led by the Governance Committee. These assessments will focus on the Board's contributions to the Company and will include a review of any areas the Board or management believes the Board could improve upon.

## **16. BOARD INTERACTION WITH THIRD PARTIES AND EMPLOYEES**

### **16.1 Third Party Access**

The Board recognizes that management speaks on behalf of the Company. However, the Board shall establish procedures for third party access to the Lead Director and to the non-management directors as a group. The Board and the committees shall have the right at any time to retain outside financial, legal or other advisors and shall have appropriate access to the Company's internal and external auditors and outside counsel.

### **16.2 Employee Access**

Board members have full access to the Company's management and employees. Board members will use their judgment to assure that any contacts will not disrupt the daily business operation of the Company. The Chief Executive Officer and/or the Secretary of the Company will be copied, as appropriate, on any written communication between a director and an officer or employee.



### **16.3 Receipt Of Complaints**

The Audit Committee will establish procedures for receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters and the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters.

## **17. MEETINGS OF NON-MANAGEMENT DIRECTORS**

The non-management directors will meet regularly in executive sessions without management. "Non-management" directors are all those who are not Company officers and includes such directors who are not "independent" by virtue of the existence of a material relationship with the Company. Executive Sessions shall be led by the Lead Director. An executive session will be held in conjunction with each regularly scheduled Board meeting and other sessions may be called by the Lead Director in his or her own discretion or at the request of the Board.