AVAYA CUSTOMER MASTER CLOUD AGREEMENT

This Agreement (the "Agreement"), consisting of these general terms ("General Terms") and Supplemental Terms, is a master agreement between the Avaya legal entity below, based upon Customer location, ("Avaya" or "Company") and the Customer executing a proposal or order form prepared by Avaya. The terms of this Agreement govern Customer's purchase of Avaya OneCloud™ Services and Avaya OneCloud™ CPaaS Services as detailed on the Matrix (individually and collectively, the "Service(s)") and related Equipment. This Agreement is available at https://support.avaya.com/TermsOfSale (or a successor site)

Country	Legal Entity	Address
United States	Avaya Cloud Inc.	350 Mount Kemble Ave, Morristown, NJ 07960
Canada	Avaya Cloud Canada Inc.	11 AllState Parkway, Suite 300, Markham, Ontario L3R 9T8
Outside of US and Canada (unless otherwise indicated by Avaya)	Avaya International Sales Ltd	25-29 Mervue Business Park, Mervue, Galway H91 A0H2
The Avaya Affiliates listed in this chart are subject to change by Avaya.		

In addition to these General Terms, each of Avaya's individual Services may be subject to additional terms and conditions including Use Policies (in accordance with Section 1.6) that are specific to the Equipment or Services only and the applicable Service Description. When Customer accesses or uses the Equipment or Services, the applicable Supplemental Terms will apply to Customer, and will automatically be incorporated into this Agreement by reference.

GENERAL TERMS

The following Schedules and Exhibits are part of these General Terms (along with the respective attachments, if applicable), and any other documents cross-referenced (via hyperlinks or the like):

Exhibit A, Definitions
Schedule 1, Add-on Services Terms, Avaya Professional Services
Schedule 2, Terms for the purchase of phones or other Equipment.
Schedule 3, Terms for the purchase of Avaya OneCloud™ CPaaS Services
Addendum, Country Specific Additional Terms available at https://support.avaya.com/TermsOfSale (or a successor site)

1 TERMS OF SERVICE

1.1 **Term of Service.** Upon acceptance of an order (pursuant to Section 1.2 below), Avaya will make the Services available to Customer for the Initial Term. The Initial Term will renew for consecutive Renewal Terms where auto renew is available, unless either party gives the other 30 days (or longer period if expressly stated in the applicable SOW or Supplemental Terms) advance written notice before the end of the Initial Term or current Renewal Term of their intent not to renew. Where autorenewal is available, the Renewal Term shall be as in the SOW or Supplemental Terms.

1.2 **Orders.** Orders are subject to acceptance by Avaya. Accepted orders will be governed by this Agreement. All other terms and conditions contained in any Customer purchase order or other document not expressly referenced in this Agreement will have no effect.

1.3 **Changes to, and Discontinuation of, the Service.** From time to time Avaya may update or modify the Service, including features, functionality and Supplemental Terms, provided that: (a) the change and modification applies to all customers generally, and are not targeted to any particular customer; and (b) one-month prior notice is provided to Customer for any material changes to the Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Service and terminate the respective Service Order without penalty in case of any change to the Service or Supplemental Terms that is of material detriment to the Customer, by written notice within 60 days after Avaya notifies Customer of the change.

1.3.1 Avaya will use commercially reasonable efforts to provide 60 days' notice prior to ending the sale of a Service, at which time the Service will no longer be available for order. Avaya will continue to provide the Service through the end of Customer's then current Service Period.

1.4 **System Requirements.** Services are dependent upon Customer's maintenance of internet access, network access and power. Customer is responsible for maintaining all telecommunications (including mobile service and devices), broadband and computer equipment and services needed to access and use the Services, and for paying all charges associated with these services.

1.5 **Registration.** Customer may be required to register to use the Services. Registration may include providing information (e.g., email or physical addresses, etc.) and Customer agrees to keep such information updated.

1.6 **Use Policies.** When Customer accesses and uses a Service, Customer is responsible for complying with this Agreement, applicable laws and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: http://support.avaya.com/TermsOfSale (or a successor site) and are incorporated into and form part of this Agreement. Avaya may update the Use Policies from time to time and will post the updated version. Such updates will become effective on the next calendar month in which Avaya posts the updated version. Customer is responsible for reviewing the Matrix to determine which Use Policy applies to each Service.

© 2020 Avaya Cloud Inc. All rights reserved. Avaya and the Avaya Logo are trademarks of Avaya Inc or its Affiliates. and may be registered in certain jurisdictions. All trademarks identified by the ® or TM are registered trademarks, service marks or trademarks, respectively, of Avaya Inc or its Affiliates. All other trademarks are the property of their respective owners.

1.7 **Third Party Terms.** During the Service Period, Customer may elect to purchase Third Party Products and Third Party Services from Avaya and, in that case, Customer acknowledges that certain additional terms and conditions may apply to these Third Party Products and/or Third Party Services ("Third Party Terms"). Customer agrees to be bound by and to abide by these Third Party Terms. These Third Party Terms will be provided by Avaya in advance of order in the applicable Supplemental Terms or otherwise.

2 PAYMENT, INVOICING, FEES and TAXES

2.1 **Charges.** Unless otherwise stated in the Supplemental Terms or order, prices are quoted on a consumption and/or subscription basis and are expressed in local currency. Pricing herein does not include charges for taxes, fees, and government-imposed surcharges, which may be included in the invoices. All fees due to Avaya under this Agreement are non-cancellable and the sums paid are non-refundable, except as otherwise expressly provided in this Agreement. By subscribing to the Service, Customer authorizes Avaya to investigate Customer's credit worthiness and agrees, from time to time, to provide appropriate authorizations and financial information as Avaya may reasonably request for this purpose. Payments must be made at the address designated on the invoice or as otherwise indicated by Avaya. Avaya invoices and Customer payments will be processed via Avaya's electronic bill application. Unless otherwise stated in the Supplemental Terms, Services will be billed to Customer monthly in arrears by Avaya and Customer shall pay all fees due hereunder within 30 days of the date of the invoice.

2.2 If Customer adds or removes users or numbers, during a month, the applicable Subscription fees will be pro-rated for the month.

2.3 **Late Payments.** Avaya may suspend licenses and performance of the Services for which payment is overdue until the overdue amount is paid in full or otherwise terminate an order for Services or this Agreement. Overdue payments will be subject to a late payment charge of the lesser of one and one-half percent per month (19.56% per annum) or the maximum rate allowed by applicable law. Customer will reimburse Avaya for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

2.4 **Payment Disputes.** Customer must dispute any charges for the Services in writing within 15 days of the invoice date; otherwise, Customer waives any dispute or further recourse with respect to the applicable charges. Any disputes by Customer must be brought in good faith. Payments of any disputed amounts are due and payable upon resolution.

2.5 **Price Changes.** Avaya may change the fees associated with any Services upon 30 days advance written notice. Customer's continued use of the Service after any price change becomes effective constitutes Customer acceptance of the modified fees, and such amounts shall apply as of the first day of the next month after the fee change was posted or communicated to Customer.

2.6 **Taxes**. Unless Customer provides Avaya with a current tax exemption certificate, Customer is solely responsible for paying all legally required taxes, including any sales, use, excise or other taxes and fees which may be levied upon the Service, except for any (a) taxes that are imposed on, measured by, or based upon net income of Avaya; and (b) taxes in the nature of franchise, doing business, or capital stock taxes if such taxes are based on or measured by capital stock value, par value or net worth of Avaya and are imposed by any taxing jurisdiction in which Avaya is subject to such taxes as a result of transactions or activities not related to this Agreement. If Customer is required to bear a tax pursuant to this Section or make any withholding, then Customer will pay such tax and any additional amounts as are necessary to ensure that the net amounts received by Avaya hereunder, after all such payments or withholdings, equal the amounts to which Avaya is otherwise entitled under this Agreement as if such tax or withholding did not exist.

2.7 **Regulatory Fees.** Customer will be responsible for all governmental assessments, surcharges and regulatory fees pertaining to Customer's use of the Service, that are imposed on Avaya or any Affiliate of Avaya incident to the provision or sale of the Service or chargeable to customers by any governmental entity, including, but not limited to, any government assessment or regulatory fees imposed on Avaya as a result of a material change in the manner in which the Service or Avaya is regulated.

3 SERVICES PROVIDED, USE OF THE SERVICE

3.1 **Services Provided.** The Service is sold on a consumption and/or subscription basis. Avaya will notify Customer of the Services Date. Unless Customer notifies Avaya by the close of the second Business Day following the Service Date that the Services are not operational, the Service Period will commence on the Services Date and will continue until expiration or termination of the Services.

3.2 **Misuse of Service.** Avaya may take any action it deems appropriate with respect to prohibited use of the Service or other use of the Service that it deems to be inappropriate, in violation of this Agreement, or potentially disruptive to the Avaya Service or Avaya's network.

3.3 **Support.** Avaya will provide Customer with technical consultation support for the duration of the Service Period. Customer may access technical support by sending an email or calling the numbers detailed in the applicable Supplemental Terms.

3.4 **Customer's Use of Service.** Customer may use the Service solely for the Customer's internal business use in accordance with and in the countries designated in the applicable Supplemental Terms, this Agreement and the Order, for avoidance of doubt, not for further sublicense or resale. Customer shall be solely responsible for all activities that occur under Customer's account. Upon request, Customer will provide Avaya with signed confirmation of its compliance with this provision.

4 AGREEMENT TERM; TERMINATION; DOWNTIME AND SERVICE SUSPENSION; SURVIVAL

4.1 **Agreement Term.** This Agreement begins on the Effective Date and continues until terminated in accordance with Section 4.2.

4.2 **Termination.** Unless otherwise specified in the Supplemental Terms, if either party commits a material breach of its obligations under this Agreement, or under any order, the other party may terminate this Agreement or the affected order by giving the breaching party at least 30 days' prior notice, with an opportunity to cure the breach before the 30-day period elapses. If Avaya terminates under this provision, then in addition to any other rights Avaya may have, Customer will be responsible for all fees for the Service for the remainder of the Service Period, as well as any early termination or cancellation fees (if applicable).

4.3 **Expiration/Termination.** Upon expiration of the Service Period or termination pursuant to Section 4.2, Customer shall immediately cease use of the Service and return or destroy (in accordance with Avaya's instructions) any Deliverables provided to Customer in connection with the Service, including any Avaya's Intellectual Property. Upon request, Customer shall certify in writing to Avaya that Customer has complied with this provision and Avaya may provide such certification to its suppliers. Except as provided in Section 4.2, any termination of this Agreement will not affect any rights or obligations of the parties under any order accepted before the termination of this Agreement became effective. Under all circumstances, Customer shall pay Avaya the fees for the Service through the effective date of expiration or termination of an order, in addition to any true up or early termination/cancellation fees (if applicable). The provisions contained in this Agreement will continue to apply to such accepted orders until their expiry or termination.

4.4 **Downtime and Service Suspensions.** Customer acknowledges that: (a) Customer's access to and use of the Service may be suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Service for any reason, including as a result of power outages, hacking, system failures, fraud prevention, or other interruptions; and (b) Avaya shall also be entitled, without incurring any liability to Customer or its users, to suspend access to any portion or all of the Service at any time, on a Service-wide basis: (i) for scheduled downtime to permit Avaya to conduct maintenance or make modifications, upgrades, or updates to any Service; (ii) in the event of a denial of service attack or other attack on the Service or other event that Avaya determines, in its sole discretion, may create a risk to the applicable Service, to Customer or its users or to any of Avaya's other customers if the Service were not suspended; or (iii) in the event that Avaya determines that it is necessary or prudent to do so for legal or regulatory reasons (collectively, "**Service Suspensions**"). WITHOUT LIMITATION TO SECTION 9 (LIMITATION OF LIABILITY), AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT CUSTOMER OR ITS USERS MAY INCUR AS A RESULT OF ANY SERVICE SUSPENSION. TO THE EXTENT AVAYA IS ABLE, AVAYA WILL ENDEAVOR TO PROVIDE CUSTOMER NOTICE OF ANY SERVICE SUSPENSION IN ACCORDANCE WITH THE SUPPLEMENTAL TERMS OR SOW AND TO POST UPDATES REGARDING RESUMPTION OF THE SERVICE FOLLOWING ANY SUCH SUSPENSION, BUT SHALL HAVE NO LIABILITY FOR THE MANNER IN WHICH AVAYA MAY DO SO OR IF AVAYA FAILS TO DO SO.

5 CUSTOMER CONTENT AND MARKS

5.1 Customer is solely responsible for Customer Content, including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content. Customer represents and warrants that it has all necessary rights to, and hereby does, grant to Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Customer Content to the extent necessary for the purpose of providing the Service.

5.2 As between Avaya and the Customer, Customer retains all right, title and interest in and to Customer Content. Avaya will not share Customer Content or Other Users' Content with any third parties unless: (a) Avaya has Customer written or electronic consent for sharing any of Customer Content and Other Users' Content; (b) it is required by law; or (c) Avaya provides Customer Content or Other Users' Content to third parties (e.g. sub-contractors) to carry out tasks on Avaya's behalf (*e.g.,* data storage, etc.) as directed by Avaya and subject to appropriate agreements with those third parties.

5.3 Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer trade names, trademarks, service marks, logos, domain names and the like ("Customer Marks") and to host and display likenesses and photo images for the purpose of providing the Service to Customer or promoting or advertising that Customer uses the Service; provided, that the use of Customer Marks in connection with this Agreement shall not create any right or title in or to the use of the Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

6 AVAYA'S INTELLECTUAL PROPERTY RIGHTS

6.1 **Avaya Owns Avaya's Intellectual Property.** Avaya and/or its Affiliates, licensors or suppliers own all right, title, and interest in and to the Service and all intellectual property; including but not limited to Software (if any), any and all Deliverables provided to Customer in connection with this Agreement as well as any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, "**Avaya Intellectual Property**"). Customer shall not, directly or indirectly, copy, modify, rent, lease, sell, loan, distribute, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from or create derivative works of the Service or any Avaya Intellectual Property.

6.2 **Marks.** Nothing in this Agreement grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, the Service, or any Software.

7 RIGHTS AND DISCLAIMERS

7.1 All information transmitted through the Service is the sole responsibility of the person from whom such information originated. Avaya reserves the right, but is not obligated to pre-screen, refuse, flag, filter, or remove any material posted on the Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with this Agreement, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) set forth above, or similar actions, without notice or liability to Customer or any other party. Accordingly, Avaya assumes no liability for any action or inaction regarding transmissions, communications, or content provided by Customer or any third parties.

7.2 Customer acknowledges that, in performing the Service, Avaya may archive Customer Content and Other Users' Content and may periodically delete Customer Content and Other Users' Content without notice to Customer. Customer is solely responsible to ensure that any information, including Customer Content, Customer wishes to retain is downloaded, saved and/or backed-up. Avaya may implement reasonable limits as to the size or duration of storage of any Customer Content or Other Users' Content related to the use of the Service.

7.3 Any software security feature is not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures.

7.4 It is Avaya's policy to respond to notices of alleged copyright or trademark infringement that comply with applicable international intellectual property law (including, without limitation, in the United States the Digital Millennium Copyright Act) and where appropriate at Avaya's discretion to terminate the accounts or subscription of infringers. If Customer would like to send Avaya an alleged copyright or trademark infringement notice as it pertains to the Service, go to the following link http://support.avaya.com/AvayaCopyrightAgent (or a successor site) and follow the instructions on how to get in touch with Avaya. If Customer has trouble accessing this link, then Customer may contact Avaya for further information at copyrightagent@avaya.com with the subject line: *"DMCA Takedown Request"* or by mail to:
Avaya Copyright Agent Notification
350 Mount Kemble Avenue, Room 2C109
Morristown, NJ 07960
908-953-2044

8 DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH AND LIMITED HEREIN AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA PROVIDES NO WARRANTIES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICE, INCLUDING, ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER AVAYA, NOR ITS LICENSORS, NOR ITS SUPPLIERS WARRANTS THAT: (A) CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS; (B) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR VIRUSES; (C) THAT CUSTOMER'S USE OF THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, OR DELETION OF CUSTOMER OR THIRD PARTY DATA; (D) THAT THE SERVICES WILL PREVENT TOLL FRAUD; (E) INFORMATION OR CONTENT PROVIDED TO CUSTOMER THROUGH THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (F) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (G) THE SERVICE WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

9 LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS OF PERSONAL INJURY, WILLFUL MISCONDUCT, INFRINGEMENT OF AVAYA'S OR ITS SUPPLIERS' OR LICENSORS' INTELLECTUAL PROPERTY RIGHTS, AND/OR TO THE EXTENT OF THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, IN NO EVENT WILL AVAYA AND ITS AFFILIATES AND LICENSORS OR SUPPLIERS, OR CUSTOMER, BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OTHERWISE FOR: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) TOLL FRAUD, ANY LOSS OF PROFITS, REVENUE, REPUTATION, GOODWILL, OR ANTICIPATED SALES OR SAVINGS, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE, EVEN IF AVAYA OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBIILITY OF SUCH DAMAGES. ALL LIABILITY OF AVAYA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS COLLECTIVELY FOR CLAIMS ARISING OUT OF THIS AGREEMENT, CUSTOMER'S ORDER, OR THE SERVICE SHALL NOT EXCEED THE GREATER OF: (i) FEES PAID TO AVAYA FOR THE SERVICE DURING THE TWELVE (12) MONTHS BEFORE THE LAST EVENT THAT GAVE RISE TO THE CLAIM OR (II) $100,000.00 USD. THE LIMIT IS IN THE AGGREGATE AND NOT PER INCIDENT. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

10 INDEMNIFICATION

10.1 **Avaya's Defense and Indemnification Obligations.** Avaya will defend Customer against third party claims brought against Customer to the extent arising solely from an allegation that the Service directly infringes a third-party patent or copyright. Avaya will indemnify Customer against damages (specifically excluding any increased or enhanced damages resulting from Customer's willful infringement) finally awarded against Customer by a court of competent jurisdiction or a settlement amount approved by Avaya. Avaya's obligations under this Section will not apply if the claim arises or results from (a) Customer's breach of this Agreement, (b) modification to the Service or use of the Service outside the scope of this Agreement, the Supplemental Terms or SOW, (c) combination, operation, or use of the Service with, or damages based on the value of, products, software, data, services or business processes not provided by Avaya, (d) Third Party Products and non-Avaya branded Services, (e) Avaya's compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf, (f) use of non-current or unsupported versions of the Service, or use of the Service after Avaya notifies Customer to stop use due to a third party claim, (g) Customer's Applications, Customer Content or Customer data (including Personal Data), Other Users' Content or any other content or data not provided by Avaya, (h) Deliverables, APIs and SDKs, (i) open source and freeware software or (j) any services, products, software or business processes Customer provides

based on or related to the Service. In the event a claim is made or likely to be made, Avaya may, at Avaya's option and discretion, (i) procure for Customer the right to continue using the Service under the terms of this Agreement, or (ii) replace or modify the Service to be non-infringing without material decrease in functionality. If these options are not commercially reasonably available, at Avaya's discretion, Avaya may terminate the Service by unilaterally terminating the applicable order) upon written notice to Customer and refund Customer any advanced payments for unused Subscription.

10.2 **Customer' Defense and Indemnification Obligations.** Customer will defend and indemnify Avaya and its Affiliates, and their respective officers, directors, employees, contractors, suppliers, licensors, partners and agents (each, an "**Avaya Indemnified Party**") against third party claims brought against an Avaya Indemnified Party arising from (a) Customer's breach of this Agreement, (b) Customer's violation of applicable law, (c) Customer's Applications, Customer Content or Customer data (including Personal Data), Other Users' Content, or the combination of Customer's Customer Content or data, or Other Users' Content, with other applications, content or processes (including, but not limited to any claim involving infringement or misappropriation of third party rights), (d) Customers use of the Services, (e) a dispute between Customer and any client, or dispute between Customer and any third party with whom Customer uses the Service to interact, or (f) Customers or its employees' or agents' negligence or willful misconduct. Customer will defend and indemnify the applicable Avaya Indemnified Party against all damages finally awarded against the Avaya Indemnified Party (or the amount of any settlement entered into by Customer) with respect to such claims.

10.3 **Indemnification Procedures.** The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice shall not relieve the indemnifying party of its obligations under this Section unless the indemnifying party's defense of such claim is materially prejudiced by such failure), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

10.4 **Sole Remedy.** THE FOREGOING STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INTELLECTUAL PROPERTY CLAIMS. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE SERVICE AND ANY OTHER AVAYA INTELLECTUAL PROPERTY.

11 DATA PRIVACY

11.1 **DPA.** Avaya respects Customer's privacy and will only use information provided by Customer to Avaya or collected in the provision of Services in accordance with Avaya's data privacy policies. To the extent Avaya processes Personal Data on behalf of Customer, the most current Avaya DPA, published on http://support.avaya.com/TermsofSale at the time of the particular order, applies and is incorporated herein by reference. The DPA is considered a Supplemental Term, if applicable.

11.2 **Co-operation with Law Enforcement Authorities.** Avaya reserves the right to fully cooperate with any law enforcement authorities, regulatory authorities, or court order requesting or directing Avaya to disclose the Personal Data of anyone posting any messages or content or publishing or otherwise making available any materials that are believed to violate this Agreement. Customer is fully responsible for informing all relevant Data Subjects with whom Customer may communicate or otherwise interact via the Service of the foregoing right belonging to Avaya. BY ACCEPTING THIS AGREEMENT, CUSTOMER WAIVES AND HOLDS HARMLESS AVAYA FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND / OR FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER AVAYA OR LAW ENFORCEMENT AUTHORITIES. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT AVAYA RESERVES THE RIGHT TO INVOICE CUSTOMER AN ADMINISTRATIVE FEE TO RECOVER AVAYA'S COST TO RESPOND TO VALID SUBPOENAS, COURT ORDERS OR COMPLAINTS ISSUED BY A COMPETENT LAW ENFORCEMENT AUTHORITY, REGULATORY AUTHORITY, OR COURT OF LAW REGARDING ABUSIVE OR FRAUDULENT USAGE OF THE SERVICE BY CUSTOMER OR ITS END USERS.

12 FEEDBACK

Avaya welcomes Customer Feedback about the Service. All such Feedback provided by Customer or its users to Avaya or its authorized channel partners becomes Avaya's property and Customer agrees that all intellectual property rights therein are transferred and hereby assigned to Avaya. Customer agrees to cooperate fully with Avaya in connection with such transfer and assignment and Avaya may use such Feedback however it elects without any monetary or other consideration of any kind owed to Customer or any third party.

13 EXTERNAL LINKS AND THIRD-PARTY SERVICES

In some cases, the Service may contain hyperlinks to External Services and Sites. Customer's use of such External Services and Sites is at Customer's own risk. Customer acknowledges and agrees that Avaya neither endorses nor has any responsibility for the External Services and Sites.

14 CONFIDENTIALITY AND PROTECTION OF SERVICE

14.1 **Confidentiality.** The Receiving Party will exercise the same degree of care that it uses to protect its own Confidential Information but in no event less than reasonable care to (i) protect and not disclose to third parties (except as otherwise permitted in this Agreement) any Confidential Information, (ii) restrict dissemination of Confidential Information to individuals (including Receiving Party's employees, agents, directors, officers, professional legal advisers, Affiliates and/or subcontractors) with a need to know and who are under a substantially similar duty of confidentiality, and (iii) not use any Confidential Information for any purpose other than to perform its

obligations under this Agreement. The Receiving Party's obligations hereunder shall not apply to information that (i) is rightfully in its possession prior to receipt from the disclosing party, (ii) is or becomes publicly available other than as a result of a breach of this Agreement, (iii) is rightfully obtained by the Receiving Party from a third party under no obligation of confidentiality with respect to the information, or (iv) is independently developed by the Receiving Party. The Receiving Party may disclose Confidential Information to the extent required by law or regulation. The confidentiality obligations of each party will survive for three years following termination or expiration of this Agreement and any orders under it, or the period required by applicable law, whichever is greater, including laws governing the protection of personally identifiable information and the protection of trade secrets; provided trade secrets will remain confidential for so long as they remain trade secrets under applicable law or until Confidential Information falls under one of the exceptions to the confidentiality obligations specified in this Section.

14.2 **Protection of Service.** Customer acknowledges that the Service, any Deliverables delivered to Customer in connection with the Service, and all other Avaya Intellectual Property are the property and Confidential Information of Avaya, its suppliers, and/or its licensors and contain trade secrets of Avaya, its suppliers, and/or its licensors. Customer agrees at all times to protect and preserve the Service, any such Deliverables, and Avaya Intellectual Property and to implement reasonable security measures to protect the trade secrets of Avaya, its Affiliates, suppliers, and its licensors.

15 SOFTWARE LICENSE TERMS AND UPDATES

15.1 If use of the Service requires Customer to download Software or Software is otherwise made available to Customer, such Software is licensed pursuant to (a) the terms and conditions made available to Customer when Customer downloads or installs the Software portion of the Service, or (b) if no such terms and conditions exist, then the applicable Avaya Global Software License Terms posted at http://support.avaya.com/LicenseInfo (or a successor site) in effect as of the Services Date will apply, for the sole purpose of using the Service, and solely for the duration of the Service Period.

15.2 It is possible that Software may automatically download and install updates from Avaya or its Affiliates from time to time. In such event, Customer agrees to promptly allow such updates to be downloaded and installed.

16 GOVERNING LAW, VENUE, DISPUTE RESOLUTION

16.1 **Governing Law**. Any Dispute under this Agreement will be governed by the laws of the State of New York, excluding both conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods.

16.2 **Dispute Resolution**. In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each controversy or claim within 30 days, (or other mutually agreed period), following the delivery of notice, by referral to designated representatives of the parties authorized to negotiate resolution thereof.

16.3 **Arbitration of Non-US Disputes**. Any Dispute that: (i) arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States; (ii) cannot be settled under the procedures and within the timeframe set forth in Section16.2; and (iii) is not based upon non-payment, will be conclusively resolved by a final and binding arbitration proceeding in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce, except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed One Million US Dollars ($1,000,000.00) at the time all such claims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three (3) arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of Section 9 (Limitation of Liability) and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify this Agreement. The ruling by the arbitrator(s) will be final and binding on the parties and may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees but will each bear their own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration will be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed.

16.4 **Choice of Forum for US Disputes**. If a Dispute arises in the United States or is based upon an alleged breach committed in the United States and cannot be settled under Section 16.2, then either party may bring an action or proceeding solely in either the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York. Except as otherwise stated in Section 16.1 each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Agreement.

16.5 **Injunctive Relief**. Nothing in this Agreement will be construed to preclude either party from seeking provisional remedies, including, but not limited to, temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights, including its rights pending arbitration, at any time. The parties agree that the arbitration provision in Section 16.3 may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order.

16.6 **Time Limit**. Actions on Disputes between the parties must be brought in accordance with this Section within two (2) years after the cause of action arises. For the avoidance of doubt, this time limit does not trump the 15 day period in Section 2.4, Payment Disputes.

16.7 **Compliance**. Customer and Avaya will cause their Affiliates to comply with the dispute resolution procedures described in this Section.

16.8 **Disputes with Other Users.** Customer is solely responsible for Customer's interactions with third parties with whom it uses the Service to interact. Avaya will have no liability with respect to such Customer interactions or disputes that may arise between Customer and such third parties. Avaya reserves the right, but has no obligation, to become involved with disputes between Customer and any such third party in the event that Avaya's interests are impacted.

17 RECORDING

If conferences are applicable to the Service Customer is subscribing to, Customer acknowledges that the laws of certain states, provinces or countries require that if a conference is to be recorded, all participants in the conference must be informed of that prior to the recording taking place, so they may consent to being recorded (if required by applicable laws) in the relevant jurisdictions when using recording features. Customer acknowledges and agrees that Customer shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Customer's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Avaya shall have no liability to Customer or any user or third party if consent is not obtained.

18 EMERGENCY SERVICES, HIPAA and PCI DISCLAIMERS

IN ADDITION, CUSTOMER HAS READ, UNDERSTOOD, AND AGREES TO THE FOLLOWING:

A. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE SERVICE, AS PROVIDED BY AVAYA, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 112, 999, 911 AND E911 SERVICE.

B. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").

C. UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERED TO AS PCI OR PCI DSS.

19 NOTICES

19.1 Service-related notices. Any Service-related notice originating from the Customer that are required or permitted under this Agreement shall be delivered by sending an email or calling the numbers detailed in the applicable Supplemental Terms. Notices given by Customer will be effective when received by Avaya. With respect to Service-related notices delivered by Avaya, they will be sent to the email address Customer has provided to Avaya or by posting the notice on the website associated with the Service. Notices given by Avaya will be effective when sent or posted.

19.2 Legal notices. Legal notices under this Agreement originating from either party will be provided in writing and addressed to the other party at its address set forth herein or to any other address that the receiving party may designate from time to time in accordance with this Section. Notices will be deemed to have been given upon the earlier to occur of (i) actual receipt of the notice or (ii) 10 days after being sent by courier, return receipt requested, to the address stated below:

Avaya, Attention: VP Law
350 Mount Kemble Avenue
Morristown, NJ 07960 United States
Email: lglnoticescomm@avaya.com

20 GENERAL

20.1 **Compliance with Laws.** Customer shall observe all applicable local, state, national, foreign and international laws and regulations when accessing and/or using the Service and any work product or content of the Service, including, without limitation, any export and import laws and/or regulations.

20.2 **International Trade Compliance.** Customer shall not import/export, re-export and/or transfer any work product or content of the Service when accessing and/or using Service in violation of the import/export control laws and regulations of the United States, Canada, Wassenaar Arrangement Member States, World Trade, World Customs Organizations and local laws. In that regard, Customer represents and warrants that: (a) Customer shall obtain any export, re-export, or import authorizations as required; (b) Customer shall not use the Service, content, or work product from Avaya's Service to design, develop or produce missile, chemical/biological, or nuclear weaponry; and (c) neither Customer nor anyone acting on Customer behalf who accesses or uses the Service, content or work product from Avaya's Service are (i) subject to total and/or partial country embargos, or (ii) a foreign person or entity blocked or denied by the United States, Canada, Wassenaar Arrangement Member States, World Trade, World Customs organizations or local laws.

20.3 **Force Majeure.** Neither party will be liable for any delay or failure in performance, other than payment obligations, to the extent the delay or failure is caused by events beyond the party's reasonable control, including fire, flood, Act of God, explosion, terroristic acts, hacking, malware, ransomware, business interruption or data loss caused by malicious or criminal act, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, or civil or military authority, provided such party promptly notifies the other party and uses reasonable efforts to correct such failure or delay in its performance.

20.4 **Message Routing.** Customer may not use phone numbers provided by Avaya to route SMS messages over any other provider's network. All SMS messages sent and received for an Avaya number must be sent and received via the Services. If Customer uses SMS it is

Customer's responsibility to ensure that if Customer initiates any unsolicited SMS, Customer provides Customer's end user with the option to opt in or opt out of receiving those messages as required by applicable law.

20.5 **Agreement in English.** The parties confirm that it is their wish that this Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in English only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise. To the extent that the *Civil code of Québec* is found to govern any part of this Agreement, the Customer hereby waives its rights pursuant to articles 2125, 2126 and 2129 of the *Civil code of Québec*, and acknowledges that its sole rights and recourses with respect to termination of this Agreement are those set forth in this Agreement.

20.6 **Miscellaneous.** This Agreement (and, applicable Supplemental Terms, SOW and the Service order(s)) constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties**.** The terms of this Agreement may be modified only by a signed written amendment. In no event will electronic mail constitute a modification or amendment to this Agreement. If there is an express conflict between the General Terms or the Supplemental Terms, the Supplemental Terms will govern, followed by the General Terms. If any provision of this Agreement is determined to be unenforceable or invalid by court decision, this Agreement will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under this Agreement, including, but not limited to, the right to terminate this Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this Agreement in accordance with its terms. The provisions concerning survival, Avaya's Intellectual Property rights, Disclaimer of Warranties, Limitations of Liability, any indemnification obligations under this Agreement in any section of this Agreement, Feedback, Confidentiality and Protection of Services, Governing Law, Dispute Resolution, and any other terms which, by their nature, are intended to survive termination will survive any such termination of this Agreement. Customer agrees that no joint venture, partnership, employment, or agency relationship exists between Customer and Avaya as a result of this Agreement or use of the Service. If necessary to comply with Avaya's governmental or third party supplier compliance obligations or verify compliance with the terms of the Agreement, in addition to any other remedies available to Avaya, Customer will cooperate with Avaya's reasonable requests for information and inspection of records to confirm that Customer's use of the Service complies with the rights granted hereunder and terms of use of the Services.

20.7 **Assignment & Subcontractors.** Avaya may assign this Agreement and any order to any of its Affiliates or to any entity to which Avaya may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under this Agreement. Any other assignment of this Agreement (or orders) or any rights or obligations under this Agreement without the express written consent of the other party (not to be unreasonably withheld) will be invalid. Avaya may subcontract any or all of its obligations under this Agreement but will retain responsibility for the obligations.

EXHIBIT A- Definitions

Defined terms are identified by capitalized letters and have the meaning given in this Exhibit or elsewhere in the Agreement. This Exhibit A is incorporated into and part of the Agreement.

"Acceptable Use Policy" or "AUP" means the document posted at http://support.avaya.com/TermsOfSale (or a successor site) which describes actions that Avaya prohibits when any party uses its services.
"Acceptance Period" means the time period in which Customer may test the Deliverable which shall not exceed 5 Business Days starting with the business day immediately following the date on which the Deliverable is delivered to Customer.
"Add-on Services" means the implementation, onboarding, professional and/or managed services as described in Schedule 1.
"**Affiliate**" means, with respect to either party, an entity that is directly or indirectly controlling, controlled by, or under common control with a party of this Agreement. For purposes of this definition, "**control**" means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the term "**controlled**" has the meaning correlative to the foregoing.
"Application" means a software application or website within a Customer's domain or that the Customer creates using the API's that interfaces or connects to the Services.
"**Business Days**" means Monday through Friday, 8:00 to 5:00 pm ET, excluding Avaya holidays.
"Confidential Information" means non-public confidential or proprietary information of the disclosing party that is (a) clearly marked confidential at the time of disclosure or (b) a reasonable person would know, based on the circumstances surrounding disclosure and the nature of the information, that the information should be treated as confidential**.**
"Customer" means the legal entity which signs a proposal or order form prepared by Avaya.
"Customer Content" means the content of all data, information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by Customer or Customer personnel, including Other Users Content, while utilizing the Service.
"Customer's End User Agreement" means the agreement by and between the Customer and its End Users.
"**Data Subject**" means an identified or identifiable natural person.
"Delivery Date" means the date on which Avaya delivers Equipment in accordance with Schedule 2 or, in the case of Software that can be enabled by Avaya remotely or delivered via electronic means, the date the Software is enabled or downloaded to the target processor.
"**Deliverables**" means customized software, customized documentation, or other work product provided under Schedule 1.
"Dispute" means any dispute, claim or controversy arising out of or relating to this Agreement.
"DPA" means Data Privacy Addendum.
"Documentation" means information published by Avaya or its Affiliates in varying mediums which may include product information, operating instructions and performance specifications that Avaya or its Affiliates generally makes available to users of its products. Documentation does not include marketing materials.
"Effective Date" means the date in which the last party signs a proposal or order form prepared by Avaya.
"End User" means Customer's users, employees, clients or customers.
"Equipment" means phones compatible with the Service or other hardware.
"External Services and Sites" means non-Avaya websites, content, or resources or otherwise interface or work with third party services which are not maintained or controlled by Avaya.
"Feedback" means comments or suggestions.
"Initial Term" means the term of the Subscription that is indicated in the Customer's order and commences upon the date the Service is available for Customer's use.
"Matrix" means the chart that is posted on the following website (or a successor site): http://support.avaya.com/TermsOfSale that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix periodically and post an updated version.
"Other Users' Content" means the content of any information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by other users while interacting with the Service, including, without limitation, likenesses or photo images, advertisements or sponsored content.
"Personal Data" means data that identifies or may be used to identify an individual.
"Processing", "Process", "Processed" means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
"Project Phase" means a defined activity, objective or period as set out in the applicable SOW during which Add-On Services will be provided.
"Rejection Notice" means a notice Avaya receives from Customer before the end of the Acceptance Period indicating in reasonable detail the material failure of the Add-On Services, Deliverable, or Project Phase to conform to the agreed acceptance criteria in the acceptance procedures.
"Renewal Term" means each of the subsequent terms after the Initial Term.
"Services Date" means the date Avaya advises Customer that the Services are available for Customer's use.
"Service Description" means the applicable description of the Services then current as of the date of Customer's ordering of the Services which is incorporated by reference and is available to Customer upon request or via links in the Matrix.
"Service Period" means the period of time in which Avaya is providing Services to Customer, whether the Initial Term or Renewal Term.
"**Software**" means computer programs in object code, provided by Avaya whether as stand-alone products or pre-installed on Equipment, and any upgrades, updates, patches, bugfixes, or modified versions thereto.

"Statement of Work" or **"SOW"** means a Customer-specific document(s) that describes the features, terms and conditions of an Avaya service being purchased by Customer.
"Supplemental Terms" means, individually or collectively, the Use Policies and Service Descriptions.
"T&M Services" or "**time and material Services"** means Add-On Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.
"Third Party Products" means any product made or provided by a party other than Avaya, including: (i) products ordered by Customer from third parties; (ii) products provided by Avaya that are recognizable as standalone items, and; (iii) products identified as separate items on Avaya's price list, quotes, Order specification forms or Documentation.
"Third Party Services" means any non-Avaya branded service provided under this Agreement.
"Traffic Data" means user billing data and/or metadata, including Caller ID, name, number dialed, duration of call, landline or mobile originated call, SMS send / receive destinations.
"Use Policies" means the policies or additional terms that are incorporated in this Agreement and apply to the provision of certain Services as identified herein and in the Matrix.

SCHEDULE 1 - Add-On Services Terms

These Add-on Services Terms apply to Customer's purchase and use of any Add-on Services. Any capitalized terms used in this Schedule have the meaning given to them herein or in the General Terms.

1. SCOPE; ORDER OF PRECEDENCE; CHANGES

1.1 Services Provided. Avaya will provide the Add-on Services as specified in an order, and as described in a SOW. Add-on Services may include installation and configuration, onboarding, management, consulting and other services where Avaya creates and delivers Deliverables and/or completes other defined objectives or a Project Phase on a milestone basis, T&M basis or other basis ("**T&M Services**"). Deliverables do not include generally available hardware and Software or any installation and configuration of generally available Software and hardware. To the extent a SOW provides that Avaya will deliver generally available Avaya products and related services, such products and services must be purchased pursuant to a separate purchase agreement with Avaya.

1.2 Order of Precedence. Specific to the Services provided under this Schedule 1, unless otherwise provided for in these Add-on Services Supplemental Terms, in the event of conflict among the General Terms, the Supplemental Terms, these Add-on Services Terms, any SOW and any ancillary schedules to or documents referenced in a SOW, the order of precedence is: (i) these Add-on Services Terms; (ii) the General Terms; (iii) the Supplemental Terms, (iv) any SOW; and (v) ancillary documents; except that in relation to limitations of liability, licensing provisions, intellectual property rights and intellectual property rights indemnification, the provisions contained in the General Terms will always take priority.

1.3 Changes. Changes in Add-on Services will be made in accordance with Avaya's change process defined in the SOW.

2. ACCEPTANCE PROCEDURES

2.1 T&M Services. T&M Services are accepted upon performance.

2.2 SOW without Acceptance Procedures. Where the SOW does not contain specific acceptance criteria, Add-on Services are deemed accepted upon the earlier of either: (i) production use (unless Avaya expressly states otherwise in the Service Description or SOW), (ii) Avaya providing notice of completion to Customer; or (iii) Customer signature of an acceptance certificate.

2.3 SOW with Acceptance Procedures. Add-On Services or a Project Phase are deemed accepted upon the earlier of: (i) the end of the Acceptance Period identified in the SOW or Order, unless Avaya has received from Customer a Rejection Notice before the end of the Acceptance Period; or (ii) Customer signature of an acceptance certificate. If Add-On Services, Deliverable and/or Project Phase fails to conform to the agreed acceptance criteria and Avaya has received a Rejection Notice, then Avaya will re-perform the non-conforming Add-On Services, Deliverable and/or Project Phase and re-submit it for acceptance as described above. If, after resubmission, Add-On Services, Deliverable and/or Project Phase fail to conform to the agreed acceptance criteria in any material respect, then Customer's remedies will be either to: (a) terminate the non-conforming Add-On Services, Deliverable and/or Project Phase and return all non-conforming Deliverables for a refund of fees paid under the SOW for the non-conforming Add-On Services, Deliverable and/or Project Phase; or (b) accept the Add-On Services, Deliverable and/or Project Phase subject to the warranties and remedies described in this Schedule 1. Customer will be deemed to have accepted the applicable Add-On Services, Deliverable and/or Project Phase in accordance with subsection (b) above if, Avaya has not received a written termination notice within 5 days of Avaya's resubmission for acceptance.

2.4 Acceptance certificate. Upon acceptance or deemed acceptance in accordance with this Section 2, if requested by Avaya, Customer will sign and return an acceptance certificate without delay. Acceptance certificates may be provided by Customer to Avaya by electronic mail, at the email address provided by Avaya to Customer from time to time, or other agreed means of electronic communication.

2.5 Production Use. Unless otherwise provided for in Acceptance Procedures, production use will constitute acceptance for all purposes under this Agreement.

3. PROJECT DELAYS

If performance of Add-on Services is delayed for any reason at the request of Customer (including its agents or any third parties acting on its behalf), Avaya may invoice and Customer agrees to pay Avaya, for any additional costs reasonably incurred by Avaya as a direct result of such delay, including, if applicable, rescheduling costs. If such delay continues for more than 30 days Avaya may terminate the SOW, Project Phase or order and will be entitled to invoice, and Customer agrees to pay 100% of the fees associated with the Add-on Services performed to date, and 10% of all sums due for Add-on Services as contained in the relevant order or SOW being cancelled. Where a Customer requests a delay prior to the commencement of Add-on Services, and such delay continues for more than 75 days, Avaya may terminate the applicable SOW, Project Phase or order and Customer will pay for the Add-on Services performed to the date of termination plus 10% of the fees that would have been due if the SOW, Project Phase or order had not been cancelled.

4. TRANSFER OF RISK AND LICENSE TO DELIVERABLES

4.1 Transfer of Risk. If a Deliverable includes tangible items to be delivered to Customer, risk of loss and title shall pass as specified in Schedule 2, Section 3.

4.2 License to Deliverables. Subject to Customer's payment of fees for the Add-on Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicensable license to use Deliverables solely with the Service and solely for Customer's internal business use. Software contained in Deliverables will be licensed subject to the Avaya Global Software License Terms found at http://support.avaya.com/LicenseInfo (or a successor site) and incorporated into this Agreement by reference. The Avaya Global Software License Terms may be referred to as the "EULA".

5. INVOICING AND PAYMENT

5.1 Avaya will invoice Customer for Add-On Services in advance, unless otherwise agreed in writing or specified in the quote or SOW.
5.2 T&M Services will be invoiced monthly in arrears.

6. WARRANTY

6.1 Warranty Period. The warranty period for Add-on Services and Deliverables will be 30 days beginning on the acceptance date of the Add-on Services or a Project Phase (the "**Warranty Period**").
6.2 Warranty. During the Warranty Period, Avaya warrants to Customer that: (i) Add-on Services will be carried out in a professional and workmanlike manner by qualified personnel; and (ii) Deliverables will conform in all material respects to the specifications contained in the SOW. However, Avaya does not warrant that software contained in the Deliverables will perform uninterrupted or error-free.
6.3 Remedies
6.3.1 Add-on Services. To the extent that Avaya has not performed Add-on Services or the applicable Project Phase in accordance with the above warranty **("Non-Conformity")** and Avaya receives written notice from Customer within the Warranty Period that identifies the Non-Conformity in reasonable detail, Avaya will re-perform the applicable Add-on Services or a Project Phase. If Avaya determines that re-performance is not commercially reasonable: (i) Avaya will refund to Customer the fees for the non-conforming Add-on Services or the non-conforming Project Phase; or (ii) in the case of T&M Services, Customer may cancel the affected T&M Services, subject to payment of fees for T&M Services already performed.
6.3.2 Deliverables. If Avaya receives from Customer within the Warranty Period a written notice describing in reasonable detail how the Deliverables failed to be in conformance with the above warranty, Avaya will, at its option, repair or replace the non-conforming Deliverables, or refund to Customer the applicable fees upon return of the non-conforming Deliverables.
6.3.3 Exclusive Remedies. THE REMEDIES SET FORTH IN THIS SECTION 6.3 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA WITH RESPECT TO THE NON-CONFORMANCE OF ADD-ON SERVICES, PROJECT PHASE AND/OR DELIVERABLES.
6.4 Disclaimer. Add-on Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Avaya nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that Add-on Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

7. TERM AND TERMINATION

7.1 Term. The term of a SOW or order for Add-on Services will begin on the date specified in the SOW or order for Add-on Services, or, where not specified, on the date the SOW or order for Add-on Services is executed by Avaya. The term of the SOW or order for Add-on Services will continue until the work is completed or the SOW or order for Add-on Services is terminated earlier in accordance with this Section.
7.2 Termination. Unless otherwise provided in the SOW, either party may terminate any Add-On Services or Project Phase that has not been accepted (if acceptance is relevant) upon 45 days' prior written notice, and Customer will pay for (a) Add-On Services performed through the effective date of termination, (b) all non-recoverable out-of-pocket expenses incurred by Avaya, and (c) if the termination is effected by Customer, applicable termination fees.

SCHEDULE 2 - Terms for The Purchase of Phones or Other Equipment

1.ORDERS

Customer may purchase Equipment from Avaya by placing an order as indicated in Section 1.2 of the General Terms. Avaya may make changes to Equipment, modify the drawings and specifications relating to Equipment, or substitute Equipment of later design, provided that the changes do not adversely and materially impact the form, fit or function. Avaya will charge Customer for the Equipment on the Delivery Date.

2. DELIVERY AND INSTALLATION

Customer agrees that for Software that may be a part of or embedded in the Equipment that Avaya or its Affiliates delivers electronically to its customers, the instructions posted on Avaya's or its Affiliates website for downloading and installation of the Software may be provided in English only. Customer must install the Equipment in accordance with Avaya's installation instructions available at https://www.avaya.com/ (or a successor site).

3. RISK OF LOSS/TITLE

Risk of loss and title to the Equipment hardware will pass to Customer on the Delivery Date. Title to Software provided under this Agreement will remain solely with Avaya and its Affiliates and licensors.

4. DELIVERY

Unless Avaya provides Customer with express written confirmation of a different delivery term, all deliveries of Equipment will be made CIP [Avaya - named shipping point] (INCOTERMS 2020). Notwithstanding the agreed delivery term, Avaya may charge Customer for shipping and handling charges, which may be reflected as a separate line item on Avaya's invoice.

5. WARRANTY AND LIMITATIONS

5.1 Warranty Period. Avaya warrants to Customer that during the applicable warranty period, the Equipment will conform to and operate in accordance with the applicable Documentation in all material respects. Unless a different period is specified in the order, the warranty periods for Equipment are as follows: (a) hardware: 12 months, beginning on the Delivery Date; and/or (b) Software and Software media: 90 days, beginning on the Delivery Date.

5.2 Remedies. If Equipment is not in conformance with the warranty above and Avaya receives from Customer during the warranty period a written notice describing in reasonable detail how the Equipment failed to be in conformance, Avaya at its option will: (a) repair or replace the Equipment to achieve conformance and return the Equipment to Customer; or (b) refund to Customer the applicable fees upon return of the non-conforming Equipment to Avaya. For Software warranty claims, Avaya provides access to available Software corrective content and Equipment support knowledge base on a self-service basis. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Equipment are warranted as above for the remainder of the original applicable Equipment warranty period. THESE REMEDIES WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST AVAYA OR ITS AFFILIATES WITH RESPECT TO THE NONCONFORMANCE OF EQUIPMENT.

5.3 Warranty Procedures. Equipment subject to a warranty claim must be returned to Avaya in accordance with Avaya's instructions accompanied by evidence that the Equipment remain under warranty (i.e. a valid invoice, and in some cases, this may also require Equipment registration with Avaya). Customer shall place warranty requests by sending an email or calling the numbers detailed in the Service Description.

5.4 Costs. If Equipment is returned within the applicable warranty period subject to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Equipment. If Avaya determines that the Equipment was operating in conformance with its applicable warranty, Avaya may charge Customer for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current rates.

5.5 Exclusions and Disclaimers. The above-referenced warranty does not extend to any damages, malfunctions, or non-conformities caused by: (a) Customer's use of Equipment in violation of the license granted under the main body of this Agreement or in a manner inconsistent with the Documentation; (b) normal wear due to Equipment use, including but not limited to Equipment cosmetics and display scratches; (c) use of non-Avaya furnished equipment, software, or facilities with Equipment (except to the extent provided in the Documentation); (d) Customer's failure to follow Avaya's installation, operation or maintenance instructions; (e) Customer's failure to permit Avaya timely access, remote or otherwise, to Equipment; or (f) failure to implement all new updates to Software provided under this Agreement. Warranties do not extend to Equipment that have been serviced or modified other than by Avaya or a third party specifically authorized by Avaya to provide the service or modification. In the event Customer purchases any Third-Party Products from Avaya, Avaya provides Third Party Products on an" AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Avaya specifies otherwise. However, such Third-Party Products may carry their own warranties and Avaya shall pass through to Customer any such warranties to the extent authorized. Exercise of such warranty shall be directly between Customer and the third-party provider. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER AVAYA, NOR ITS LICENSORS, SUPPLIERS, OR AFFILIATES MAKES ANY EXPRESS REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS WITH REGARD TO THE EQUIPMENT. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF EQUIPMENT OR THAT THE EQUIPMENT WILL PREVENT TOLL FRAUD. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AVAYA AND ITS AFFILIATES DISCLAIM ALL IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS RELATED TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY REFERENCED HEREIN WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES RELATED TO THE EQUIPMENT.

SCHEDULE 3 - Terms for the Purchase of Avaya OneCloud™ CPaaS

These terms for the purchase of Avaya OneCloud™ CPaaS apply to Customer's purchase and use of any CPaaS Services. Any capitalized terms used in this Schedule have the meaning given to them herein or in the General Terms.

1. MANDATORY PREREQUISITES FOR THE AVAYA ONECLOUD™ CPAAS TERMS OF SERVICE

In order to use the Avaya API's and markup language (the "**API**"), or make use of the Properties and various Avaya OneCloud™ CPaaS services and information contained therein (the API, Properties and Avaya OneCloud™ CPaaS services are collectively referred to herein as the "**Avaya CPaaS Services**") and are included within the definition of "Services, Customer must accept the terms in this Schedule.

If Customer includes the Avaya CPaaS Service in its own products and services, Customer must flow down or otherwise obligate its End Users to the applicable terms and conditions of this Agreement to protect Avaya's rights and secure Avaya's right to access Customer's End User's data as necessary to provide the Avaya CPaaS Services. Customer's End User Agreement must contain terms at least as protective of Avaya's rights as those set forth in this Agreement. By way of example, Customer's End User Agreements must include terms concerning restrictions on use, protection of proprietary rights, disclaimer of warranties, and limitations of liability. Customer must ensure that Customer's End Users using applications that incorporate the API or the Avaya CPaaS Services adhere to this Agreement, and Customer agrees to notify Avaya promptly if Customer becomes aware of any breach of the terms of Customer's End User Agreements that may impact Avaya. Customer will take all reasonable precautions to prevent unauthorized access to or use of the Avaya CPaaS Services and notify Avaya promptly of any such unauthorized access or use.

2. GRANT OF RIGHTS TO USE THE SERVICE

2.1 So long as Customer is in compliance with this Agreement, Avaya hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right and license during the Service Period to access and use the Avaya CPaaS Services, solely in accordance with this Agreement. Unless explicitly stated otherwise, any new features provided by Avaya that augment or enhance the current Avaya CPaaS Services shall also constitute "Avaya CPaaS Services" and shall be subject this Agreement. Customer may not, nor may Customer allow any third party to, copy, distribute, sell, disclose, lend, transfer, convey, modify, decompile, disassemble or reverse engineer the Avaya CPaaS Services for any purpose whatsoever. Customer may not allow any unauthorized third party to access the Avaya CPaaS Services for any purpose whatsoever. All rights not expressly granted under this Agreement are retained by Avaya or its Affiliates, licensors or suppliers.

2.2. Customer may create a software application or website (an "**Application(s)**") that interfaces with the Avaya CPaaS Services, provided that Customer complies with this Agreement. Customer may use the Avaya CPaaS Services to execute Applications owned or lawfully obtained by Customer, except as limited by this Agreement or Customer's End User Agreement.

2.3 Customer and any Applications that Customer may create, build or distribute may make network calls or requests to the Avaya CPaaS Services, or may receive telephone calls via the Avaya CPaaS Service, at any time that the Avaya CPaaS Services are available, provided that those requests do not violate this Agreement.

2.4 Customer may not remove, obscure, or alter any notice of any Avaya trademark, service mark ("**Marks**") or other intellectual property or proprietary right appearing on the Avaya CPaaS website posted at https://www.avaya.com/en/products/CPaaS/ (or a successor site) ("Website") or contained within the Avaya CPaaS Services.

2.5 Customer acknowledges that Avaya may change APIs for any Avaya CPaaS Service or any feature of an Avaya CPaaS Service from time to time, and that it is Customer's responsibility to ensure that calls or requests from Customer's Applications made to or via Avaya CPaaS Services are compatible with then-current APIs for the Avaya CPaaS Services. Avaya will attempt to provide reasonable prior notice to Customer of any API changes so Customer can adjust Customer's Applications, but Avaya is under no obligation to do so.

2.6 Customer is solely responsible for Customer's Applications, including any data, text, images or content contained therein. Customer is also solely responsible for all traffic originating from Customer's Applications that uses Customer's account credentials to access the Avaya CPaaS Services. Actions taken using Customer's credentials shall be deemed to be actions taken by Customer, with all associated consequences including charges for Avaya CPaaS Services, service termination, civil and criminal penalties.

2.7 Avaya may make available to Customer, for Customer's installation, copying or use in connection with the Avaya CPaaS Services, a variety of software, data and other content and printed and electronic documentation (the "**Properties**"). Avaya hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license, during the Service Period only, to install, copy and use the Properties solely in connection with and as necessary for Customer's use of the Avaya CPaaS Services in accordance with this Agreement. The Properties may include, without limitation: (a)The Website; (b) APIs; (c) Documentation; and (d) Specifications describing the operational and functional capabilities, use limitations, technical and engineering requirements, and testing and performance criteria relevant to the proper use of the Avaya CPaaS Service and its related APIs and technology.

2.8 Avaya may make additional content or software available under another license agreement, such as an open source license. Any such content or software will be clearly marked with such a license indicating the usage rights available for that content or software. Such content or software may include:(a) Developer tools, such as software development kits or sample code for use in connection with the APIs; and (b) Articles and documentation for use in connection with the use and implementation of the APIs (collectively, "**Documentation**").

2.9 Except as may be expressly authorized under this Agreement: (a) Customer may not, and may not attempt to, modify, alter, tamper with, repair, or otherwise create derivative works of the Properties. (b) Customer may not, and may not attempt to, reverse engineer, disassemble, or decompile the Properties or the Avaya CPaaS Service or apply any other process or procedure to derive the source code of any software included in the Properties.

2.10 Customer hereby grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer's trade names, trademarks, service marks, logos, domain names and the like for the purpose of providing the Avaya CPaaS Services to Customer or promoting or advertising that Customer uses the Avaya CPaaS Services. Customer may not display or use the Properties in any manner unless Customer obtains Avaya's prior written consent. All uses of the Marks and goodwill associated therewith shall inure to the benefit of Avaya or its Affiliates.
The rights granted by Avaya in this Agreement with respect to the Properties and the Avaya CPaaS Services are nonexclusive, and Avaya reserves the right to: (i) act as a developer of products or services similar to any of the products or services that Customer may develop in connection with the Properties or the Avaya CPaaS Services; and (ii) grant similar rights to those provided under this Agreement to third parties that as developers or systems integrators may offer products or services which compete with Customer's Application(s).
2.11 Customer understands and acknowledges that Avaya is not certifying or endorsing, and has no obligation to certify or endorse, any of Customer's Applications or Customer's Content.

3. SUSPENSION OR TERMINATION

Avaya may suspend or terminate Customer's right to use the Avaya CPaaS Service for cause immediately upon Avaya's notice to Customer in accordance with the notice provisions set forth in this Agreement if: (i) Customer or Customer's End Users violate, or Avaya has reason to believe that Customer or Customer's End Users have violated, any provision of the AUP, (ii) there is an unusual spike or increase in Customer's use of the Avaya CPaaS Service, and there is reason to believe such traffic or use is fraudulent or negatively impacting the operating capability of the Avaya CPaaS Service; (iii) Avaya determines, in Avaya's sole discretion, that Avaya's provision of the Avaya CPaaS Service to Customer is prohibited by applicable law, or has become impractical or unfeasible due to any legal or regulatory change; or (iv) subject to applicable law, upon Customer's liquidation, Customer's commencement of dissolution proceedings, the disposal of Customer's assets, the failure to continue Customer's business, an assignment for the benefit of Customer's creditors, or Customer's becoming the subject of a voluntary or involuntary bankruptcy or similar proceeding.

4. BACKUP AND RETENTION

Notwithstanding Sections 8 and 9 of the General Terms, Customer acknowledges that Customer bears sole responsibility for adequate backup of Customer's Content, including all audio recordings associated with Customer's account. AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT CUSTOMER OR CUSTOMER'S END USERS MAY INCUR WITH RESPECT TO LOSS OF DATA ASSOCIATED WITH CUSTOMER'S ACCOUNT AND CUSTOMER'S OR ANY OF CUSTOMER'S END USERS' CONTENT DATA THEREIN.

5. INTELLECTUAL PROPERTY

5.1 Other than the limited use and access rights and licenses expressly set forth in this Agreement, Avaya and/or its Affiliates, suppliers and licensors reserve all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) the Avaya CPaaS Services; (ii) the Properties; (iii) the Marks; and (iv) any other technology and software that Avaya provides or uses to provide the Avaya CPaaS Services and the Properties. Customer does not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the Avaya CPaaS Services, the Properties, the Marks, or any other technology and software, except for the limited use and access rights described in this Agreement.
5.2 Avaya may, at its discretion, offer certain software development kits, tools, application samples, documentation or other software under an open source license. Any such products will be marked with copyright details, and those copyrights will apply to those and only those software development kits, tools, application samples, documentation or other software. Avaya, its Affiliates, suppliers and licensors reserve all rights to any documents, tools, services, technologies and the like not subject to an open source license.
5.3 Other than the rights and interests expressly set forth in this Agreement and excluding any and all works derived from Properties, Customer reserves all right, title and interest (including all intellectual property and proprietary rights) in and to: (i) Customer Content Customer may send to Avaya or use as part of Customer's use of the Avaya CPaaS Services; and (ii) Customer's Applications.
5.4 During and after the Services Period, with respect to the Avaya CPaaS Services that Customer elects to use, Customer will not assert, nor will Customer authorize, assist, or encourage any third party to assert, against Avaya or any of Avaya's Affiliates, customers, end users, vendors, business partners (including third-party sellers on websites operated by or on behalf of Avaya), sub-licensees or transferees, any patent infringement or other intellectual property infringement claim with respect to such Avaya CPaaS Services.

6. REPRESENTATIONS

6.1 Customer represents and warrants that Customer will not use the Avaya CPaaS Services, Properties, Marks, Customer's Application or Customer's Content in a manner that violates this Agreement. Although Avaya does not assume the duty or obligation to monitor any materials created, posted or uploaded by Customer or any third parties, Avaya reserves the right, in its sole and absolute discretion, to monitor any and all materials posted or uploaded by Customer or any third parties at any time without prior notice to ensure that they conform to any usage guidelines or policies (including Avaya's AUP).
6.2 Customer shall not use the Avaya CPaaS Services to create a medical device or take other action that would violate regulations promulgated by the Food and Drug Administration, including but not limited to (i) diagnosing a disease or other condition, (ii) curing, mitigating, treating, or preventing a disease or condition, or (iii) using the Avaya CPaaS Services in a way that may affect the structure or function of the body of a human or animal. Avaya shall have no liability of any kind whatsoever as a result of Customer's violation of this Section. Customer's violations of this Section will be subject to the indemnification provisions in this Agreement.
6.3 Customer represents and warrants that Customer is responsible for any charges incurred by virtue of Customer's use of the Avaya CPaaS Services, no matter whether Customer's Application acted in error. Customer also represents and warrants: (i) that Customer is solely responsible

for the development, operation, and maintenance of Customer's Application and for Customer's Content, including, the accuracy, appropriateness and completeness of Customer's Content and all product-related materials and descriptions; (ii) that Customer has the necessary rights and licenses, consents, permissions, waivers and releases to use and display Customer's Application and Customer's Content; (iii) that neither Customer's Application nor Customer's Content (a) violates, misappropriates or infringes any rights of Avaya or any third party, (b) constitutes defamation, invasion of privacy or publicity, or otherwise violates any rights of any third party, (c) violates any applicable laws or regulations, or (d) is designed for use in any illegal activity or promotes illegal activities, including, without limitation, activity that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (iv) that neither Customer's Application nor Customer's Content contains any components capable of harming Avaya's network or Avaya CPaaS Services; and (v) to the extent to which Customer is authorized by Avaya to use any of the Marks, that Customer will conduct Customer's business in a professional manner and in a way that reflects favorably on the goodwill and reputation of Avaya.

6.4 Customer agrees to abide by all applicable local, state, national, foreign and international laws and regulations and that Customer will be solely responsible for all acts or omissions that occur under or through Customer's account or password, including the content of Customer's and Customer's customers' transmissions through the Avaya CPaaS Services. Customer further agrees that neither Customer nor Customer's End Users will use the Avaya CPaaS Service for any purpose that is unlawful, abusive, intrusive on another's privacy, harassing, libelous, threatening or hateful, or in any other way that would violate any applicable laws or regulations. Customer represents and warrants that (i) Customer has the legal right and authority, and will maintain the legal right and authority during each Service Term, to install and use the Avaya CPaaS Services as contemplated hereunder; (ii) the performance of Customer's obligations under this Agreement and use of Avaya CPaaS Services will not violate any applicable law, rule or regulation or any applicable manufacturers' specifications or unreasonably interfere with Avaya's or its other customers' use of the Avaya CPaaS Services or network; (iii) Customer is authorized and has completed all required corporate actions necessary to execute this Agreement; and (iv) Customer shall not intentionally carry out any act or omission that results in Avaya breaching any law, rule or regulation. Customer shall comply with all the applicable legal and/or regulatory licenses and consents specifically required from the relevant governmental authorities with respect to any permitted resale of the Avaya CPaaS Services. Customer shall be solely responsible and liable for any misuse of the Avaya CPaaS Services by Customer's End Users or any third parties in respect of Customer's resale of the Avaya CPaaS Services and shall defend and indemnify and hold harmless Avaya for against any claims or proceedings, including any judgements, settlements and reasonable attorney's fees resulting from and against any and all third party claims or proceedings arising from or related to such resale of the Avaya CPaaS Services by Customer. Any failure by any third party (including End Users) to comply with any applicable law rule or regulation regarding sale or use of the Avaya CPaaS Services shall be attributable to Customer for the purposes of this Agreement. Any resale or sublicense by Customer of the Avaya CPaaS Services shall not relieve Customer of Customer's obligations under this Agreement. Any such third party waives any liability by Avaya in connection therewith.

6.5 Customer represents and warrants that without Avaya's express written consent Customer will not use, and will not authorize any third party to use, any Public Software (as defined below) in connection with the Avaya CPaaS Services in any manner that requires, pursuant to the license applicable to such Public Software, that any Properties or the Avaya CPaaS Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients. Customer represents and warrants that all Feedback and Communications contributed by or through Customer (a) are legally distributable by Customer, either because Customer owns the copyright or because Customer has fully complied with any copyright terms associated with the software or content, (b) contain no third-party software or any software that may be considered Public Software, and (c) do not violate, misappropriate or infringe any intellectual property rights of any third party. "**Public Software"** means any software, documentation or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software (e.g., Linux or Asterisk) or similar licensing or distribution models, including, but not limited to software, documentation or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (1) GNU Affero General Public License (AGPL), Common Public Attribution License (CPAL), European Public License (EUPL), GNU's General Public License (GPL), Lesser/ Library GPL (LGPL), or Free Documentation License, (2) The Artistic License (e.g., PERL), (3) the Mozilla Public License, (4) the Netscape Public License, (5) the Sun Community Source License (SCSL), (6) the Sun Industry Standards License (SISL), (7) the BSD License and (8) the Apache License.

6.6 In addition to the foregoing, Avaya specifically disclaims all liability for, and Customer agrees that Customer shall be solely responsible for:

- the development, operation, and maintenance of Customer's Application, all related equipment, and all materials that appear on or within Customer's Application and Customer's Content;
- the accuracy and appropriateness of any materials posted on or within Customer's Application or Customer's Content (including, among other things, any product-related materials);
- ensuring that any materials posted on Customer's site or within Customer's Application do not violate Avaya's AUP, are not illegal and do not promote illegal activities, including any activities that might be libelous or defamatory or otherwise malicious, illegal or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age;
- ensuring that Customer's Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable, that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers; and
- any of Customer's End Users' claims relating to Customer's Application or Customer's Content or the Avaya CPaaS Services utilized in connection with Customer's Application.

7. LIABILITY FOR EMERGENCY CALLING

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW**,** AVAYA AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, AND RESELLERS ("EMERGENCY SERVICES INDEMNIFIED PARTIES") WILL HAVE

NO LIABILITY TO CUSTOMER, CUSTOMER'S USERS, OR ANY THIRD PARTY, AND CUSTOMER WAIVES ALL CLAIMS AND CAUSES OF ACTION, ARISING OUT OF OR RELATED TO CUSTOMER'S, CUSTOMER'S USERS, OR ANY THIRD PARTY'S INABILITY TO DIAL LOCAL EMERGENCY NUMBERS (SUCH AS 112, 911, 999) OR ANY OTHER EMERGENCY TELEPHONE NUMBER OR TO ACCESS AN EMERGENCY SERVICE OPERATOR OR EMERGENCY SERVICES. CUSTOMER HEREBY RELEASES AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE EMERGENCY SERVICES INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, LOSSES, EXPENSES, AND/OR COSTS (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COST OF SUIT) BY OR ON BEHALF OF CUSTOMER OR ANY THIRD PARTY OR USER ARISING FROM OR RELATED TO THE FAILURE OF EMERGENCY SERVICES TO FUNCTION OR FUNCTION PROPERLY OR AVAYA'S PROVISION OF EMERGENCY SERVICES OR FAILURE TO PROVIDE ACCESS TO EMERGENCY SERVICES.

End of Avaya Customer Master Cloud Agreement