

Registered Membership Terms of Use

Effective Date: 10 May 2019

AVAYA DEVCONNECT PROGRAM REGISTERED MEMBERSHIP TERMS AND CONDITIONS

IMPORTANT: THIS AVAYA DEVCONNECT PROGRAM (THE “PROGRAM”) REGISTERED MEMBERSHIP TERMS AND CONDITIONS (THE “PROGRAM TERMS”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR ANY OTHER LEGAL ENTITY) AND AVAYA INC. (“AVAYA”). PLEASE READ IT CAREFULLY BEFORE ACCEPTING THE PROGRAM TERMS. BY SUBMITTING YOUR INFORMATION TO AVAYA TO JOIN THE PROGRAM AT THE REGISTERED LEVEL, AND BY SUBSEQUENTLY ACCESSING THE MATERIALS AND RESOURCES MADE AVAILABLE VIA THE PROGRAM WEBSITE (THE “WEBSITE”) OR OTHER AVAYA MARKETING PROGRAMS, YOU ARE CONFIRMING YOUR ACCEPTANCE TO BE BOUND BY THE PROGRAM TERMS, AND REPRESENTING THAT YOU HAVE THE FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO AND PERFORM THE PROGRAM OBLIGATIONS (INCLUDING, WITH RESPECT TO YOUR ACCEPTANCE OF THESE PROGRAM TERMS, THE AUTHORITY TO AGREE ON BEHALF OF YOUR EMPLOYER). IF YOU DO NOT AGREE TO BE BOUND BY THESE PROGRAM TERMS, THEN DO NOT SUBMIT YOUR INFORMATION AND DO NOT ACCESS THE WEBSITE OR OTHER AVAYA MARKETING PROGRAMS, AND YOU WILL NOT BECOME A MEMBER OF THE PROGRAM. IF YOU, OR AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY HAVE PREVIOUSLY OR IN THE FUTURE APPLY AND ARE ACCEPTED BY AVAYA INTO THE PROGRAM FOR HIGHER LEVEL MEMBERSHIP, YOU AGREE TO BE GOVERNED BY ANY ADDITIONAL TERMS AND CONDITIONS OF THE MEMBERSHIP AT THE HIGHER LEVEL.

1. Membership ID and Password.

- 1.1. Upon joining the Program, you are issued a user name and password which must be used in order to access certain parts of the Website. The user name and password are personal to you and are not transferable. Your name and password are the methods used by Avaya to identify you. You agree to keep secure and not provide or disclose to or share with any third parties any username or password you use to access the Website, and you will not log into the Website using third party's username or password.
- 1.2. You are responsible for all information posted on the Website by anyone using your user name and password and any payments due for services accessed through the Website by anyone using your user name and password. You should notify Avaya immediately at: devconnect@avaya.com about any breach of security of a user name and password.
- 1.3. You may not adapt or circumvent the systems Avaya uses to operate the Website, nor access the Website other than through normal operations. Unauthorized individuals attempting to access the password protected and/or secure areas of the Website may be subject to prosecution.
- 1.4. You understand that Avaya reserves the right to modify the terms, conditions, and policies of its Program at any time without notice, and to suspend and/or terminate your membership in the Program at any time. In such event, no refund or partial refund of any annual fee will be made for any reason.

2. Provision of the Website and the Website Materials.
 - 2.1. Avaya retains the right to stop making the Website available at any time, without notice to you, at its sole discretion. Avaya also retains the right to add, delete, change or modify the content and the Software, as defined in Section 17 below, provided on the Website and/or any other features or services of the Website (collectively, the "Website Materials") at any time, without notice to you, at its sole discretion. Avaya may establish and change, at any time without notice to you, rules and limits concerning the amount, manner and duration of use of the Website.
 - 2.2. Avaya makes no representation that the information contained on the Website is appropriate or available for use throughout the world. It is forbidden to access the Website from territories where applicable law provides that the content or use of the Website is illegal. You choose to use the Website on your own initiative, and it is your responsibility to ensure that you conform to all applicable local laws.
 - 2.3. If you breach the terms and conditions of any related services or licenses available through the Website, you will be deemed to be in breach of these Program Terms.
3. Forward-Looking Statements. Some of the information on this Website may contain forward-looking statements. These statements are only predictions based on our current expectations and projections about future events. Because these forward-looking statements involve risks and uncertainties, there are important factors that could cause Avaya's actual results, level of activity, performance or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements.
4. Links. THE LINKS ON THE WEBSITE WILL LET YOU LEAVE THE WEBSITE. THE LINKED SITES ARE NOT UNDER THE CONTROL OF AVAYA AND AVAYA IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY LINKED SITE OR ANY LINK CONTAINED IN A LINKED SITE, OR ANY CHANGES OR UPDATES TO SUCH SITES. AVAYA IS NOT RESPONSIBLE FOR WEBCASTING OR ANY OTHER FORM OF TRANSMISSION RECEIVED FROM ANY LINKED SITE. AVAYA IS PROVIDING THESE LINKS TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF ANY LINK DOES NOT IMPLY ENDORSEMENT BY AVAYA OF THE SITE OR ANY OF ITS CONTENTS.
5. Third-Party Software and Information. Third party software provided by Avaya to you under the Program may be accompanied by its own licensing terms, in which case such licensing terms will govern your use of that particular third party software. Mention of third parties and third party products in any materials, advertising, promotions or coupons provided to the Program members is for informational purposes only and constitutes neither an endorsement nor a recommendation. All third party product specifications and descriptions are supplied by the respective vendor or supplier, and Avaya shall have no responsibility with regard to the selection, performance, or use of these vendors or products. All understandings, agreements, or warranties, if any, take place directly between the vendors and the prospective users.
6. Copyright. Avaya, its suppliers or the original creator of the material own all copyrights to material on the Website and all other intellectual property rights related to the Website. To the extent that Avaya has the right to do so without compensation to third parties and except for material specifically provided under other terms, Avaya grants you permission to copy materials on the Website solely for your non-commercial use in support of Avaya products. You agree that any copies of material shall retain all copyright and other proprietary notices in the same form and manner as the original. You may not, without Avaya's written permission, "mirror" any material contained on the Website or any other server. Except as specified above, nothing contained herein shall be

construed as conferring by implication, estoppel or otherwise any license or right under any trademark, patent, copyright, mask work protection right or any other intellectual property right of Avaya or any third party.

7. Trademarks. Avaya and the Avaya logo are trademarks or service marks, registered or not, of Avaya. Nothing on the Website may be interpreted so as to grant to you, directly or indirectly, the use of a trademark or service mark reproduced on the Website, whether belonging to Avaya or third party suppliers, without the written permission of Avaya.
8. Confidential Information. You agree that all information disclosed by Avaya to you that relates to the Software (in object and source code form), including , but not limited to application programming interfaces ("APIs") and software development kits ("SDKs"), documentation, any technical information related to Avaya products or otherwise supplied under the Program, pricing, designs, plans, business opportunities, or third-party confidential information, and any other information or data, regardless of whether in tangible, electronic or other form, will be considered and referred to collectively as "Confidential Information". Confidential Information, however, does not include: (a) information that Avaya makes generally available to the public; (b) information that you can demonstrate to have had rightfully in your possession prior to disclosure to you by Avaya; (c) information that is independently developed by you without the use of any Confidential Information; (d) information that you rightfully obtain from a third party who has been given the right to transfer or disclose it by Avaya; or (e) which is required to be disclosed by court order or by regulatory demand, provided that you shall advise Avaya of the request for disclosure and shall take reasonable steps to attempt to preserve the confidentiality of the Confidential Information. You agree not to disclose, publish, or disseminate Confidential Information to anyone other than those employees working for the same entity as you who have an existing Program membership. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree not to use Confidential Information otherwise for your own or any third party's benefit, without the prior written approval of an authorized representative of Avaya in each instance.
9. Ownership of Information provided to Avaya through the Website. You shall retain ownership of all copyright and any other intellectual property rights in any data, information, feedback or other materials you submit to the Website. You grant Avaya a world-wide, non-exclusive, royalty-free, non-terminable license to use, modify, copy, distribute, incorporate, publish and transmit such information in any manner without any obligations to you.
10. High Risk Activities. In no event is the Website or any Website Material intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, or weapon systems, in which the failure of any such information, product or service could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). You are not authorized to use any such information, product or service in High Risk Activities and you agree not to do so.
11. Abusive Uses.
 - 11.1. You agree not to disrupt the normal use of the Website or engage in any abusive uses, or facilitate aid or encourage any such abusive uses. You agree not to make any attempt to penetrate the Website security, and any such attempt may be notified to the appropriate law-

enforcement agencies. You agree not to use the services of another provider in order to facilitate any breach or violation of these Program Terms.

- 11.2. You agree not to post on the Website or use the Website to point to or direct traffic to any other website or location that creates, distributes or stores material that:
 - 11.2.1. violates trademark, copyright, trade secret or other intellectual property law;
 - 11.2.2. violates the privacy, publicity or other personal rights of others;
 - 11.2.3. violates export control laws;
 - 11.2.4. impairs the privacy of communications;
 - 11.2.5. may be threatening, abusive, racist, discriminatory or hateful, pornographic or indecent, defamatory, libelous or constitute a terrorist act; or
 - 11.2.6. encourages conduct that would constitute a criminal offence or give rise to a civil liability, including through e-mails, SIP messages or bulletin board or chat room postings.
- 11.3. You agree not to undertake any activity or make any communication in connection with the Website which could be capable of coming within one of the bullet points above.
- 11.4. You agree not to:
 - 11.4.1. post a single article or substantively similar articles to an excessive number of newsgroups, forum boards or other information sharing resources (which may, by example, include deliveries to more than 10 newsgroups under certain circumstances) or continually post articles which are off-topic (e.g., off-topic according to the newsgroup charter, or the article provokes complaints from the readers of the newsgroup for being off-topic) using an Avaya-hosted domain, or posting such messages through an Avaya website service;
 - 11.4.2. send unsolicited e-mails, bulk commercial advertisements or informal announcements (which may, by example, include deliveries to more than 10 individuals) ("Spamming"), whether or not such activities provoke complaints from the recipients.
 - 11.4.3. engage in Spamming and using the Website as a return address point.
- 11.5. If you see anything on the Website which appears to infringe these Program Terms, please inform Avaya by sending an email with the header marked "Report Abuse" to the following address: devconnect@avaya.com.
- 11.6. You acknowledge that we are entitled to withdraw any material (from whatever source) on the Website which appears to breach these Program Terms or could bring the Website or Avaya into disrepute.

12. Content.

- 12.1. You are entirely responsible for all content and information you deliver (directly or indirectly) to or through the Website. Avaya accepts no responsibility for any content or information posted by you or other users, does not guarantee or warrant any such content or information, and does not undertake to update such information, except as set forth in Avaya Privacy Policy.
- 12.2. You acknowledge that Avaya is not and cannot be responsible for the behavior of users of the Website, whether on the Website itself or outside of it. Avaya only provides a venue where the services may be accessed. In particular, you should be aware that Avaya does not pre-screen or monitor material provided by users.
- 12.3. You warrant that all images, logos or other materials or content you upload or provide for use on the Website do not infringe any third party copyright, trade marks, any other intellectual property rights or any applicable law and that you are entitled to upload or provide them for display on the Website. You warrant that your use of the Website will be for lawful purposes only in accordance with these Program Terms and you will indemnify Avaya against all

claims, losses, liabilities, costs, damages and expenses incurred by Avaya due to any breach by you of these Program Terms.

13. Consequences of Unacceptable Use. In addition to its rights under Section 19, Avaya reserves the right to suspend your account and/or your right to access the Website for any breach or violation of these Program Terms and to suspend your account while investigation of any possible breach or violation thereof. In addition, Avaya reserves the right to condition your continued use of the Website upon your correction of any violation of these Program Terms. You agree that any indirect or attempted breach or violation by yourself or by any third party on your behalf shall be considered a violation by you.

14. Privacy and Security

14.1. Definitions. For the purpose of this Agreement: (a) "Personal Data" means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; (b) "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; (c) "Data Controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; (d) "Data Processor" means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller. For the avoidance of doubt, the foregoing terms shall have the meaning as per the European General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016) ("GDPR").

14.2. Processing Personal Data on Your behalf

14.2.1. Any Processing of Personal Data under this Agreement shall occur only (a) on behalf of You (including when Processing is initiated by Your users), (b) in accordance with this Agreement, and (c) for the purpose of fulfilment of Your instructions.

14.2.2. Your instructions for the Processing of Personal Data shall comply with applicable data protection laws and regulations. You shall have sole responsibility for the legitimacy, adequacy and accuracy of Personal Data and the means by which You acquired Personal Data. Provided Avaya considers an instruction of Yours to violate applicable data protection regulations, it shall notify You without undue delay. This does not include an obligation of Avaya to actively monitor Your instructions for compliance.

14.2.3. This Agreement is Your complete and final instructions at the time of signature of this Agreement to Avaya for the Processing of Personal Data. However, such instructions may be amended, supplemented or replaced by You in documented form at any time (new instruction). If such new instructions from You exceed the scope of this Agreement, they shall be considered as a request to amend these terms, and the parties shall commence good faith negotiation on this change request.

- 14.2.4. If for any reason Avaya is unable to comply with any agreed instruction(s), Avaya will inform You of this fact without undue delay. You may then suspend the transfer of Personal Data to Avaya, restrict the access to it, request all Personal Data to be returned to You and / or terminate this Agreement as per the terms of this Agreement.
- 14.2.5. You are responsible as Data Controller for compliance with the applicable data protection laws and regulations, unless the applicable laws and regulations specifically impose an obligation on Avaya (acting as Data Processor).
- 14.2.6. Avaya will Process Personal Data as necessary to provide Services pursuant to this Agreement (and as further instructed by You in its use of the above).
- 14.2.7. Avaya will Process Personal Data for the duration of respective order, unless otherwise agreed upon in writing or required by applicable law.
- 14.2.8. The categories of Data Subjects affected by the Processing of Personal Data on behalf of You within the scope of this Agreement result from this Agreement and in particular from Your individual usage of Services provided by Avaya. They typically include: employees, agents, advisors, freelancers and business partners of Yours (who are natural persons); natural persons (employees etc.) of customers and prospective customers of You, as well as of Your customers' customers, etc.
- 14.2.9. The types of Personal Data affected by the Processing on behalf of You within the scope of this Agreement result from this Agreement and in particular from Your individual usage of (and input into) Services provided by Avaya. They typically include: name, contact information (company, title / position, email address, phone number, physical address), connection data, location data, video / call (recordings) data, information concerning family, lifestyle and social circumstances (including age, date of birth, marital status, number of children and name(s) of spouse and / or children) and metadata derived thereof, etc.
- 14.3. Avaya's personnel. Avaya shall: (a) ensure all employees involved in Processing of Personal Data on behalf of You have committed themselves to confidentiality, are prohibited from Processing Personal Data without authorization, have received appropriate training on their responsibilities; (b) appoint in country / global data protection officer, to the extent required by the applicable law, and provide his / her contact details on request to You in writing.
- 14.4. Technical and organizational measures
 - 14.4.1. Avaya has implemented and shall maintain technical and organizational security measures that are appropriate with respect to the Processing of Personal Data that is undertaken on Your behalf. You shall ensure a level of security appropriate to the risk of varying likelihood and severity for the rights and freedoms of Data Subjects and regularly check their abidance.
 - 14.4.2. Avaya shall be entitled to modify its technical and organizational measures as long as an at least equivalent level of security appropriate to the risk of varying likelihood and severity for the rights and freedoms of natural persons is maintained. Current technical and organizational measures at Avaya may be reviewed and accessed via <https://www.avaya.com/en/privacy-toms-customers-24778>. Additional technical and organizational measures and information concerning such measures may be specified in this Agreement and associated documentation.
- 14.5. Sub-processors (sub-contractors) and international Personal Data transfers.
 - 14.5.1. Avaya may engage sub-processors (sub-contractors) to Process Personal Data on Your behalf. Avaya shall make sure that at least equivalent data protection obligations, as set out in this DPA, are imposed on all sub-processors Processing Personal Data on behalf of European Economic Area or Switzerland ("EEA / CH") based customers by way of a contract

or other legal act under European Union or European Member State law, in particular providing sufficient guarantees to implement appropriate technical and organizational measures.

- 14.5.2. A list of sub-processors that may be engaged by Avaya while Processing Personal Data on behalf of EEA / CH based Customers can be found via <https://www.avaya.com/en/privacy-subcontractors>. At least twenty (20) calendar days before Avaya engages any new sub-processor, Avaya will update the directory on the website above. You are entitled to object to the use of new sub-processor(s) for any Processing of Personal Data on its behalf with a term of ten (10) business days after any new sub-processor is listed on the aforementioned website. This objection shall be sent by e-mail to dataprivacy@avaya.com (a) referencing Your full legal name (and other credentials) and this Agreement, (b) including the copy of the respective purchase order, and (c) providing the reason for the objection. If You exercise Your right to object, Avaya shall at its choice and sole discretion (a) refrain from using the objected sub-processor to Process Personal Data on Your behalf and confirm this to You in writing, (b) contact You and seek for an agreement on a mitigation of the reason for the objection (if an agreement between the parties is reached, You shall revoke the objection), or (c) have the right to terminate this Agreement entirely or only with respect to the Processing on Your behalf for which the objected new sub-processor shall be engaged.
- 14.6. For any transfer of Personal Data to a country outside the EEA / CH the requirements of Article 44 GDPR must be fulfilled.
- 14.6.1. The transfers of Personal Data between Avaya's Affiliates shall be governed by the Binding Corporate Rules Policy. The Company's Binding Corporate Rules Policy is available at www.avaya.com/privacy-BCRprocessor and is incorporated herein by reference.
- 14.6.2. If Avaya transfers Personal Data originating from the EEA / CH to third party sub-processors (i.e., Avaya's sub-contractors that are not Avaya's Affiliates) located in countries outside the EEA / CH that have not received a binding adequacy decision by the European Commission, such transfers shall be subject to (a) the terms of Standard Contractual Clauses (as per European Commission's Decision 2010/87/EU); or (b) other appropriate transfer mechanisms that provide an adequate level of protection in compliance with the GDPR.
- 14.7. Requests from Data Subjects. Avaya shall, in accordance with applicable laws, promptly notify You if Avaya receives a request from Data Subject to exercise his rights, such as: right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or right not to be subject to an automated individual decision making, etc. Taking into account the nature of the Processing, Avaya shall assist You by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Your obligation to respond to Data Subject request under data protection laws and regulations. In addition, to the extent You, in Your use of the Services provided by Avaya, does not have the ability to address Data Subject request, Avaya shall upon Your written request assist You in responding to such Data Subject request, to the extent Avaya is legally permitted to do so and the response to such Data Subject request is required under applicable data protection laws and regulations. To the extent legally permitted, You shall be responsible for any costs arising from Avaya's provision of such assistance.
- 14.8. Notification and incidents
Avaya shall:

- 14.8.1. Immediately notify You of any actual or alleged incident of unauthorized or accidental disclosure of or access to any Personal Data or other material breach of this Agreement by You or any of its staff, sub-processors or any other third party (the "Security Breach");
 - 14.8.2. Promptly provide You with full cooperation and assistance in respect of any Security Breach and all information in Avaya's possession concerning the Security Breach, including the following: (a) the possible cause and consequences of the breach; (b) the categories of Personal Data involved; (c) a summary of the possible consequences for the relevant Data Subjects; (d) a summary of the unauthorized recipients of Personal Data; and (e) the measures taken by Avaya to mitigate any related risk and / or loss or damage or (potential loss or damage);
 - 14.8.3. Not make any announcement or publish or otherwise authorize any broadcast of any notice or information about a Security Breach (the "Breach Notice") without the prior written consent from You; and prior written approval by You of the content, media and timing of the Breach Notice unless such Breach Notice is mandatory under the applicable law.
- 14.9. Data protection impact assessment and prior consultation
- 14.9.1. Upon Your written request and subject to reasonable remuneration which shall be subject to a separate agreement, Avaya shall assist You in ensuring compliance with its obligations pursuant to Articles 35 (Data protection impact assessment) and 36 (Prior consultation) GDPR, taking into account the nature of processing and the information available to Avaya.
- 14.10. Return and deletion of Your Personal Data
- 14.10.1. Personal Data (including any copy of it) shall not be kept longer than is required for the Processing purposes, unless (a) a longer retention period is required by applicable law or (b) You instruct Avaya in writing (i) to keep certain Personal Data longer and Avaya agrees to follow such instruction or (ii) return or delete certain Personal Data earlier.
 - 14.10.2. The return of any data storage medium provided by You to Avaya shall be conducted without undue delay (a) after termination / expiration of the Processing activity or (b) earlier as instructed by You.
- 14.11. Audits
- 14.11.1. Upon prior written request by You, Avaya shall supply You with all information necessary to effectively perform an audit on Avaya's compliance with Section 14 of this Agreement.
 - 14.11.2. Upon prior written notice and within a reasonable term Avaya shall grant You access to its data Processing facilities, data files and documentation relevant for the Processing activities during its usual business hours without disturbances to the normal course of operations. For clarity purposes Avaya is not under an obligation to provide You with an access to its systems which Process Personal Data of other Avaya's customers / partners (Data Controllers). The engagement of a third-party auditor to conduct the audit on behalf of You shall be subject to Avaya's prior written consent, which may only be refused on due cause, and to an executed written confidentiality agreement between the third-party auditor, You and Avaya. You will provide Avaya any audit report(s) generated in connection with any audit under this Section 14.11.2. You may use the audit report(s) only for the purposes of meeting Your regulatory audit requirements and / or confirming compliance with the requirements of this Agreement. The audit report(s) shall constitute confidential information of the parties under this Agreement.
- 14.12. 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. You are fully responsible for informing all relevant Data Subjects with whom You may communicate or otherwise interact via the Service of the foregoing right belonging to Avaya. BY ACCEPTING THESE TERMS, YOU WAIVE AND HOLD 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, YOU ACKNOWLEDGE AND AGREE THAT AVAYA RESERVES THE RIGHT TO INVOICE YOU 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 YOU OR YOUR END USERS.

14.13. Backup and Retention. Avaya strives to keep the information You provide secure but cannot guarantee that Avaya will be successful at doing so. Accordingly, You acknowledge that You bear sole responsibility for adequate backup of Your Content, including all audio recordings associated with Your account. Notwithstanding the foregoing, we will make commercially reasonable efforts to make data generated by Your use of the Service (such as audio recordings) available via our API for at least thirty (30) days from the date such data was generated, and any call detail records or other traffic data as required by applicable law. Avaya strongly encourages You, where available and appropriate, to use encryption technology to protect Your Content from unauthorized access and to routinely archive Your Content. NOTWITHSTANDING THE ABOVE AND WITHOUT LIMITATION TO ANY OTHER PROVISION IN THIS AGREEMENT, AVAYA SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES THAT YOU OR YOUR END USERS MAY INCUR WITH RESPECT TO LOSS OF DATA ASSOCIATED WITH YOUR ACCOUNT AND YOUR OR ANY OF YOUR END USERS' CONTENT DATA THEREIN.

15. Relationship with Avaya. You understand and agree that these Program Terms and membership in the Program do not create a legal partnership or agency relationship between you and Avaya. Neither you nor Avaya is a partner, an agent or has any authority to bind the other. You agree not to represent otherwise.
16. Avaya Independent Development. You understand and agree that Avaya may acquire, license, develop for itself or have others develop for it, and market and/or distribute similar hardware or software to that which you may develop.
17. Indemnity. You agree to indemnify and hold Avaya, its affiliates, and its and their officers, agents and employees, as well as Avaya's licensors and other third parties with which Avaya contracts, harmless from and against any and all claims, demands, actions, costs, and/or expenses (including reasonable attorneys' fees) incurred by or against such persons or entities arising out of or resulting from any information you submit, post to or transmit through the Website, your use of the Website or the Website Materials (including without limitation any use in violation of any law), your connection to the Website, your violation of these Program Terms or your violation of any rights of a third party.
18. Software License Terms.

18.1. "Software" means the computer programs in object code form that Avaya delivers under these Program Terms, whether as stand-alone products or pre-installed on hardware, including, but not limited to APIs and SDKs.

18.2. Any Software you download from the Website is governed by: (i) any license terms accompanying the Software; or (ii) the software license agreement contained herein only if license terms do not accompany the Software.

18.3. Software License Agreement

18.3.1. License Grant. Avaya grants to you, subject to the following terms and conditions, a nonexclusive, nontransferable right to use the Software in a non-production environment solely for the purpose of interoperability testing under the Program on a single computer at a time. Avaya reserves all rights not expressly granted to you.

18.3.2. Protection of Software. You agree to protect the Software and documentation from unauthorized copy or use. The Software source code represents and embodies trade secrets of Avaya and/or its licensors. The source code and embodied trade secrets are not licensed to you and any modification, addition or deletion is strictly prohibited. You agree not to disassemble, decompile, or otherwise reverse engineer the Software in order to discover the source code and/or the trade secrets contained in the source code.

18.3.3. To the extent that the Software is located in a Member State of the European Community and you need information about the Software in order to achieve interoperability of an independently created software program with the Software, you shall first request such information from Avaya. Unless Avaya refuses to make such information available, you shall not take any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the Software. Avaya may charge you a reasonable fee for the provision of such information.

18.3.4. Copies. You may make a single archive copy of the Software. You may not copy documentation unless it carries a statement that copying is permitted. All proprietary rights notices must be faithfully reproduced and included on all copies.

19. Termination.

19.1. Avaya reserves the right to terminate your membership in the Program at any time without notice.

19.2. Avaya has the right to terminate your account and/or your right to use the Website without notice to you for: (i) any breach or violation of these Program Terms or Avaya Privacy Policy; (ii) any activity which in Avaya's opinion is in violation of any applicable law; or (iii) any activity that adversely impacts the performance of the Website, the provision of services to other users, or the rights of third parties.

19.3. If your access to the Website has been suspended or terminated you must not re-register or re-access the Website without Avaya's prior written consent.

20. Disclaimers.

20.1. WHILE AVAYA ATTEMPTS TO PROVIDE ACCURATE INFORMATION ON THE WEBSITE, IT ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION. MATERIAL, INCLUDING SOFTWARE, ON THE WEBSITE AND THE WEBSITE ITSELF IS PROVIDED "AS IS" AND AVAYA DOES NOT PROVIDE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. AVAYA SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE WEBSITE OR ANY CONTENT OR MATERIAL ON THE WEBSITE.

- 20.2. AVAYA MAKES NO WARRANTY THAT (i) THE WEBSITE WILL MEET YOUR REQUIREMENTS, (ii) ACCESS TO THE WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE WILL BE ACCURATE OR RELIABLE, AND (iv) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- 20.3. ANY MATERIAL OR SOFTWARE DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEBSITE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL OR SOFTWARE.
- 20.4. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM AVAYA OR THROUGH OR FROM THE WEBSITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE PROGRAM TERMS.

21. Limitation of Liability. AVAYA, ITS RELATED COMPANIES, DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS MAY NOT, UNDER ANY CIRCUMSTANCES BE HELD LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF (OR THE INABILITY TO USE) THE WEBSITE, WEBSITE MATERIALS OR ANY SOFTWARE. THIS INCLUDES, BUT IS NOT LIMITED TO, THE LOSS OF DATA OR LOSS OF PROFIT, EVEN IF AVAYA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF ALL OR PART OF THIS LIABILITY IS FOUND UNENFORCEABLE FOR ANY REASON, THEN AVAYA'S MAXIMUM AGGREGATE LIABILITY UNDER SUCH CIRCUMSTANCES FOR LIABILITY THAT WOULD OTHERWISE HAVE BEEN LIMITED SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100).

22. Disputes.

- 22.1. Any controversy or claim arising out of or in connection with the Program Terms, its enforcement or interpretation ("Dispute"), will be finally resolved solely in accordance with the terms of this Section 21.
- 22.2. If a Dispute arises, the parties will endeavor to resolve the Dispute through good faith negotiation within forty-five (45) days of notification of the Dispute. If the Dispute cannot be settled through good faith negotiation, Avaya and You will submit the Dispute to non-binding mediation conducted by the American Arbitration Association ("AAA") or any other mutually acceptable alternate dispute resolution organization. Each party shall bear its own expenses but those related to the compensation of the mediator shall be borne equally. The parties, their representatives, other participants and the mediator (and arbitrator, if any) shall hold the existence, content and result of mediation in confidence.
- 22.3. All Disputes that cannot be resolved through mediation will be finally resolved, subject to Section 21d below, by binding arbitration before one arbitrator, selected pursuant to the Commercial Rules of the AAA. The proceedings will be conducted in Morristown, New Jersey pursuant to such rules. The arbitrator so appointed will have the authority to determine issues of arbitrability and to consider and rule on dispositive motions. The arbitrator will have authority to award only those damages within the scope of Section 20 herein and will not award punitive or exemplary damages. The arbitrator will not have the authority to limit, expand or otherwise modify the terms of this agreement. The parties, their representatives, other participants and the arbitrator will hold the existence, content and result of mediation and arbitration in confidence.
- 22.4. Injunctive Relief. Either party may seek injunctive relief in any court of competent jurisdiction (including but not limited to preliminary injunctive relief). The parties acknowledge that each of them has a vital interest in enjoining any violation of confidentiality obligations,

including unauthorized use of the Software or documentation, because damages would not adequately compensate a party for any infringements of that party's intellectual property rights.

- 22.5. Actions on Disputes between the parties with respect to the Program Terms must be brought in accordance with this Section 21 within two (2) years after the cause of action arises.
23. **Governing Law.** The validity, construction and performance of this Agreement will be governed by the substantive laws of the State of New Jersey, excluding conflict of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods. THE PARTIES UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT AND/OR THE USE OF THE WEBSITE.
24. **Compliance with Laws.** It is your responsibility, and you agree to comply with all U.S. and foreign federal, state and local laws and regulations applicable to the use of the Website. Avaya makes no representation that the Website or the Website Materials are appropriate for access or available for use from outside the United States.
25. **Export of Information.** The United States Export Controls laws prohibit the export of certain technical data and software to certain territories. No content from the Website may be downloaded or otherwise exported in violation of United States law or any other local law from where you may be accessing the Website.
26. **Assignment.** The Program Terms may not be assigned or transferred by you without the prior written consent of Avaya. Avaya may assign the Program or the Program Terms to any affiliate or third party in part or in whole.
27. **General** If any provision of these Program Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Failure to act with respect to a breach or violation of these Program Terms does not constitute a waiver of any rights with respect to such breach or violation or a waiver of any right to act with respect to subsequent or similar breaches. These Program Terms set forth the entire understanding and agreement between you and Avaya with respect to the subject matter hereof.