TermScout Certified Contract
Avaya: Software License and Services Agreement
This contract has been carefully reviewed and certified Balanced by TermScout, an independent contract rating company.
SEE TERMSCOUT REVIEW

Software License & Services Agreement
General Terms

This Software License and Service Agreement, including the applicable Order Specific Terms (defined below), (the **"SLSA**"), and the offer documentation that are incorporated herein by reference, govern the purchase, provision, and use of the Services and Products. Capitalized terms have the meaning set out in Section 14 of the General Terms, or in the Order Specific Terms, as applicable.

ORDER SPECIFIC TERMS

The terms for the offer types listed below and attached to these General Terms **("Order Specific Terms" or "OSTs**") apply to the Order for the relevant Products and Services included in the Order:

- **Products and Subscription Licenses**
- **Professional Services**
- **Support & Managed Services**
- **Cloud Services**

1. ORDERS, INVOICING, PAYMENT AND TAXES

1.1 Orders. All Orders accepted by Avaya are subject to the terms of this SLSA, including those which do not reference this SLSA. All other terms and conditions contained in any purchase order or other document presented or developed by Customer and not expressly referenced in this SLSA have no effect.

1.2 Invoicing and Payment. Unless specified otherwise in this SLSA or otherwise agreed to in writing,

- Avaya will invoice Customer for Products on the Delivery Date.
- Avaya will invoice Customer for Services in advance, unless otherwise specified in the offer description referenced in the applicable Order Specific Terms.
- Avaya will invoice to, and process associated payments from, Customer via Avaya's electronic bill application, unless otherwise requested in writing in advance by Customer.
- Payment is due within 30 days from the date of Avaya's invoice other than with respect solely to those portions that are disputed by Customer by written notice to Avaya within 15 days from the date of Avaya's invoice.
- Avaya will invoice Customer in the currency of the applicable quote.
- If a different invoicing or payment method is agreed between Avaya and Customer, Customer will pay all incremental bank charges, taxes, duties, levies and other costs and commissions associated with such other methods of invoicing and payment.
- If a payment is not timely received from Customer, Avaya may, upon prior written notice, suspend performance of its obligations, including licenses and performance of orders until all such overdue amounts are paid in full. In addition, late payments will be subject to an incremental fee equal to the lesser of 1.5% per month or the maximum rate allowed by applicable law that must be paid in order for overdue amounts to be deemed paid in full.

1.3 Customer will reimburse Avaya for reasonable attorneys' fees and any other costs associated with collecting late payments.

1.4 Taxes. Unless Customer provides Avaya with a current tax exemption certificate, Customer is responsible for paying all legally required taxes, including without limitation any withholding, sales, excise or other taxes and fees which may be levied upon the sale, movement, transfer of ownership, license, installation or use of the Products or upon the Services, except for any income tax assessed upon Avaya. If Customer is required to pay 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, after all such payments or withholdings are made, equal the amounts to which Avaya is entitled under this SLSA as if such tax or withholding did not exist

1.5 Other Payment Mechanism. Where Avaya agrees to be paid by "**Payment Mechanism**":

- Customer authorizes Avaya or its payment processor to charge Customer's Payment Mechanism in accordance with the terms on the Order, SLS, Service Description or SOW.
- If any payment made via Payment Mechanism is rejected, denied or returned unpaid for any reason: (a) Avaya may suspend Customer's subscription and access to the Service; (b) Customer will be liable for any fees, costs, expenses or other amounts Avaya incurs arising from such rejection, denial, or return (and Avaya may automatically charge Customer for such amounts); and (c) Avaya may provide Customer with further instructions regarding how Customer may update or replace the relevant payment method. If Customer fails to provide a valid alternative Payment Mechanism within thirty (30) days after the Services have been suspended, Avaya may terminate the Services, in which case Customer will be subject to any applicable termination fees outlined in the Service Description. If the new Payment Mechanism is accepted, the subscription billing date will remain the same as the original date for subsequent months. Customer's payment obligation shall be satisfied when Avaya's payment processor provides notification of final good funds in settlement of Customer's credit card. Avaya may agree to allow Customer to pay amounts due in arrears. In such event, Customer will make all of the payments due within thirty (30) calendar days of the date of the invoice. If applicable, Customer's Payment Mechanism will be automatically charged recurring fees on a regular basis during the Service Period as set out in the Order, Service Description, SLS or SOW, including during any renewals, unless Customer cancels the subscription. Customer authorizes Avaya or its payment processor to process such automatic recurring charges. If Customer cancels a subscription, Customer will not be entitled to a refund or a credit for any fees already due and/ or paid, and Customer will be subject to any termination fees outlined in the Order, Service Description, SLS or SOW.

2. LICENSE INFORMATION

Any Software licenses (including Subscription Licenses) granted by Avaya to Customer under this SLSA shall be in accordance with the then-current terms and conditions set forth in the EULA.

3. WARRANTY AND DISCLAIMER OF OTHER WARRANTIES

3.1 Warranties. Warranties for Products and Services provided to Customer shall be set forth in the Order Specific Terms.

3.2 EXCEPT AS REFERENCED AND LIMITED IN THIS SLSA, NEITHER AVAYA NOR ITS LICENSORS OR SUPPLIERS MAKE ANY EXPRESS REPRESENTATIONS OR WARRANTIES ABOUT ANY MATTER UNDER THIS SLSA. AVAYA DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF PRODUCTS, SERVICES OR DELIVERABLES, THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD, THAT SERVICES WILL DETECT ALL SECURITY THREATS AND VULNERABILITIES, OR THAT SERVICES WILL RENDER CUSTOMER'S NETWORK OR PARTICULAR NETWORK ELEMENTS SAFE FROM INTRUSIONS AND OTHER SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE WARRANTY REMEDIES EXPRESSLY PROVIDED IN THE APPLICABLE ORDER SPECIFIC TERMS TO THIS SLSA WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

3.3 Avaya provides Third-Party Products and Third-Party Services on an "**AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND**. However, such Third-Party Products or Third-Party Services may carry warranties from their manufacturers or providers, and Avaya will pass through to Customer any such warranties to the extent authorized. Exercise of such warranties will be directly between Customer and the relevant Third Party.

4. CUSTOMER RESPONSIBILITIES

4.1 Cooperation. Customer agrees to:

- Cooperate with Avaya as reasonably necessary for Avaya's delivery of Products and performance of Services in a timely manner.

- Provide Avaya with interface and other information regarding access to third party products or services in Customer's network and necessary third-party consents and licenses to enable Avaya's performance under this SLSA.
- Adequately secure its networks and systems against unauthorized intrusion or attack.
- Properly use, safeguard, and return to Avaya any Avaya Tools. Avaya Tools are not Products.

4.2 Customer acknowledges that its cooperation hereunder is essential to Avaya's performance of the Services. Avaya is not liable for any delay or deficiency in performing the Services as a result of Customer not meeting their responsibilities.

5. IP OWNERSHIP

5.1 Avaya Intellectual Property. Avaya, its Affiliates, licensors and suppliers own all Avaya Intellectual Property. Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property. Customer shall receive a license to use Deliverables as described in the applicable Order Specific Terms.

5.2 Marks. Nothing 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, Services or Software. To the extent Avaya authorizes Customer to use any marks described in this Section 5.2, any goodwill associated with Customer's use shall inure to the benefit of Avaya.

5.3 Feedback. Avaya welcomes Customer Feedback. To the extent not already owned by Avaya, Customer hereby grants Avaya a perpetual, exclusive, royalty-free, irrevocable, worldwide license to use or disclose any suggestions, enhancement requests, recommendations, proposals, ideas or other Feedback Customer provides to Avaya concerning the Services or Software, and create derivative works thereof, without restriction, compensation, obligation or liability of any kind to Customer or to any third party. .

6. INDEMNIFICATION

6.1 Defense and Indemnity. Subject to Sections 6.2, 6.3, and 6.4 below, Avaya will defend and indemnify Customer for any judgments, settlements and court awarded attorneys' fees resulting from a Claim, provided Customer:

(a) Promptly notifies Avaya of the Claim in writing upon becoming aware of a potential Claim;
(b) Gives Avaya sole authority and control of the defense and settlement of the Claim; and
(c) Provides information and assistance reasonably requested by Avaya to defend against or settle the Claim.

6.2 Remedial Measures. If a Product or Service becomes, or its use reasonably may become, the subject of a Claim, Avaya may opt to: (i) procure for Customer the right to continue use of the Product or Service; (ii) replace or modify the Product or Service; or (iii) refund to Customer a pro-rated portion of the applicable fees for the Product based on a linear depreciation monthly over a 5 year useful life and any prepaid fees, in which case Customer will cease all use of the Product and return the applicable Product to Avaya.

6.3 Exceptions. Avaya will have no defense or indemnity obligation for any Claim to the extent it is based on: (i) a Product or Service that has been modified by someone other than Avaya; (ii) a Product or Service that has been modified by Avaya in accordance with Customer-provided specifications or instructions; (iii) use or combination of a Product with Third-Party Products, open source or freeware; (iv) Third-Party Products, Third-Party Services, open source, or freeware; or (v) Customer's (a) failure to implement a remedial measure set out in Section 6.2 within a reasonable time after notice by Avaya; or (b) failure to allow Avaya to implement a remedial measure as set out in Section 6.2. Customer will defend Avaya against any Claim, and will indemnify Avaya for any judgments, settlements and reasonable attorneys' fees resulting from a Claim to the extent the Claim is based on subsection (i) or (ii) or (v) above.

6.4 Sole Remedy. THE FOREGOING STATES AVAYA'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PARTY. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT.

7. TERM AND TERMINATION

7.1 Termination for Breach. Either Party may terminate the SLSA or a specific Order by giving written notice to the other Party if the other Party breaches any material term of the SLSA and fails to cure such breach within 30 days after receipt of such notice.

7.2 Termination for Convenience. Customer may terminate an Order for convenience only as set forth in the applicable Service Description, SLS or SOW. Such termination may be subject to fees as stated in the applicable Order Specific Terms.

8. LIMITATION OF LIABILITY

8.1 Limitation of Liability. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE ORDER (EXCLUDING ANY LIABILITY TO PAY THE FEES DUE FOR PRODUCTS AND SERVICES) WILL NOT EXCEED AN AMOUNT EQUAL TO THE GREATER OF THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE UNDER THE ORDER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE LAST EVENT GIVING RISE TO THE CLAIM OR $100,000.00 USD.

8.2 Exclusion of Consequential and Related Damages. NEITHER PARTY NOR ITS RESPECTIVE LICENSORS OR SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS SLSA FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, COST OF SUBSTITUTE GOODS OR COST OF SUBSTITUTE PERFORMANCE.

8.3 Applicability. THE EXCLUSIONS OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION 8 WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. HOWEVER, THE EXCLUSIONS OF LIABLILITY AND THE LIMIT ON AGGREGATE LIABILITY DO NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY, OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMIT ON AGGREGATE LIABILITY WILL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS OR ITS BREACH OF SUCH OBLIGATIONS UNDER THIS SLSA.

9. CONFIDENTIALITY

9.1 Confidential Information. Each party acknowledges that it may receive Confidential Information from the other party in connection with the Order, and during the course of the parties' general business relationship. Unless stated otherwise in this Section 9 or agreed otherwise by the parties, the receiving party shall keep in trust and confidence all Confidential Information received under this SLSA, and may use Confidential Information solely for the purpose of furtherance of the business relationship between the parties, or to exercise its rights and fulfil its obligations under this SLSA.

9.2 Authorized Disclosure. The receiving party may disclose Confidential Information only to its employees, contractors, agents, directors, officers, professional legal advisors, Affiliates, suppliers or subcontractors with a need to know and who are bound by confidentiality obligations at least as protective as the terms stated in this Section 9 (collectively, the "Authorized Parties"). Each party is responsible for their Authorized Party's breach of this Section 9. The receiving party may disclose Confidential Information to persons other than an Authorized Party upon the prior written consent of the disclosing party. Notwithstanding the foregoing, the receiving party is authorized to disclose Confidential Information as required by applicable law in accordance with a valid order issued by a court, government agency or relevant regulatory or listing exchange authority, provided that the receiving party, where allowed under applicable law, provides: (i) prior written notice to the disclosing party of such obligation; and (ii) the opportunity for the other party to oppose such disclosure. The confidentiality obligations of each party will survive three years following the expiration or termination of the Order, whichever occurs later. Upon such termination or expiration, the receiving party, upon request of the disclosing party, will cease all use of and/or destroy the disclosing party's Confidential Information (including any copies thereof) in the receiving party's possession, custody, or control, provided that the receiving party may keep archival copies due to mandatory retention laws, for regulatory purposes or to enforce its rights, subject to the confidentiality obligations as stated in this Section 9. Notwithstanding the foregoing, any trade secrets disclosed hereunder shall be held in confidence by the receiving party for: (i) as long as such Confidential Information remains the disclosing party's trade secret under applicable law; or (ii) until such Confidential Information falls under one of the exceptions to the confidentiality obligations specified in this Section.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 Governing Law. This SLSA, including any Dispute, will be governed by the laws of the State of New York excluding both conflict of laws principles and the United Nations Convention on Contracts for International Sale of Goods.

10.2 Dispute Resolution. In the event of any Dispute, the disputing party shall give the other party written notice of the Dispute in accordance with the notice provision of this SLSA. The parties will attempt in good faith to resolve each Dispute within 30 days, or such longer period as the parties may mutually agree, following the delivery of such

notice, by negotiations between designated representatives of the parties who have dispute resolution authority. If the parties are not able to resolve the Dispute within the period as set forth above then either party may bring an action or proceeding as set forth in Section 10.3 or 10.4, as applicable.

10.3 Choice of Forum. For any Dispute arising in the United States or based upon an alleged breach committed in the United States, 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. Each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising under this Section 10.3.

10.4 Undisputed Invoices. Nothing in Section 10 will be construed to preclude Avaya from instituting a proceeding for payment of undisputed invoices from any court of competent jurisdiction.

10.5 Injunctive Relief. Nothing in Section 10 will be construed to preclude either party from seeking provisional remedies, including, without limitation, 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.

10.6 Time Limit. Actions or Disputes between the parties must be brought in accordance with this Section within 2 years from when the facts giving rise to such action or dispute occurred.

11. THIRD PARTY TERMS

Third-Party Terms., Customer will be bound by certain additional terms and conditions (as indicated by Avaya) that apply to Third-Party Products and/or Third-Party Services ("**Third-Party Terms**") purchased from Avaya. In case of a conflict, the Third-Party Terms take precedence over the SLSA only for those Third-Party Products and/or Third-Party Services.

12. DATA PRIVACY

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

12.2 Where Customer has provided Customer's electronic contact data (*e.g.* e-mail address) to Avaya in connection with a Product or Service Order, Avaya may occasionally send Customer information about similar Products and Services that may be of interest to Customer. If Customer does not wish to receive such information, Customer should contact Avaya Sales or notify Avaya via email at dataprivacy@avaya.com.

13. MISCELLANEOUS

13.1 Compliance. Each party must comply with all laws and regulations applicable to its actions contemplated under this SLSA. Each Party agrees to conduct its operations in relation to this SLSA in compliance with all International Trade Laws. Each Party shall be responsible for obtaining the necessary authorizations required by International Trade Laws that are applicable to the Party's import, export, re-export, in-country transfer or other foreign trade activity in connection with its performance under this SLSA. Each party confirms that they are not engaging in transactions involving comprehensive or selective embargoes, sanctioned countries, and have not been designated as Denied Parties or Restricted Parties under applicable International Trade Laws unless government authorizations have been obtained. The Parties agree to not use any Products or Services obtained under this SLSA to engage in activities relating to weapons of mass destruction, nuclear proliferation, nuclear, chemical, or biological weaponry, or to permit or facilitate such prohibited uses of Products or Services by a third party.

13.2 Assignment, Independent Contractor, & Subcontractors. Avaya may assign this SLSA to any of its Affiliated entities 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 SLSA. Any other assignment of this SLSA or any rights or obligations under this SLSA without the express written consent of the other party will be invalid. Avaya may subcontract any or all of its obligations under this SLSA but will retain responsibility for the work. Avaya is an independent contractor and no partnership, joint venture, or agency relationship exists between the parties. Each party will be responsible for paying its own employees, including employment related taxes and insurance.

13.3 Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, 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, civil or military authority, and inability to secure materials or transportation facilities.

13.4 Notices. Any required notice will be addressed to the applicable party as set forth below. Notices will be delivered by: (i) personal delivery; (ii) courier or first class mail (with all fees or postage prepaid); (iii) an e-mail containing a duly signed PDF document (with receipt confirmed). Notices will be deemed to have been given, as applicable, on the earlier of: (a) the date of receipt; (b) 2 working days after sending by courier; (c) 5 working days after first class posting; and (d) next working day after sending by facsimile or email.

For Customer: Address as set forth on the Order form
For Avaya: Avaya LLC. Attn: Law Dept. 350 Mount Kemble Avenue Morristown, NJ 07960 United States, Email: lglnoticescomm@avaya.com

For Customer notification of termination or intent not to renew maintenance, managed service and subscription services, send notice to Avaya: Avaya World Services Inc., Customer Care Center - Attn: Services Termination, Email: mycontract@avaya.com, Facsimile: 800-441-6371, or, if the order was placed on an alternative Avaya Affiliate, the notice of termination must be sent to the e-mail or address stated on the relevant Order

13.5 Reference. Neither Party may use the name, logos and trademark(s) of the other Party or to list it as a provider or recipient of Products or Services for marketing purposes, whether on websites, social media or in public announcements, without the prior consent of the other Party

13.6 Construction. The provisions concerning confidentiality, license grant to Customer, indemnity, and any other terms which, by their nature, are intended to survive termination or expiration of the Order will survive. If any term of this SLSA is found to be invalid, the remaining provisions will remain effective and the invalid term shall be replaced with a term consistent with the purpose and intent of this SLSA. No waiver of any term, condition, or breach shall be construed as a waiver of subsequent terms, conditions, or breaches. Except as expressly contemplated in the SLSA, only written and signed modifications to this SLSA shall be enforceable. Paragraph headings are for reference only. The singular includes the plural, and vice versa. "Including" and similar words shall not be construed as terms of limitation. Each party represents that the person signing this SLSA or an associated the Order on its behalf has authority to contractually bind such party to the terms and conditions of this SLSA. This SLSA or any related documents may be executed by electronic signature in lieu of a handwritten signature. This SLSA may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original. This SLSA constitutes the entire understanding of the parties with respect to the subject matter of the Order and supersedes all previous and contemporaneous communications, representations or understandings, either oral or written, between the parties relating to that subject matter.

13.7 Avaya's Ethics, Compliance and Corporate Responsibility. Avaya is committed to ethical business conduct and corporate responsibility. We strive to perform in accordance with the Avaya Supplier Code of Conduct found at https://www.avaya.com/en/documents/supplier_code_conduct.pdf.

13.8 Order of Precedence.

If conflicting or inconsistent terms cannot reasonably be read as non-conflicting, consistent and supplemental, the following descending order of precedence will be: (i) Avaya Customer Order Form, (ii) Service Description, SAS and SLS, (iii) Order Specific Terms; (iv) these General Terms; and (v) and any other document expressly referred to in this SLSA which governs the Products and Services.

14. DEFINITIONS

"Affiliate," or "Affiliated" means an entity that is directly or indirectly controlling, controlled by, or under common control with a party to the Order. 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 terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Avaya" means, as the context requires, either Avaya LLC or the appropriate Avaya Affiliate named on the Order.

"Avaya Customer Order Form" means the documentation provided by Avaya to Customer establishing what Customer is purchasing and what the cost will be paid. This Avaya Customer Order Form specifically excludes any purchase order provided by Customer to Avaya.

"Avaya Intellectual Property" means collectively rights, title and interest in and to any intellectual property in the Products, the Services, any and all Deliverables provided to Customer 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.

"Avaya Tools" means items that Avaya lends or makes available to Customer for purposes of the Order (*e.g.*, Secure Access Link, etc.).
"Claim" means a claim, action, suit or proceeding brought by a third party against a party alleging that a Product or Service, as of its Delivery Date, infringes a patent, copyright trademark or Trade Secret or any intellectual property right.
"Customer" means the entity set forth on the Order form.
"Confidential Information" means either party's business and/or technical information, trade secrets, unpatented inventions or confidential intellectual property, financial information including pricing, discounts forecasting or sales data, information acquired during any location visit or remote access, and other information regardless of whether in tangible or other form if marked or otherwise expressly identified in writing as confidential or reasonably understood to be confidential under the circumstances. Information communicated verbally will qualify as Confidential Information if the receiving party knew or had a reason to know that the information being disclosed was confidential information. Confidential Information does not include information which: (i) has entered the public domain except where such entry is the result of the receiving party's breach of this SLSA; (ii) was rightfully in the receiving party's possession prior to disclosure under this SLSA; or (iii) was obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party.
"Deliverable" means customized software, documentation, or other work product created in the course of a Professional Services (as defined in the Professional Services Order Specific Terms) engagement; Deliverables do not include generally available hardware and Software and are not Products.
"Delivery Date" means the date on which Avaya delivers to the carrier for shipment 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.
"Dispute" means any dispute, claim or controversy arising out of or relating to the Order.
"Documentation" means information published in varying media which may include product information, subscription or service descriptions, operating instructions and performance specifications that are generally made available to users of products. Documentation does not include marketing materials.
"EULA" means the Avaya Global Software License Terms, found at http://support.avaya.com/LicenseInfo (or a successor site properly noticed) which may be updated from time to time and will apply prospectively.
"Feedback" means comments or suggestions.
"International Trade Laws" means all applicable import, export, re-export, in-country transfer, and other foreign trade control statutes, laws, regulations, enactments, directives, and ordinances of any governmental authority with jurisdiction over such International Trade Laws.
"Order" means an order placed by the Customer to Avaya setting out the Products and Services being purchased by the Customer, and that has been accepted by Avaya by: electronic mail or other agreed upon means of electronic communications (to addresses provided by Customer to Avaya) or upon shipment or delivery of Products or commencement of Services performance.
"Payment Mechanism" means payment by Customer via credit card, online, direct debit or other payment mechanism other than Customer's electronic funds transfer.
"Products" means hardware, licensed Software, and associated Documentation.
"SOW" or "Statement of Work" means a Customer-specific document that describes the features, terms and conditions of an Avaya service being purchased by Customer.
"SAS" or "**Service Agreement Supplement"** has the meaning given in the applicable Order Specific Terms.
"SD" or "**Service Description**" means the applicable description of the Services then current as of the date of Customer's Order.
"**Services**" means Avaya services described in the applicable Service Description or SOW.
"Software" is defined in the EULA**.**
"Supplemental Terms" means, individually or collectively, the Use Policies and Service Descriptions.
"Third-Party Product" means any product made or provided by a party other than Avaya, including products ordered by Customer from third parties, products provided by Avaya that are recognizable as standalone items, and products identified as separate items on Avaya's price list, quotes, order specification forms or Documentation.
"Third-Party Service" is any service provided by a party other than Avaya or an Avaya subcontractor.
"Update" means a patch, product correction notice (PCN), minor software, firmware update or service pack.
"Use Policies" means the policies or additional terms that are incorporated in this SLSA and apply to the provision of certain Services as identified herein and in the Matrix.

Order Specific Terms: Sale of Products and Subscription Licenses

These Order Specific Terms apply to Orders in which Customer purchases any Products and/or Subscription Licenses.

1. ORDERS AND CHANGES

1.1 Product Changes. Prior to its delivery, Avaya may make changes to the Product, modify the drawings and specifications relating to the Product, or substitute the Product for a Product of later design; provided that the changes do not have a materially adverse effect on the function of the Product. Notwithstanding the foregoing, the parties may agree to change an Order at any time and such changes may be subject to additional charges.

1.2 Cancellation of Product Orders. Customer may cancel an Order for Product prior to shipping by written notice to Avaya as follows:

- **1.2.1** within 24 hours of Order placement: subject to a cancellation fee of 5% of the purchase price
- **1.2.2** more than 24 hours after Order placement: subject to a cancellation fee of 10% of the purchase price
- **1.2.3** Avaya may invoice for cancellation fees immediately.
- **1.2.4** Customer may not cancel an Order once Avaya or a third party has customized the relevant Product, the Product has been shipped or has been made available for download.

1.3 Delays to Product Orders. Customer may request that the Delivery Date for Products be delayed by up to 75 days from the original Delivery Date. Any request for delay by Customer in excess of 75 days from the Delivery Date will entitle Avaya to cancel the Order for Products that have not yet been delivered, subject to a cancellation fee of 10 % of the Product price for such cancelled Products, payable by Customer upon cancellation by Avaya. The remainder of the Order will remain in full force.

1.4 Termination of Subscription Licenses. Subscription Licenses terms, termination and any applicable termination fees are set forth in the applicable Subscription License Supplement.

2. DELIVERY, TITLE, AND RISK OF LOSS

2.1 Delivery and Risk of Loss. Unless otherwise agreed in an Order, all deliveries of Products will be made CIP (Destination on Order or Delivery Point).
Avaya may charge Customer for shipping and handling charges in relation to the delivery of the Products, which will be reflected as a separate line item in Avaya's invoice. Risk of loss will pass to Customer on the Delivery Date.

2.2 Title to Hardware. Unless hardware is sold on an as-a-Service basis, for hardware delivered in the United States and Canada, title to the hardware will pass to Customer on the Delivery Date and in countries other than the United States and Canada, title to the hardware will pass to Customer upon payment in full of the price for the hardware. Avaya may, in its sole discretion and at any time, waive the requirement of payment prior to passing of title to hardware, in which case title will pass to Customer on the Delivery Date or (if later) on the date of the waiver concerned. For hardware delivered in the United States and Canada, title to the hardware will pass to Customer on the Delivery Date. Title to hardware sold on an as-a-Service basis does not pass to Customer

2.3 Title to Software does not Pass. Software is licensed to Customer as specified in Section 3. Title to Software will remain with Avaya and its licensors (provided that Customer will be entitled to retain the copies of the Software supplied for the duration of the license term that applies to the use of the Software concerned).

2.4 Security Interest. Until Avaya has received payment in full from Customer for tangible Products, Customer authorizes Avaya to register Avaya's retention of title pending payment in the applicable official registers of any national or local jurisdiction to which the applicable Product is delivered or physically located. Customer will on request from Avaya (and at Avaya's expense) execute all such documents and take all actions reasonably requested by Avaya to enable Avaya to exercise its rights to security under this Section.

3. SUBSCRIPTION LICENSE

Subscription licenses are also subject to then-current Subscription Licensing Supplement.

4. WARRANTIES

4.1 Warranty Scope. Avaya warrants to Customer that, during the applicable warranty period, Products will conform to and operate in accordance with the applicable Documentation in all material respects.

4.2 Warranty Period. Warranty periods are as follows: (i) hardware: 12 months, beginning on the In-Service Date for Avaya-installed hardware and on the Delivery Date for all other hardware; and (ii) Software and Software media: 90 days, beginning on the In-Service Date for Avaya-installed Software; the Subscription License Term Start Date as set forth in the SLS; or the Delivery Date for all other Software and media.

4.3 Remedies. If a Product does not conform to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, then as Customer's sole and exclusive remedy, Avaya will, at its option: (i) repair or replace same to achieve conformance or (ii) refund to Customer the applicable fees paid for the non-conforming hardware or Software, upon return of the non-conforming hardware to Avaya in accordance with Avaya's instructions. Customer will return Products subject to a warranty claim to Avaya in accordance with Avaya's instructions. 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 Products are warranted as above for the remainder of the original applicable Product warranty period. For Software warranty claims, Avaya will provide access to available Software corrective content and Product support knowledge base on a self-service basis.

4.4 Costs. If a Product 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 Product. If Avaya determines that the Product 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 time and materials rates.

4.5 Exclusions and Disclaimers. The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Customer's use of Products in violation of the license granted under this SLSA or in a manner inconsistent with the Documentation; (ii) normal wear due to Product use, including but not limited to Product cosmetics and display scratches; (iii) use of non-Avaya furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iv) Customer's failure to follow Avaya's installation, operation or support instructions; (v) Customer's failure to permit Avaya timely access, remote or otherwise, to Products; or (vi) failure to implement Updates provided by Avaya. Warranties do not extend to Products that have been serviced or modified by a party other than Avaya or a third party specifically authorized by Avaya to provide the service or modification.

5. DEFINITIONS

"**In-Service Date"** means the earlier date of (i) Avaya notifying Customer that the Products are installed and available for production use; or (ii) Customer begins using the Product in a production environment.

"Subscription Licensing Supplement" or "**SLS**" means the then-current Avaya offer description document for Subscription Licenses found at https://www.avaya.com/en/legal-service-descriptions/ or a successor site and incorporated into this SLSA by this reference as of the date of Avaya's acceptance of an Order.

"Subscription License(s)" means the software licenses Ordered by Customer which are subject to a subscription.

Order Specific Terms: Professional Services

These Order Specific Terms apply to Orders or SOWs in which Customer purchases any Professional Services.

1. SCOPE

Avaya will provide Professional Services as specified in the Order which may, as applicable, incorporate a SOW or Service Description. Professional Services may include installation and configuration of Products and Services, consulting and other Professional Services where Avaya creates a Deliverable and/or completes other defined objectives or a project phase on a milestone basis, time and material basis, or other basis.

2. ACCEPTANCE

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

2.2 Order without Acceptance Procedures. Where the Order does not contain T&M Services or specific acceptance criteria and procedures, Professional Services are deemed accepted upon the earlier of either: (i) Avaya providing notice of completion to Customer; or (ii) Customer signing of an acceptance certificate.

2.3 Order with Acceptance Procedures. The Professional Services are deemed accepted upon the earlier of either: (i) the end of the Acceptance Period as set out in the Order, unless before the end of the Acceptance Period Avaya has received from Customer a rejection notice; or (ii) Customer signing of an acceptance certificate. If the Professional Services fail to conform to the agreed acceptance criteria and Avaya has received a rejection notice, then Avaya will re-perform the non-conforming Professional Services and re-submit it for acceptance as described above. If, after resubmission, the Professional Services fail to conform to the agreed acceptance criteria in any material respect, then Customer's sole and exclusive remedies will be for Customer to either: (i) terminate the non-conforming Professional Services and return all non-conforming Deliverables for a refund of any fees pre-paid under the SOW for the non-conforming Professional Services; or (i) accept the Professional Services, subject to the warranties and remedies described in Section 6. Customer will be deemed to have accepted the applicable Professional Services, in accordance with subsection 2.2 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 in accordance with this Section 2, Customer will promptly sign and return an acceptance certificate. 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. Notwithstanding any other provisions above, production use by Customer will constitute acceptance for all purposes under the SLSA.

3. TRANSFER OF RISK AND LICENSE TO DELIVERABLES

3.1 Transfer of Risk. If the Professional Services include tangible items to be delivered to Customer, risk of loss and title shall pass when carrier receives the Deliverable for shipment to Customer.

3.2 License to Deliverables. Subject to Customer's payment of fees for the Professional Services, Avaya grants Customer a non-exclusive, non-transferable, limited, non-sublicensable license to use Deliverables created by Avaya and delivered to Customer. 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.

4. INVOICING OF PROFESSIONAL SERVICES

4.1 Professional Services will be invoiced in advance, or as specified in the Order.

4.2 T&M Services will be invoiced monthly in arrears.

5. DELAYS

Any delays in the performance of Professional Services caused by Customer may result in additional applicable charges for resource time. If such delay continues for more than 30 days, Avaya may terminate the Order and Customer agrees to pay for all Professional Services performed to date of termination and if applicable, any termination fees.

6. WARRANTY

6.1 Avaya warrants that Professional Services will be performed in a professional and workmanlike manner by qualified personnel, and that for a period of 30 days from the acceptance or deemed acceptance date of the Professional Services, the Professional Services will conform in all material respects to the specifications contained in the Order.

6.2 Remedy. If the Professional Services do not conform to their warranty and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Professional Services failed to be in conformance, Avaya will, at its option: (i) re-perform the applicable Professional Services or (ii) refund to Customer any pre-paid fees for the non-conforming Professional Services. 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. 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 WITH RESPECT TO THE NON-CONFORMANCE OF PROFESSIONAL SERVICES.

6.3 Disclaimer. Professional 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 the Professional Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

7. ORDER TERMINATION

Either party may terminate Professional Services that have not been submitted for acceptance in accordance with the Order upon 45 days prior written notice. Customer will pay for Professional Services performed to the date of termination and all non-refundable or non-terminable out-of-pocket expenses Avaya incurred, and if applicable, any termination fees.

8. DEFINITIONS

"Acceptance Period" means the time period in which Customer may test the Deliverable which shall not exceed ten (10) business days starting with the business day immediately following the date on which the Deliverable is delivered to Customer.

"**Professional Services**" means the implementation of Products and other Services described in an Order.

"T&M Services" or "time and material Services" are Professional Services which are billed by Avaya based upon the time spent to perform the work and for the materials used.

Order Specific Terms: Support and Managed Services

These Order Specific Terms apply to Orders in which Customer purchases any Managed Services or Support Services ..

1. ORDER AND PROVISION OF SERVICES

In return for the payment of applicable fees and subject to compliance with the terms of the SLSA, Avaya will provide the Support Services or Managed Services options selected by Customer for Supported Products at the Supported Sites set out in the applicable Order or SD (collectively "**Services**" in these OST).

2. MONITORING

Avaya may electronically monitor Supported Products for the following purposes: (i) to perform remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable End User License Agreement; (iv) to assess Customer needs for additional Products or Services to address or resolve Services issues; or (v) as otherwise provided in the Service Description.

3. INCIDENT CORRECTION

Some Services options may include correction of incidents. The incident categories and any corresponding support level are further described in the applicable Service Description.

4. HELP LINE SUPPORT

Where the selected Services option includes help line support, Avaya will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Customer has selected in the Order or SOW.

5. END OF SUPPORT

Periodically, Avaya or a third party manufacturer may declare end of support for certain Supported Products. Customer may access Avaya's user support website (http://support.avaya.com, or such successor site) for end of support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Avaya. For Products subject to End of Support, Avaya will continue to provide extended support (except for the end of support exceptions listed therein). If the Service Description does not include **e**xtended support information, Avaya will make available the description of extended support (if available) for the Products concerned at the same time as its end of support notification. For Products not subject to extended support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the Order or SOW and rates will be adjusted accordingly.

6. REPLACEMENT HARDWARE

Any replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Title to Avaya-installed replacement hardware provided as part of Services will pass to Customer when installed. Title to all other hardware provided as part of Services will pass to Customer as specified in the Order Specific Terms for Sale of Products and Subscription Licenses.

7. ADDED PRODUCTS

Newly purchased Products will be added to the Order or SOW automatically for the remainder of the term at the applicable rates. Customer will inform Avaya without undue delay of any added Products not acquired from Avaya. Products purchased from a party other than the manufacturer or an Avaya channel partner may be added to or declined from being added to the Supported Products at Avaya's discretion, and will be subject to certification by Avaya at Avaya's then current Services rates.

8. GENERAL LIMITATIONS

Unless the applicable Service Description provides otherwise, Avaya will provide Software Services only for the unaltered current release of the Software and the prior release. The following items are included in the Services only if the Service Description specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Avaya (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of incidents arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or have had their serial numbers altered, defaced or deleted.

9. ADDITIONAL CUSTOMER RESPONSIBILITIES

9.1 General. At Customer's expense, Customer will cooperate with Avaya as reasonably necessary for Avaya's performance of its obligations, including without limitation: (i) providing Avaya with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them; and (iv) any other responsibilities as set out in the applicable Service Description, or otherwise agreed from time to time. If Avaya provides Updates as part of Services, Customer will implement them promptly, unless otherwise set out in the SD.

9.2 Provision of Supported Products and Systems. Customer will provide all Supported Products and Supported Sites. Customer continuously represents and warrants that: (i) Customer is either the owner of, or is authorized to access and use, each of them; and (ii) Avaya, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

9.3 Moves of Supported Products. Customer will notify Avaya in advance before moving Supported Products**.** Identical Services may not be available in all locations and in such circumstances either cancellation charges will apply, or additional charges may apply if Avaya incurs additional costs in providing Services as a result of such moves.

9.4 Vendor Management. Where the applicable SD states that Avaya provides vendor management for Customer, Customer will provide Avaya, upon request, a letter of agency or similar document, permitting Avaya to perform vendor management. Where the third-party vendor's consent is required for Avaya to be able to perform vendor management in a timely manner, Customer will obtain the written consent of the vendor and provide Avaya a copy of it upon request.

9.5 Third-Party Hosting. In the event one or more network addresses to be monitored by Avaya are associated with systems owned, managed, and/or hosted by a third-party service provider, Customer will: (i) notify Avaya of the third-party service provider prior to commencement of the Services; (ii) obtain the third-party service provider's advance written consent for Avaya to perform the Services on the third-party service provider's computer systems and provide Avaya with a copy of the consent upon request; and (iii) facilitate necessary communications between Avaya and the third-party service provider in connection with the Services.

10. WARRANTY

10.1 Warranty Scope. Avaya warrants to Customer that, during the applicable warranty period, Services will be carried out in a professional and workmanlike manner by qualified personnel.

10.2 Warranty Period. The warranty period is 30 days beginning on the day of performance of the Service.

10.3 Remedies. If the Service does not conform in any material respect to the warranty above and Avaya receives from Customer during the applicable warranty period a written notice describing in reasonable detail how the Service failed to be in conformance, Customer's sole and exclusive remedy will be for Avaya to re-perform non-conforming Support Services or Managed Services or, if Avaya is unable to re-perform the Services within a reasonable period of time such that they conform in all material respects with the applicable warranty, Avaya shall refund the fees paid for the non-conforming Support Services or Managed Services.

10.3.1 Warranty Procedures. Customer must provide written notice to Avaya during the applicable warranty period describing in reasonable detail how the Support Services or Managed Services failed to be in conformance with the applicable warranty.

11. TERM

11.1 Support Service Term. Unless a different term is specified in the applicable Service Description, Avaya will provide Support Services for an initial term of 1 year. The Order will be renewed automatically for successive 1-year terms (unless a longer renewal period is specified in the applicable Service Description) applying the most similar generally available support offer and then current rates, unless either party gives the other written notice of its intent not to renew at least 30 days prior to the expiration of the applicable initial or renewal term.

11.2 Managed Services. Unless a longer initial term or different renewal terms are defined in the Order, SOW or SD, Avaya will provide Managed Services for an initial term of 3 years and such initial term will be renewed automatically for subsequent 1 year periods, applying the then-current rates, unless either party gives the other party written

notice of its intent not to renew at least 90 days prior to the expiration of the applicable initial or renewal term.

12. DEFINITIONS

"Managed Services" means the management of Supported Products, including (where applicable) automated client notifications, configuration management, incident and problem management, service desk, and monitoring.

"SAS" or "**Service Agreement Supplement"** means a document that describes the features, terms and conditions of an Avaya Support Services offer**.**

"Support Services" means the maintenance and support of Products in accordance with the SD.

"Supported Products" means the Products for which the Services are to be provided, as identified in the applicable Order or SOW, together with any added Products, which may include Products made available for Customer's use as part of Subscription Services and Third Party Products to the extent they are specified in the relevant Order or Service Description.

"Supported Sites" means the location(s) to which Services are to be provided, as set out in the applicable Order or SOW.

Order Specific Terms: Cloud Services

These Order Specific Terms and the Supplemental Terms apply to the extent Customer purchases Services delivered from the 'cloud' under the Order, all as listed in the Matrix ("Cloud Service"). Country Specific Additional Terms available at https://support.avaya.com/TermsOfSale (or such successor site).

1. TERMS OF SERVICE

1.1 Terms of Service. Upon acceptance of an Order Avaya will make the Cloud 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.

1.2 Changes to, and Discontinuation of, the Cloud Service. From time to time Avaya may update or modify the Cloud 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 Cloud Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Cloud Service and terminate the respective Order without penalty if any change to the Cloud Service or Supplemental Terms is of material detriment to Customer, by written notice, within 60 days after Avaya notifies Customer of the change.

1.2.1 Avaya will use commercially reasonable efforts to provide 60 days' notice prior to discontinuing a Cloud Service, at which time the Cloud Service will no longer be available for order.

1.3 System Requirements. Cloud 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 Cloud Services, and for paying all charges associated with these services.

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

1.5 Use Policies. When Customer accesses and uses a Cloud Service, Customer is responsible for complying with the SLSA, applicable laws and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: http://support.avaya.com/TermsOfSale (or such successor site) and are incorporated into and form part of this SLSA. 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.

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. 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 SLSA are non-cancellable and the sums paid are non-refundable, except as otherwise expressly provided in this SLSA.

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 Price Changes. Avaya may change the fees associated with any Cloud 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.

2.4 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 Commencement of Cloud Services. Avaya will notify Customer of the Service Activation Date. Unless Customer notifies Avaya by the close of the second Business Day following the Service Activation Date that the Cloud Services are not operational, the Service Period will commence on the Service Activation Date and will continue until expiration or termination of the Cloud Services.

3.2 Support. Customer may access technical support by sending an email or calling the numbers detailed in the applicable Supplemental Terms.

3.3 Customer's Use of Service. Customer represents and warrants that Customer has the legal right and authority to install and use the Cloud Services. Customer may use the Service solely for Customer's internal business use in accordance with and in the countries designated in the applicable Supplemental Terms, this SLSA and the Order, are 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.

3.4 Co-operation with Law Enforcement Authorities. Avaya may charge Customer an administrative fee to recover Avaya's costs that arise from requests from law enforcement authorities, regulatory authorities, or court orders resulting from Customer's use of the Cloud Service.

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

4.1 Termination. Avaya's termination due to Customer's uncured breach does not excuse Customer from its obligation to pay fees for the remainder of the Service Period.

4.2 Expiration/Termination. Upon expiration of the Service Period or termination pursuant to Section 7 of the General Terms, 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.

4.3 Service Availability. Cloud Services (or part) may be unavailable for use by Customer (a) for scheduled downtime to permit Avaya to conduct maintenance, or to modify, upgrade or update the Service, and Avaya will use reasonable efforts to notify Customer of such scheduled downtime in advance in accordance with the Supplemental Terms, (b) without notice in the event that Avaya reasonably believes there may be a denial of service attack or other security risk to the Service, Customer (or its users) or Avaya's other customers, or (c) without notice in the event that Avaya determines that it is necessary or prudent to do so due to or for legal or regulatory reasons (collectively, "**Service Suspensions"**). Avaya shall not be liable to Customer for Service Suspensions.

5. CUSTOMER CONTENT, APPLICATIONS, AND MARKS

5.1 Customer is solely responsible for Customer Content and Applications (including any data, text, images or other content contained therein), including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content or Applications. Avaya does not certify or endorse any Customer Content or Applications. Customer represents and warrants that it has all necessary rights to, and grants to, Avaya a limited, non-exclusive, non-transferable, non-sublicensable (except to its subcontractors and suppliers) license to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Customer Content and Applications to the extent necessary for the purpose of providing the Cloud Service.

5.2 As between Avaya and Customer, Customer retains all right, title and interest in and to Customer Content and Applications. Avaya will not share Customer Content, Other Users' Content or Applications with any third parties unless: (a) Avaya has Customer's written or electronic consent for sharing any Customer Content,, Other Users Content or Applications; (b) it is required by law; or (c) Avaya provides Customer Content, Other Users Content or Applications 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 In connection with the provision of the Cloud Service, Customer 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; provided, that the use of Customer Marks in connection with this SLSA shall not create any right or title in or to the use of Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

6. RIGHTS AND DISCLAIMERS

6.1 All information transmitted through the Cloud 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 Cloud Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with this SLSA, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) set out 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.

6.2 Customer acknowledges that, in performing the Cloud 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 or Other Users' 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.

6.3 Provided Avaya does not use Customer's Confidential Information, Avaya reserves the right to: (i) develop products or services similar to any of the Applications that Customer may develop in connection with a Cloud Service and (ii) grant similar rights to those provided under this SLSA to third parties that may develop or offer products or services which compete with any such Applications.

6.4 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.

6.5 It is Avaya's policy to respond to notices of alleged copyright infringement that comply with the United States 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 infringement notice as it pertains to the Service, go to the following link http://support.avaya.com/AvayaCopyrightAgent (or such 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
1-908-953-2044

7. INDEMNIFICATION

7.1 Avaya's Indemnification Obligation: Avaya will defend Customer against third-party claims brought against Customer to the extent arising solely from an allegation that Customer's use of the Cloud 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 7 will not apply if the claim results from (a) Customer breach of this SLSA, (b) modification to the Cloud Service or use of the Cloud Service outside the scope of the applicable Service Description, (c) combination, operation, or use of the Cloud Service with products, software, services or business processes not provided by Avaya, (d) Avaya's compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer behalf, (e) Customer Content (f) trial or beta use of the Cloud Service, or (g) services Customer provides based on the Cloud Service. In the event a claim is made or likely to be made, Avaya may, (i) procure for Customer the right to continue using the Cloud Service under the terms of this SLSA, or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If these options are not reasonably available, Avaya may terminate the Cloud Service upon written notice to Customer and refund Customer a pro rata portion of the price Customer may have pre-paid to Avaya for the Cloud Service for the remainder of the unexpired term.

7.2 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 or its end users use of the Service in a manner not expressly authorized by the SLSA or that is in violation of applicable law; (b) Customer Content or Applications or the combination of these with other applications, content or processes; and (c) any dispute between Customer and its end users, clients or third parties. 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.

7.3 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.

7.4 Exclusive Remedy. THE FOREGOING STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INDEMNIFICATION CLAIMS UNDER THIS SECTION. 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.

8. EXTERNAL LINKS AND THIRD-PARTY SERVICES

In some cases, the Service may contain hyperlinks to External Services and Sites or Avaya may refer Customer to, or make available to Customer, Non-Avaya Content. Such External Services and Sites and Non-Avaya Content are not part of any Cloud Service and are provided or referenced on an "AS-IS" basis. Customer's use of such External Services and Sites or Non-Avaya Content is at Customer's own risk. Customer acknowledges and agrees that Avaya neither endorses nor has any responsibility for the External Services and Sites or Non-Avaya Content.

9. SOFTWARE LICENSE TERMS AND UPDATES

9.1 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 made available to Customer when Customer downloads or installs the Software portion of the Service, or (b) if no such terms exist, then the EULA in effect as of the Service Activation Date will apply for the sole purpose of using the Service, and solely for the duration of the Service Period.

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

10. RECORDING

If conferences are applicable to the Service 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 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.

11. EMERGENCY SERVICES, HIPAA AND PCI DISCLAIMERS

UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS THAT:

A. 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. TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW, AVAYA AND ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS WILL HAVE NO LIABILITY FOR ANY SUCH CALLS OR COMMUNICATIONS, AND CUSTOMER WAIVES ALL CLAIMS AGAINST AVAYA RELATED TO ANY SUCH CALL OR COMMUNICATIONS.

B. THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").

C. THE SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERRED TO AS PCI OR PCI DSS.

12. GENERAL

Message Routing. Customer may not use phone numbers provided by Avaya to route Short Messaging Service ("**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 Cloud 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.

13. OFFER -SPECIFIC TERMS

The following shall apply to a Customer's use of Communications APIs:

13.1 Customer may install, copy, and use as necessary any Properties, solely in connection with Customer's use of the Service. Customer may not display or otherwise commercially exploit the Properties in any manner unless Customer obtains Avaya's prior written consent.

13.2 Customer will not use, and will not authorize any third party to use, any Public Software in connection with Communications API offer in any manner that requires, pursuant to the license applicable to such Public Software, that the Communications API offer (including without limitation any Properties) be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.

13.3 Customer shall ensure that (i) Customer's Application do not violate Avaya's AUP, and (ii) 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.

13.4 If Customer sells or provides any party access to an Application that interfaces with Communications API, Customer will incorporate into Customer's agreement with its End Users ("**Customer's End User Agreements**") terms and conditions that: a) enable Avaya to use Customer's and Customer's users, employees, clients or customers' ("**End Users**") data as necessary to provide the Communications API Services and b) protect Avaya's rights to the same extent as the terms of this SLSA. Without limiting the foregoing, Customer's End User Agreements will include terms concerning restrictions on use, protection of proprietary rights, disclaimer of warranties, and limitations of liability applicable to Communications API that are no less protective than this SLSA. Customer will ensure that Customer's End Users using Applications adhere to such terms, and Customer will notify Avaya promptly if Customer becomes aware of any breach of Customer's End User Agreements that may impact Avaya or Communications API.

14. Definitions

"Acceptable Use Policy" or "AUP" means the document posted at http://support.avaya.com/TermsOfSale (or such successor site) which describes actions that Avaya prohibits when any party uses its Services.

"Application" means a software application or website within a Customer's domain or that Customer creates using the API's that interfaces or connects to the Cloud Services.

"**Business Days**" means Monday through Friday, 8:00 to 5:00 pm Eastern Time, excluding Avaya holidays.

"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.

"Effective Date" means the date in which the last party signs this SLSA.

"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.

"Initial Term" means the term of the Subscription that is indicated in 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 such successor site): http://support.avaya.com/TermsOfSale and referred to as the Master Cloud Agreement Matrix that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix.

"Non-Avaya Content" means additional content or software (including developer tools such as software development kits or sample code, and articles and documentation) that is subject to a non-Avaya license agreement, each for use at your option, solely in connection with Customer's use and implementation of Communications APIs. Non-Avaya Content will be marked or otherwise identified with a license indicating the usage rights available for that content or software.

"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.

"Properties" means a variety of software, APIs, data and other content and printed and electronic documentation that Avaya may make available in connection with the Service. Properties include, without limitation: (a) the Communications API website posted at https://www.avaya.com/en/products/CPaaS/ or any successor site, (b) APIs, and (c) Documentation.

"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

"Renewal Term" means each of the subsequent terms after the Initial Term as specified in the Service Description.

"Service Activation Date" means the date Avaya advises Customer that the Cloud Services are available for Customer's use.

"Service Description" means the applicable description of the Cloud Services then current as of the date of Customer's ordering of the Cloud 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 Cloud Services to Customer, whether the Initial Term or Renewal Term.

"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.