

TERMS OF USE FOR SAL REMOTE ACCESS HOSTED CONCENTRATOR

January 11, 2016

BELOW ARE THE TERMS OF USE FOR HOSTED SERVICES, AS DESCRIBED FURTHER IN THE THEN-CURRENT AVAYA-PROVIDED SECURE ACCESS LINK (SAL) REMOTE ACCESS HOSTED CONCENTRATOR OFFER DEFINITION ("**SAL REMOTE ACCESS HOSTED CONCENTRATOR OFFER DEFINITION**") REGARDING THE APPLICABLE HOSTED SERVICE (THE "**SERVICE**"). "**COMPANY**" OR "**AVAYA**", AS REFERENCED HEREIN, MEANS AVAYA INC. OR THE APPLICABLE AVAYA AFFILIATE OR, WHERE APPROPRIATE, ITS SUPPLIERS OR LICENSORS. "**YOU**", "**YOUR**" OR "**USER**", AS REFERENCED HEREIN, MEANS YOU THE AVAYA AUTHORIZED PARTNER, OR THE LEGAL ENTITY FOR WHOM YOU ARE DOWNLOADING, ACCESSING OR USING THE SERVICE, OR ANY OTHER PERSON OR ENTITY WHOM YOU AUTHORIZE TO DOWNLOAD, ACCESS OR USE THE SERVICE ON BEHALF OF YOURSELF OR THE LEGAL ENTITY FOR WHOM YOU ARE DOING SO. PLEASE READ THE FOLLOWING TERMS OF USE FOR THE SERVICE, INCLUDING ANY AND ALL SCHEDULES ATTACHED HERETO ("**TERMS OF USE**") CAREFULLY BECAUSE THEY WILL APPLY TO YOUR ACCESS TO AND USE OF THE SERVICE (INCLUDING ANY DOCUMENTATION PROVIDED TO YOU REGARDING THE SERVICE), AND THE TERMS OF USE CONSTITUTE A LEGALLY BINDING AGREEMENT BETWEEN YOU AND COMPANY. YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT. IF YOU AGREE WITH THESE TERMS OF USE, PLEASE SELECT AND CHECK THE "ACCEPT" BUTTON BELOW. IF THERE IS NO "ACCEPT" BUTTON ON THE SCREEN, YOU AGREE TO THESE TERMS OF USE WHEN YOU EITHER SELECT THE "DOWNLOAD" BUTTON (OR EQUIVALENT OPTION) OR ACCESS OR USE THE SERVICE, OR AUTHORIZE OTHERS TO DO SO ON BEHALF OF YOURSELF AND THE ENTITY FOR WHOM YOU ARE DOING SO. IF YOU ARE ACCEPTING THESE TERMS OF USE ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF USE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT WISH TO ACCEPT THESE TERMS OF USE OR DO NOT AGREE WITH THEM, PLEASE SELECT AND CHECK THE "DECLINE" BUTTON AND DO NOT ACCESS OR USE THE SERVICE OR AUTHORIZE ANYONE TO ACCESS OR USE THE SERVICE. IF YOU DO NOT SEE A "DECLINE" BUTTON ON THE SCREEN, THEN PLEASE SELECT THE "CANCEL" BUTTON (OR OTHER EQUIVALENT OPTION). THESE TERMS OF USE ARE EFFECTIVE AS OF THE DATE YOU EITHER SELECT AND CHECK THE "ACCEPT" BUTTON, SELECT THE "DOWNLOAD" BUTTON (OR EQUIVALENT OPTION), OR ACCESS OR USE THE SERVICE.

COMPANY MAY, AT ITS SOLE DISCRETION, REVISE AND UPDATE THESE TERMS OF USE AT ANY TIME WITHOUT NOTICE BY POSTING AMENDED TERMS TO <http://support.avaya.com/LicenseInfo> (OR SUCH SUCCESSOR SITE AS DESIGNATED BY COMPANY OR, UPON NOTICE BY AVAYA, THROUGH SOME OTHER MEANS DESIGNATED BY AVAYA). YOUR CONTINUED USE OF THE SERVICE MEANS THAT YOU ACCEPT AND AGREE TO ANY REVISED TERMS OF USE. IF YOU DISAGREE WITH THE TERMS OF USE (AS MAY BE AMENDED FROM TIME TO TIME), YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE. THE MOST CURRENT VERSION OF THIS AGREEMENT, WHICH SUPERSEDES ALL PREVIOUS VERSIONS, CAN BE REVIEWED AT <http://support.avaya.com/LicenseInfo> UNDER THE LINK "AVAYA TERMS OF USE FOR SAL

REMOTE ACCESS HOSTED CONCENTRATOR OFFER DEFINITION” (OR SUCH SUCCESSOR SITE AS DESIGNATED BY COMPANY).

1. USE OF THE SERVICE; RESTRICTIONS ON USE

(a) System Requirements. In order to use the Service, You must, at Your own expense, provide and utilize one or more compatible devices, Internet access, and certain software, and You may be required to obtain updates or upgrades to the foregoing. Your ability to use the Service may be affected by the performance of these items. You acknowledge and agree that system requirements for the Service may change and that You are solely responsible to adhere to the system requirements at Your own expense. You are responsible for ensuring that Your networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up Your data and files in accordance with good computing practices.

(b) Registration. To access the Service, You may be asked to provide certain registration details or other information, including, without limitation, email addresses, before any use of, or access to, the Service will be permitted. It is a condition of Your use of the Service that all the information You provide will be correct, current and complete and that You promptly update Your registration information as needed. You may not use another user’s or customer’s account. You shall be solely responsible for all activities that occur under Your account or subscription.

(c) Limited License and Scope of Use. Subject to these Terms of Use, and as long as Avaya makes the Service available and Your end customers maintain eligible support coverage as specified by Avaya, Company hereby grants You a limited, non-exclusive, non-transferable, non-sublicenseable license to access and use the Service during the subscription term solely for Your internal business purposes, which includes the limited, non-exclusive, non-transferable, non-sublicenseable right to use any Company Content (defined in Section 5(a) below) solely for internal business purposes and solely as part of Your use of the Service.

(d) Restrictions. You agree not to do any of the following, or allow others to do any of the following: (1) use the Service in a manner that is actually or potentially libelous, defamatory, threatening, harmful, harassing, indecent, obscene, in violation of any third party intellectual property rights or privacy rights of any person, or otherwise unlawful under any applicable law or regulation; (2) misrepresent an affiliation with, or otherwise impersonate, any person or organization; (3) upload or otherwise transmit files that contain a virus or corrupted data; (4) download a file or software or include in the Service any content, software, files or links that You know, or have reason to believe, cannot be distributed legally over the Service; (5) post “spam,” transmit unsolicited messages, advertising, telemarketing, chain letters, bulk email, or texts or engage in other similar activities; (6) advocate illegal activity or discuss an intent to commit an illegal act; (7) seek to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details, or otherwise; (8) access or attempt to access the Service by any means other than an interface provided by Company or bypass or attempt to bypass the measures Company may use to prevent or restrict access to the Service; (9) engage in any other conduct that (a) prevents, restricts or inhibits anyone’s use or enjoyment of the Service or which, as determined by Company, may harm Company or users of the Service or expose them to liability; (b) interferes with, disrupts, disables, damages, or overburdens the Service or associated servers, networks, or software or (c) damages any Company or third party property or information, including, without limitation, Company’s confidential information, Company’s Content and Other Users’ Content; (10) reproduce, duplicate, copy, transfer, modify, license, sell, trade, or resell the Service or any Company Content, unless Company expressly agrees otherwise in writing; (11) reverse engineer, disassemble, decompile, or otherwise attempt to derive

source code from the Service; (12) transfer Your subscription to the Service to any other company or entity without the prior written consent of Company; or (13) use any trademark, service mark, trade name, or logo of any company or organization in conjunction with the Service in a manner that is likely or intended to cause confusion about the owner or authorized user of such mark, name, or logo.

(e) Mobile Services. Some or all of the Service may be available or accessible via a mobile device, including (1) the ability to transmit content to the Service; (2) the ability to browse the Service; and (3) the ability to access certain features of the Service through downloaded and installed applications. To use or access the Service via a mobile device, a compatible mobile device must be used; however, Company cannot guarantee that all mobile devices are or will be compatible. To the extent the Service is accessed or used through a mobile device, the applicable wireless service carrier's charges, data rates and other fees may apply.

2. SUBSCRIPTION TERM; EXPIRATION/TERMINATION; SURVIVAL

(a) Term. The term of the subscription Service will be for as long as Avaya makes the Service available and Your end customers maintain eligible support coverage as described in the SAL Remote Access Hosted Concentrator Offer Definition. Orders for Service subscriptions are subject to acceptance. Contact Company or Company's authorized channel partner for more information. The license to the Service granted to You is subject to these Terms of Use and is effective until the end of the subscription term for the Service, unless terminated earlier as provided herein or in accordance with Your contract terms for the Service.

(b) Expiration/Termination. Upon expiration of the subscription term for the Service or termination (whichever is earlier), You shall immediately cease use of the Service and any Company Content in its entirety. Notwithstanding anything to the contrary, in addition to any other rights and remedies available to Company as a matter of law, equity, contract, or otherwise, the Service and Your rights and licenses under these Terms of Use may be terminated immediately by Company upon Your failure to comply with any of these Terms of Use.

(c) Survival. The provisions concerning restrictions on use, expiration/termination, survival, Company's Intellectual Property rights, disclaimer of warranties, limitation of liability, any of Your indemnification obligations under these Terms of Use (in any section of these Terms of Use), Feedback, Protection of Service and Company Content, Miscellaneous, and any other terms which, by their nature, are intended to survive termination will survive any such termination or expiration.

3. YOUR CONTENT

(a) You are solely responsible for the content of all information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by You (including Your personnel) while utilizing the Service ("**Your Content**") and for the consequences of doing so, including any loss or damage to Company or a third party. Company has no responsibility to You or to any third party for Your Content.

(b) You continuously represent that (i) You are the owner of all copyrights and other intellectual property rights in Your Content or are authorized to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Your Content; and (ii) Avaya, its suppliers and subcontractors are authorized to do the same to the extent necessary for the purpose of providing support, administration, operation, maintenance, and/or distribution of the Service.

(c) You are solely responsible for protecting and enforcing, at Your expense, any intellectual property rights You may have in Your Content.

(d) Subject to Avaya's privacy policy in Section 10(a), Avaya will not share Your Content or Other Users' Content (as defined in Section 4(a)) with any third parties unless: (1) Avaya has Your written or electronic consent for sharing any of Your Content and Other Users' Content; (2) it is required by law; or (3) Avaya provides Your Content or Other Users' Content to third parties to carry out tasks on Avaya's behalf (e.g., data storage) as directed by Avaya and subject to appropriate agreements with those third parties.

4. OTHER USERS' CONTENT

(a) Other Users' Content. Company does not control and shall have no liability or responsibility for the (1) conduct or (2) 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 utilizing the Service, including, without limitation, advertisements or sponsored content (item (2) collectively referred to as "**Other Users' Content**"). Other Users' Content may be protected by copyright and other intellectual property rights of such users or other persons. You shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon Other Users' Content unless specifically agreed by the owners of such Other Users' Content in a separate written or electronic agreement with You.

(b) You continuously represent that (1) You are authorized by Your customers and by any other individuals with whom You interact or communicate via the Service to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute their Other Users' Content; (2) Company, its suppliers and subcontractors are authorized to do the same to the extent necessary for the purpose of providing support, administration, operation, maintenance, and/or distribution of the Service; and (3) You are fully responsible for any damages, liabilities, or losses (including, without limitation, attorneys' fees and court costs) incurred by Avaya arising from any failure by You to comply with Sections 4(b)(1) or (2).

5. COMPANY'S INTELLECTUAL PROPERTY RIGHTS

(a) Company Owns Company Intellectual Property. Company or its licensors or suppliers own all right, title, and interest in and to the Service, associated software (if any), and the content of all information and communications, whether visual, written, audible, or of another nature provided or presented or submitted by or on behalf of Company as part of the Service ("**Company Content**"). You shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon Company's Content. Company reserves all rights, including, without limitation, ownership, title, and all other rights and interest in and to any computer programs (in object or source code format or any other form), know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, "**Intellectual Property**") that: (1) Company owned prior to providing Service, (2) Company develops, creates, or otherwise acquires independently of the Service, or (3) Company develops, creates, or otherwise acquires while performing any services in connection with the Service.

(b) Company Marks. Nothing in these Terms of Use grants You any right to use any Company trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features. You shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Company's Content, the Service, or any associated software or servers (if any).

6. RIGHTS AND DISCLAIMERS

(a) Any content and/or opinions uploaded, transmitted, expressed, or submitted to the Service are solely the opinions and responsibility of the person or entity submitting them and do not necessarily reflect the opinions of Company. All information transmitted through the Service is the sole responsibility of the person from whom such information originated. Company will not be liable in any way for such content. Company cannot guarantee the identity of any other users with whom You may interact in the course of using the Service or the authenticity of the data or information provided by other users.

(b) Company reserves the right, but is not obligated to: (1) pre-screen, refuse, flag, filter, or remove any material posted on the Service, including any of Your Content, which Company, in its sole discretion, deems inconsistent with these Terms of Use, including any material Company has been notified or has reason to believe constitutes intellectual property infringement; and/or (2) take any action it deems appropriate with respect to any prohibited use of the Service or Company Content or other use of the Service that it deems to be inappropriate, in violation of these Terms of Use, or potentially disruptive to the Service or Company's network, including, without limitation, issuing warnings or disabling or terminating Your subscription to the Service, accounts or any user's access to all or part of the Service. Notwithstanding any other provision in the Terms of Use, Company may take any such action(s) without notice or liability to You or any other party, although Company will have no obligation or responsibility to take any such action or review material or content that is posted on the Service. Accordingly, Company assumes no liability for any action or inaction regarding transmissions, communications, or content provided by You or any third parties.

(c) Unless otherwise stated by Company in the SAL Remote Access Hosted Concentrator Offer Definition, Company may at its sole discretion (1) modify or discontinue aspects, features, and functionality of the Service without prior notice; or (2) discontinue the Service in its entirety, but Company will endeavor to provide sixty (60) days advance notice (however, the actual timing may be shorter or longer at Company's discretion).

(d) You acknowledge that, as part of the Service, Company may, for a period of time, archive Your Content and Other Users' Content and may periodically delete Your Content and Other Users' Content after a certain period of time. Contact Company or Company's authorized channel partner for more information.

(e) It is Company's policy to respond to notices of alleged copyright or trademark infringement that comply with applicable international intellectual property law (including, without limitation, in the United States the Digital Millennium Copyright Act) and where appropriate at Company's discretion to terminate the accounts or subscription of infringers. If You would like to send Company an alleged copyright or trademark infringement notice as it pertains to the Service, go to the following link -- <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site as designated by Company) and follow the instructions on how to get in touch with Company. If You have trouble accessing this link, then You may contact Company for further information at 908-953-2044.

(f) UNLESS OTHERWISE PROVIDED IN THE SAL REMOTE ACCESS HOSTED CONCENTRATOR OFFER DEFINITION, OTHERWISE PROVIDED BY AVAYA IN WRITING, OR REQUIRED BY APPLICABLE LAW, YOU ACKNOWLEDGE THAT THE SERVICE IS NOT ENABLED FOR, DOES NOT PROVIDE, AND IS NOT INTENDED TO BE USED FOR CALLING 911 OR CALLING OR REQUESTING OTHER EMERGENCY SERVICES. YOU MUST USE ANOTHER SERVICE TO DIAL 911 AND/OR REQUEST EMERGENCY ASSISTANCE.

7. DISCLAIMER OF WARRANTIES

YOU MAY BE ENTITLED TO SUPPORT SERVICES IN CONNECTION WITH THE SERVICE AS DESCRIBED FURTHER IN THE SAL REMOTE ACCESS HOSTED CONCENTRATOR OFFER DEFINITION OR YOUR SUPPORT SERVICE ENTITLEMENT DOCUMENTS. CONTACT COMPANY OR COMPANY'S AUTHORIZED CHANNEL PARTNERS FOR MORE INFORMATION. NOTWITHSTANDING THE FOREGOING, AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE (INCLUDING ANY FUNCTIONALITY AND/OR CONTENT MADE AVAILABLE OR ACCESSED THROUGH USE OF THE SERVICE), AS WELL AS THE SOFTWARE, WEBSITES, SERVERS, SUBSCRIPTIONS, AND ACCOUNTS USED OR ACCESSED AS PART OF THE SERVICE, ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AND THE SERVICE IS PROVIDED ON AN "AS AVAILABLE" BASIS. COMPANY, ITS LICENSORS, AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER COMPANY, NOR ITS LICENSORS, NOR ITS SUPPLIERS WARRANTS THAT: (A) YOUR USE OF THE SERVICE WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR VIRUSES; (C) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; (D) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE (IF ANY) PROVIDED TO YOU AS PART OF THE SERVICE WILL BE CORRECTED; OR (E) THE SERVICE WILL OPERATE OR BE COMPATIBLE WITH ANY PARTICULAR DEVICE. NEITHER COMPANY, NOR ITS LICENSORS, NOR ITS SUPPLIERS SHALL HAVE ANY RESPONSIBILITY FOR DAMAGE RESULTING FROM THE USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, DAMAGE TO ANY DEVICE OR LOSS OF DATA RESULTING FROM DOWNLOADING, OTHERWISE ACCESSING, OR USING ANY CONTENT, MATERIAL, OR DATA THROUGH THE SERVICE. DOWNLOADING, OTHERWISE ACCESSING, AND USING SUCH CONTENT, MATERIAL, OR DATA IS AT YOUR OWN RISK. COMPANY DOES NOT HAVE ANY RESPONSIBILITY FOR RETAINING ANY USER INFORMATION OR CONTENT OR COMMUNICATIONS BETWEEN USERS, UNLESS AS OTHERWISE AGREED IN WRITING OR REQUIRED BY APPLICABLE LAW.

8. LIMITATION OF LIABILITY

EXCEPT FOR PERSONAL INJURY CLAIMS OR WILLFUL MISCONDUCT AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER COMPANY, ITS AFFILIATES, ITS LICENSORS, ITS RESELLERS, ITS SUPPLIERS, NOR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS SHALL BE LIABLE FOR, REGARDLESS OF WHETHER THEY WERE ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) ANY LOSS OF PROFITS, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE; OR (C) ANY DIRECT DAMAGES ARISING UNDER THESE TERMS OF USE IN EXCESS OF THE SUBSCRIPTION FEES RECEIVED BY AVAYA IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE GIVING RISE TO THE CLAIM FOR THE SERVICE PROVIDED TO YOU THAT GIVES RISE TO THE CLAIM. THE LIMITATION OF LIABILITY WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), EQUITY, OR OTHERWISE.

9. INDEMNIFICATION

You agree to indemnify, defend, and hold harmless Company (including its affiliates) and each of their respective officers, directors, employees, consultants, agents, suppliers, licensors, and Company authorized channel partners from any and all third party allegations, claims, demands, actions, proceedings, and suits, liability, damages, settlements, penalties, fines, losses, expenses, and/or costs (including, without limitation, attorneys' fees and cost of suit) arising from or related to (a) Your use of the Service, (b) Your interactions or disputes with others related to the Service, (c) the violation of any term or condition of these Terms of Use, or (d) infringement or violation of any intellectual property or other right of any person or entity in connection with Your use of the Service or Your violation of these Terms of Use.

10. PRIVACY; PROTECTION OF PERSONAL INFORMATION AND SECURITY

(a) Privacy. Company's privacy policy is located at http://investors.avaya.com/governance/data_privacy (or such successor site as designated by Company), and is also available upon request made to Company. As part of the delivery, administration, operation, and/or support of the Service, Company may use or process personal data pertaining to You, Your personnel, or users with whom You communicate or interact via the Service. By using a mobile device to use or access the Service, You agree that certain information or personal data about the applicable user's use of the same may be communicated to Company. Personal data and information will be used by Company for communication, administrative, and/or operational purposes related to the Service, including, without limitation, providing support for the Service, and You agree to the use of Your data as described herein. Without limiting the generality of the foregoing, Company may provide its third party providers and referral companies who may be located outside Your country of residence who provide Company with services related to the Service with certain of Your data, such as Your name, address, and number of subscribers Company supports, and will reasonably cooperate, at Your expense, with You, as necessary, to allow the owner of personal data to correct or delete inaccuracies in such personal data and to oppose the processing of such data on legitimate grounds, by sending a request to the address of Company provided by parties in the orders pertaining to the applicable Service.

You are fully responsible for providing a legally enforceable privacy notice to any users with whom You or Your personnel communicate or otherwise interact via the Service. Such privacy notice shall include, at a minimum, a notice addressing (a) what is done with such users' data, (b) for what purposes such users' data is being used, (c) who might have access to such users' data (e.g., Company or Company's subcontractors, as part of its delivery, administration, operation, and/or support of the Service), and (d) any other topics required by applicable privacy laws and regulations. You shall also be fully responsible for informing users with whom You communicate or interact via the Service to the extent You do not want them to share with You via the Service sensitive information that may be in violation of certain laws and regulations (e.g., personal health information or personally identifiable information like credit card information, social security numbers, or bank account information, etc.). You are fully responsible for complying with all applicable laws, including, without limitation, all applicable privacy laws and regulations.

(b) Protection of Personal Information and Security. Any user names and passwords used for the Service are for individual use only. You will be responsible for the security of Your user names and passwords (if any) and You may not disclose them to any third party. Compromised passwords represent a major security risk. Company encourages You to create strong passwords using three different character types, change Your password regularly and refrain from using the same password regularly. You must treat such information as confidential. You agree to notify Company immediately

upon becoming aware of any unauthorized use or breach of Your user name, password, account, or subscription. Having regard to the state of technological development and the cost of implementing any measures, Company will: (1) take appropriate technical and organizational measures against the unauthorized or unlawful processing of personal data and against the accidental loss or destruction of or damage to personal data to ensure a level of security appropriate to (i) the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, or damage, and (ii) the nature of the data to be protected; and (2) take reasonable steps to ensure compliance with those measures.

You are prohibited from using any Service or facilities provided in connection with the Service to compromise security or tamper with system resources and/or accounts. The use or distribution of tools designed for compromising security (e.g., password guessing programs, cracking tools, or network probing tools) is strictly prohibited. If You become involved in any violation of system security, Company reserves the right to release Your details to system administrators at other sites in order to assist them in resolving security incidents. Company reserves the right to investigate suspected violations of these Terms of Use.

Company reserves the right to fully cooperate with any law enforcement authorities or court order requesting or directing Company to disclose the identity of anyone posting any messages or content or publishing or otherwise making available any materials that are believed to violate these Terms of Use. You are fully responsible for informing users with whom You may communicate or otherwise interact via the Service of the foregoing right belonging to Company. BY ACCEPTING THIS AGREEMENT YOU WAIVE AND HOLD HARMLESS COMPANY 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 COMPANY OR LAW ENFORCEMENT AUTHORITIES.

(c) Access to Personal Data. Where You instruct Avaya to access personal data of any employee, customer or other individual contained in any supported product, or to provide You or a third party identified by You with access, You will indemnify Company and its officers, directors, employees, subcontractors and affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of or attributable to Avaya accessing or providing access in accordance with Your instructions.

11. FEEDBACK

Company welcomes Your comments, suggestions, or feedback (collectively, "**Feedback**") about the Services. All such Feedback provided by You to Company or its authorized channel partners will become Company's property and You agree that all intellectual property rights therein are transferred and assigned to Company. You agree to cooperate fully with Company in connection with such transfer and assignment. Company may use such Feedback however it elects without any monetary or other consideration of any kind owed to You or any third party.

12. PROTECTION OF SERVICE AND COMPANY CONTENT

While You may use the Service only for Your internal business purpose (including, as applicable and depending on the Service, communicating or otherwise interacting with users in accordance with these Terms of Use), You acknowledge that the Service and Company Content are the confidential information of Company, its suppliers, and its licensors and contain trade secrets of Company, its suppliers, and its licensors. You agree at all times to protect and preserve the Service and Company Content using no less than the level of care You use to protect Your own information of a confidential nature and to implement reasonable security measures to protect the trade secrets of Company, its

suppliers, and its licensors. Company will implement reasonable measures designed to help You secure Your Content against accidental or unlawful loss, access or disclosure. However, no e-commerce solution, on-line service, website, database or system is completely secure or “hacker proof,” and You are also responsible for taking reasonable steps to protect Your personal or confidential information against unauthorized disclosure or misuse.

13. SOFTWARE LICENSE TERMS AND UPDATES

(a) Depending on the Service, there may be a software portion of the Service where You download software. The software portion of the Service (including any updates as set forth in (b) below) shall be licensed pursuant to (1) the original agreement under which the applicable software was licensed to You by Company, (2) the terms and conditions made available to You when You download or install the software portion of the Service, or (3) if no such license exists, then the Avaya Global Software License Terms posted at <http://support.avaya.com/LicenseInfo> (or such successor site as designated by Company), as of the date of Your order will apply, for the sole purpose of utilizing the Service, in accordance with the terms of these Terms of Use and the applicable SAL Remote Access Hosted Concentrator Offer Definition, and for the duration of Your subscription.

(b) Depending on the Service You subscribe to, if applicable, software may automatically download and install updates from Company from time to time. You agree to allow such updates to be promptly downloaded and installed as part of Your utilization of the Service.

14. MISCELLANEOUS

(a) Compliance with Laws. You shall observe all applicable laws and regulations when accessing and/or using the Service and any work product or content of the Service, including, without limitation, any export and import laws and/or regulations. Compliance with Personal Health Information (PHI) and Health Insurance Portability and Accountability Act (HIPAA) regulations require adherence to certain security measures and capabilities, and the Service does not provide full compliance. You must ensure that the Service is only applied to use-case scenarios where the Service does provide the necessary level of compliance.

(b) Import/ Export Compliance. You will not export or re-export and or transfer the Company Content when accessing and or using the Service and any work product or content of the Services in violation of the import/export control laws and regulations of Wassenaar members. You represent that You are not named on any government list of persons or entities that are prohibited or in violation from receiving services, products, and technology. You will not support or engage in activities including any restrictions or prohibitions on trade or financial transactions with certain countries or entities. You will not support with or enter into transactions with the proscribed states, or entities based in: Iran, Syria, North Korea, Cuba, and Sudan.

(c) High Risk Activities. The Service is not fault-tolerant and is not designed, manufactured, or intended for any use in any environment that requires fail-safe performance in which the failure of the Service could lead to death, personal injury, or significant property damage (“**High Risk Activities**”). You assume the risk for use of the Service in any High Risk Activities.

(d) Governing Law, Arbitration, Injunctive Relief and Time Limit. These Terms of Use and any dispute, claim or controversy arising out of or relating to these Terms of Use (“Dispute”), including without limitation those relating to the formation, interpretation, breach or termination of these Terms of Use, or any issue regarding whether a Dispute is subject to arbitration under these Terms of Use,

will be governed by California State laws, excluding conflict of law principles, and the United Nations Convention on Contracts for the International Sale of Goods.

Any Dispute shall be resolved in accordance with the following provisions. The disputing party shall give the other party written notice of the Dispute. The parties will attempt in good faith to resolve each Dispute within thirty (30) days, or such other 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 a Dispute that arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States cannot be settled under these procedures and within these timeframes, it will be conclusively determined upon request of either party by a final and binding arbitration proceeding to be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed by the parties or (failing agreement) by an arbitrator appointed by the President of the International Chamber of Commerce (from time to time), except that if the aggregate claims, cross claims and counterclaims by any one party against any or all other parties exceed One Million U.S. Dollars at the time all claims, including cross claims and counterclaims are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of these Terms of Use and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify the terms of these Terms of Use. The ruling by the arbitrator(s) will be final and binding on the parties and may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator(s)' fees, but each party will bear its own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration shall be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed.

If a Dispute by one party against the other that arose in the United States or is based upon an alleged breach committed in the United States cannot be settled under the procedures and within the timeframe set forth above, then either party may bring an action or proceeding solely in either the Superior Court of the State of California, Santa Clara County, or the United States District Court for the Northern District of California. Except as otherwise stated above with regard to arbitration of Disputes that arise anywhere other than in the United States or are based upon an alleged breach committed anywhere other than in the United States, each party to these Terms of Use consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings.

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

to take any necessary legal action at any time, including without limitation seeking immediate injunctive relief from a court of competent jurisdiction, in order to protect Avaya's intellectual property and its confidential or proprietary information (including but not limited to trade secrets).

If You have any Disputes with Company, You must bring them in accordance with this paragraph within two years after the claim arises.

(e) Disputes with Other Users. You are solely responsible for Your interactions with any other user of the Service. Company will have no liability with respect to Your interactions with other users of the Service or disputes that may arise between You and such users. Company reserves the right, but has no obligation, to become involved with disputes between You and any other user of the Service.

(f) Force Majeure. Company will not be liable for any delay or failure in performance, including failure of the Service to function or operate, to the extent the delay or failure is caused by events beyond Company's reasonable control, including, without limitation, fire, flood, Act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, inability to secure services or materials, transportation or hosting facilities.

(g) Agreement in English. The parties confirm that it is their wish that these Terms of Use, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

(h) Other. Notwithstanding anything to the contrary (including, but not limited to, anything in another agreement between You and the Company), if there is a conflict between these Terms of Use, any SAL Remote Access Hosted Concentrator Offer Definition provided to You regarding the Service, and any other applicable agreement You may have with Company, these Terms of Use will govern the use of the Service, followed next by any SAL Remote Access Hosted Concentrator Offer Definition provided to You regarding the Service (unless the SAL Remote Access Hosted Concentrator Offer Definition expressly states otherwise), and finally followed by any other applicable agreement You may have with Company. If any provision of these Terms of Use is determined to be unenforceable or invalid by a court decision, these Terms of Use will not be rendered unenforceable or invalid as a whole, and the provision will be changed and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under these Terms of Use, including, without limitation, the right to terminate these Terms of Use in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of these Terms of Use in accordance with their terms. You agree that no joint venture, partnership, employment, or agency relationship exists between You and Company as a result of this agreement or use of the Service.