

## Supplemental Terms and Conditions for Avaya Cloud Services

These supplemental terms and conditions for cloud services (“**Supplemental Terms**”) incorporate the standard Trading Terms of ScanSource Europe SPRL as amended from time to time (“**General Terms**”, available at [www.scansource.eu/legal-terms](http://www.scansource.eu/legal-terms)).

These Supplemental Terms contains four parts and two appendices. Part 1 includes general terms (incorporating the two appendices) that apply to all Products ordered by You, and Parts 2-4 (as the case may be) shall apply in addition to Part 1 to reflect how the relevant Hosting Solution is to be provided (e.g. who will provide the hosting). The relevant Order shall specify what Hosting Solution is to be procured by You under these Supplemental Terms.

To the extent there is any conflict between these Supplemental Terms and the General Terms, these Supplemental Terms prevail. In the event of any conflict between the terms of Appendix 1 and the Avaya End User Licence Agreement, the stricter obligation on the End User shall prevail.

### **Part 1 - Terms applicable to the supply of all Avaya Cloud Services**

#### **1. DEFINITIONS**

1.1 The definitions set out in the General Terms will apply to these Supplemental Terms. The following additional definitions will also apply to these Supplemental Terms:

<b>Acceptable Use Policy</b>	The Supplier's acceptable use policy as referred to in the Order, as amended by the relevant Supplier from time to time.
<b>Agreement</b>	The contract for the sale and purchase of the cloud services Products, which incorporates the General Terms and these Supplemental Terms and any additional terms specified in the relevant Order.
<b>Avaya</b>	Avaya International Sales Limited who will be providing all or part of the Cloud Services.
<b>Avaya Contract</b>	The contract in place between ScanSource and Avaya.
<b>Channel Policies</b>	means all the Avaya policies and programs applicable to You and made available on Avaya Partner Portal ( <a href="https://www.avaya.com/salesportal">https://www.avaya.com/salesportal</a> or successor site), as amended by Avaya from time to time at Avaya's discretion.
<b>Cloud Software</b>	The software provided by Avaya and supplied by ScanSource and branded as "powered by Avaya IP Office under this Agreement.
<b>Cloud Offer Definition</b>	(i) Any offer definition document for Cloud Software agreed upon by the parties in writing valid as of the date of a Cloud Order under this Agreement describing ScanSource's offer for the Cloud Services; and/or (ii) a statement of work agreed upon by the parties in writing describing the specific Cloud Software and related services to be provided by ScanSource to You.
<b>Cloud Order</b>	means an order issued by You to ScanSource under this Agreement for the Cloud Software.
<b>Cloud Portal</b>	Any web portal provided by a Supplier..
<b>Cloud Services</b>	The cloud services Products to be provided under this Agreement, as

amended by ScanSource and/or its Suppliers from time to time.

#### **Cloud Technology**

Any materials, equipment, software or other technology owned by ScanSource or its Suppliers or used by ScanSource or its Suppliers under a third party licence or permission, including software and software tools, hardware, computer and telecommunications systems, networks and architecture, and materials and documentation, in whatever format.

#### **Content**

The audio, video, film, slides or other images or text (digital or otherwise) provided to ScanSource or its Suppliers by You for performance monitoring or as otherwise transmitted by You.

#### **Documentation**

Means Avaya's information manuals in printed or electronic form containing operating instructions and technical specification relating to the Cloud Services and (if applicable) the Hosted Solution that Avaya (directly or via ScanSource or You) generally make available to End Users.

#### **End Users**

The end customer purchasing the Cloud Services from You solely for End User's internal business use and not for resale, sublease or sublicense.

#### **Data Protection Laws**

All applicable data protection laws and regulations in any jurisdiction, including without limitation:

- (a) the Data Protection Act 1998;
- (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; and
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);

#### **Hosted Solution**

Means, the Cloud Software, software, hardware, any third party products and their combination hosted for the purpose

of providing Cloud Services to You (as detailed in the Order, whether provided by Avaya (see Part 2), You (see Part 3) or ScanSource (see Part 4)).

**Intellectual Property Rights** all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

**Reporting Period** One month starting on the first of the month and ending at the end of the same month.

**Reseller** For the purposes of Appendix 1 and the Avaya End User Licence Agreement You shall be known as the Reseller.

**Suppliers** Avaya and any other of ScanSource's suppliers from time to time, as more particularly described in the Order, including Hosting Solution providers.

**Supplier Contracts** The Avaya Contract, and any additional third party Supplier contract entered into by ScanSource, each being a Supplier Contract.

**Term** Means the term of a Cloud Order as defined in clause 7.1.

## 2. SERVICES

2.1 You wish to purchase and ScanSource wishes to provide Cloud Services on the terms set out in this Agreement pursuant to orders placed in accordance with the General Terms (each an "Order"). The Cloud Services are to be resold by You to an End User under a contract between You and such End User.

2.2 ScanSource will use its reasonable endeavours to provide the Cloud Services in a timely manner and in accordance with any delivery timescales indicated. Unless otherwise specified, however, all delivery timescales are estimates only, and ScanSource shall have no liability to You for failure to meet any delivery timescales.

2.3 You will procure that the End Users comply with these Supplemental Terms and include respective terms and conditions in Your contracts with End Users. Where there is an obligation on You under this Agreement You shall procure (where applicable) that such obligation is passed through to the End User and procure that the End User complies with the same.

2.4 The provision of the Cloud Services is subject to the Cloud Offer Definition and the Channel Policies.

## 3. END USER TERMS AND OTHER OBLIGATIONS

3.1 You shall enter into a contract with each End User incorporating the End User Terms and Conditions set out in Appendix 1, the Avaya End User Licence Agreement, the latest version of which can be found at <http://support.avaya.com/LicenseInfo> ("the Avaya End User Licence Agreement") and the applicable Flowdown Obligations as defined in clause 4.4 and set out in Appendix 2. You are referred to as "Reseller" in Appendix 1 and the Avaya End User Licence Agreement

3.2 You shall:

(a) Ensure that all End Users have accepted in writing, the terms of the Avaya End User Licence Agreement in compliance with Your obligations under the Channel Policies and You shall retain copies of all such written acceptance and provide the same to ScanSource forthwith on receipt of a request form ScanSource of copies of the same.

(b) ensure that all equipment connected to the Cloud Services is technically compatible with the relevant Cloud Services and any applicable specifications, and that Your site and the equipment complies with and is used in accordance with all reasonable procedures notified by ScanSource and any applicable legislation.

(c) not except in the circumstances required to be permitted by applicable law, alter, rearrange, disconnect, remove, decompile, reverse engineer, repair or attempt to repair or tamper with the Cloud Services (including any of ScanSource's or its Suppliers' equipment or software) or cause, or allow, a third party to do any of these activities, without ScanSource's prior written consent.

(d) be solely responsible for selecting, supplying and maintaining Your own facilities and equipment, unless outsourced to ScanSource by purchasing an available Product.

(e) be solely responsible for the content and security of any data or information which You (or any person on Your behalf) sends or receives using the Cloud Services, and You will allow ScanSource and its Suppliers to copy, display, distribute, download, transmit and otherwise use the Content in accordance with applicable law and solely as reasonably required to perform ScanSource's obligations under this Agreement.

(f) ensure that You have all necessary right, title and interest in and to the Content, and that You have obtained all consents, licenses, permissions and releases necessary to grant ScanSource and its Suppliers the right to copy, display, distribute, download, transmit and otherwise use the Content solely as reasonably required to perform ScanSource's obligations under this Agreement.

(g) if given access to the Cloud Portal, comply with all reasonable terms of use as made available from time to time on the Cloud Portal for such use.

(h) comply at all times with all applicable laws and regulations including but not limited to any applicable Data Protection Laws and with any applicable Acceptable Use Policy.

(i) be responsible for the payment of all charges applicable to the Cloud Services (including charges incurred as a result of fraud or unauthorised use of the Cloud Services);

(j) be responsible for the payment of all agreed additional fees or charges arising from Your service requests and/or usage including but not limited to facilities, power, and/or any reasonable mutually

agreed expenses incurred by ScanSource in connection therewith.

- (k) unless more stringent provisions are otherwise set out in the Order, to ensure that each authorised user of the Cloud Services shall, keep secure any password provided for his use of the Cloud Services, that such password shall be changed periodically and that each authorised user shall keep his password confidential.
  - (l) unless more stringent provisions are otherwise set out in the Order, prevent any unauthorised access to, or use of, the Cloud Services and, in the event of any such unauthorised access or use, promptly notify ScanSource.
  - (m) unless more stringent provisions are otherwise set out in the Order, You shall during the course of this Agreement, have and maintain general liability insurance covering public and products liability, and employer's liability with adequate coverage, at least however a coverage of £2 (two) million. You shall, as and when requested, provide ScanSource with such evidence as it may require in relation to Your insurance.
- 3.3 You shall not cause the following acts or omissions with regard to the Cloud Services:
- (a) breach of applicable Data Protection laws;
  - (b) loss of data for ScanSource or its Suppliers;
  - (c) introduction of any malware to the Cloud Services or Cloud Technology;
  - (d) commit any security breaches including unauthorised hacking of the Cloud Services or Cloud Technology;
  - (e) unauthorised use of the Cloud Services or Cloud Technology.
- 3.4 Without prejudice to any other rights and remedies, You shall immediately notify ScanSource of any breach or suspected breach of this Agreement (including without limitation any breach or suspected breach of the End User Terms and Conditions) and take all steps necessary to procure that such breach is remedied without delay. You acknowledge that if, in the sole opinion of ScanSource, the End User is using the Cloud Services in breach of this Agreement then ScanSource reserves the right to suspend or cease providing the Cloud Services in respect of that End User in accordance with the End User Terms. For the avoidance of doubt, upon the termination or suspension of the Cloud Services due to Your breach of the terms of this Agreement or an End User's breach of the End User Terms You shall not be entitled to any refund of the fees paid for the Cloud Services or any part thereof.
- 3.5 At all times during the term of this Agreement, You will maintain the security of the Cloud Services and any information or data used, stored, accessed or processed during the provision of the Cloud Services by You, including compliance with any security, safeguarding and similar requirements of End Users.
- 3.6 In addition to Your co-operation obligations as set out in the Agreement, at no cost to ScanSource, You shall, in a reasonable and timely manner and provided such is in accordance with the applicable law: (i) provide ScanSource with interface and other information regarding access to Your, or the End User's network and necessary third party consents and licenses to enable ScanSource's performance and fulfillment of its obligations; (ii) provide ScanSource with all credentials, passwords and other information that may be necessary to enable ScanSource to access the Cloud Software and usage monitoring application,

whether remotely or on-site; (iv) secure all necessary approvals, consents and performance from End Users required in order for ScanSource to perform its obligations under this Agreement or to exercise its rights under this Agreement; (v) for each End User contract, provide ScanSource with the End User name, contract term and any agreed minimum commitment; and (vi) cooperate in all reasonable ways with ScanSource in relation to its performance of its obligations under this Agreement, including: (a) in the diagnosis, investigation and correction of any reported incident; (b) providing ScanSource with any further information that it may reasonably require to fulfill its obligations under this Agreement; (c) keeping backup or archival copies of its Cloud Orders, databases and computer records in accordance with commercially reasonable computing practices; and (d) notifying ScanSource in advance of any significant configuration or definition changes in the Cloud Services.

#### 4. CLOUD SOFTWARE

- 4.1 Subject to the terms and conditions of this Agreement, ScanSource authorizes You to purchase from ScanSource a non-exclusive, non-transferable, limited license to use certain Cloud Software for the sole purpose of marketing and providing Cloud Services to You in the Territory for: (i) further resale of such Cloud Services by You to End Users located in Your authorized territory; and (ii) Your own internal use. Any Cloud Software ordered under this Agreement will be provided to You on a subscription basis only subject to timely payment of the applicable fees. Unless the Cloud Offer Definition expressly provides otherwise, this Agreement does not apply to any hardware products or services necessary to deploy Cloud Services. Such services or hardware products may be ordered by You under the terms of the Agreement. You shall not market Cloud Services except as permitted in this Agreement and only for internal use and not for resale or sublicense. In particular, You are authorized to resell Cloud Services directly to End Users. ScanSource reserves the right to modify the conditions of or revoke this authorization subject to the terms of the Channel Policies. Such modification or revocation will not affect rights granted to You or End Users in accordance with this Agreement.
- 4.2 As required pursuant to clause 3.1, prior to providing Cloud Services to any End User, You must first execute an agreement with each such End User implementing all flow-down related requirements set forth in this Agreement, including the Flowdown Obligations described in clause 4.4. You are only authorized to market and resell Cloud Services to End Users located in the Your authorized territory, for End Users' own internal use and not for any resale or other provision of Cloud Services to any third parties. You shall expressly prohibit any resale of Cloud Services by End Users to any other resellers or distributors.
- 4.3 You shall, within a reasonable term, promptly terminate any agreement entered into with an End User as required in clause 4.2, in the event that the End User has in any way materially failed to comply with: (a) Avaya End User License; or (b) any obligations included in this Agreement. In case of termination or expiry of any agreement with an End User, or its part applicable to Cloud Software or Cloud Services for any reason, ScanSource shall deactivate Cloud Software licenses allocated to the affected End User, unless such End Users are re-allocated to an alternative reseller within 30 days of receipt of a written notice of termination or expiry of the agreement.
- 4.4 You acknowledge and agree that the obligations identified in Appendix 2 under this Agreement, may also apply to End Users ("Flowdown Obligations"). You shall: (i) cause Your End Users to comply with the Flowdown Obligations, including by implementing



the Flowdown Obligations in the contract entered into with the End Users as required under clause 4.2; and (ii) enforce the terms of such contracts against End Users and fully cooperate with Avaya and / or ScanSource in doing so. Where any End User fails to comply with any Flowdown Obligation, ScanSource will not be held liable for any resulting failure to perform its obligations under this Agreement. Upon ScanSource's request, You shall provide ScanSource with a copy of the relevant provisions in Your contract with the End Users containing the Flowdown Obligations.

4.5 You shall defend, indemnify and hold ScanSource harmless from any costs, expenses, liabilities, claims and damages arising from or in connection with Your culpable delay or negligible failure to comply with the provisions in this clause 4 or to procure the End User's compliance with any Flowdown Obligation.

4.6 You shall at all times during the term of this Agreement: (i) comply with the industry best practices and standards applicable to the Cloud Services as well as any ScanSource and / or Authorisation Requirements; and (ii) maintain all accreditations and credentials, applicable to the Cloud Services, as detailed in the applicable Cloud Offer Definition and Channel Policies. The authorization, accreditation and credential requirements are timely provided in writing to You before parties enter into this Agreement and subject to review and renewal and may be withdrawn or terminated at any time in accordance with this Agreement and the Channel Policies.

4.7 ScanSource is not responsible under this Agreement for any software, equipment, hardware or services that You may have separately purchased outside this Agreement or are re-using. You are responsible for ensuring that any such software, equipment or hardware is in good working order and compatible with the Cloud Software. This clause does not limit any warranty and / or support obligations that ScanSource may have elsewhere under any agreements with You.

4.8 Notwithstanding anything to the contrary in the Avaya End User License or the Agreement, You agree, and shall notify End Users in writing that ScanSource grants no warranty whatsoever to You and the End Users, including with respect to Cloud Software, and/or the Cloud Services. Any grant of warranty by the Avaya End User License or this Agreement does not extend to End Users, provided such exclusion is in accordance with applicable law.

4.9 You shall provide support to End Users with regard to any warranty or non-conformance issues or questions concerning the Cloud Services and filing warranty claims, and with regard to any license issue or question.

4.10 ScanSource reserves all rights not expressly granted in these Supplemental Terms.

## 5. SOFTWARE LICENSE FOR CLOUD SOFTWARE

5.1 Notwithstanding anything in the Avaya End User License to the contrary and subject to the terms of this Agreement, ScanSource grants to You a personal, nonexclusive, non-transferable, non-sublicensable, limited license to use and exploit the Cloud Software during the Term solely to provide Cloud Services to End Users in the Territory or Your own internal use. Subject to the provisions set forth in this Agreement, You shall comply with the terms of the Avaya End User License to the same extent as if You were an End User.

5.2 In the event that any Cloud Software (or its portion) is installed or

downloaded at an End User's site or device or otherwise made available to or accessible by End Users, ScanSource shall extend the Avaya End User License to such End User, providing that You shall obligate the End User in the contract entered as required in clause 4.2, to:

5.2.1. Obtain, subject to clause 4.8 End User's written agreement to the Avaya End User License prior to or upon Your acceptance of the End User's order and enforce the terms and conditions of Your agreement with End User as they pertain to Cloud Software and/or related Documentation

5.2.2. Communicate to End User the license types applicable to Cloud Software;

5.2.3. Not agree to any contractual limitations on End User's liability for violations of ScanSource's or Avaya's Intellectual Property Rights including through breaches of a Cloud Software license or reverse engineering;

5.2.4. Maintain a copy of each such Avaya End User License and ensure the ScanSource and/or its applicable licensors will have the right to obtain a copy of the same upon request;

5.2.5. Notify ScanSource or You promptly of any material End User's breach of the Avaya End User License and upon becoming aware of such breach terminate such End User's access and right to use the Cloud Services provided this is in accordance with applicable law; and

5.2.6. Obtain, subject to clause 4.8, End User's written agreement that, at the earlier of: (i) the conclusion of the Cloud Services term for that End User; or (ii) upon termination or expiry of the agreement between You and the End User associated with the subject matter of this Agreement, End User shall: (a) cease and desist all use of the Software and related Documentation; (b) in accordance with ScanSource's instructions, irretrievably delete, return and/or destroy any Cloud Software installed or downloaded at that End User's site or on its devices or otherwise made available to or accessible by that End User, as well as any related Documentation and (c) promptly certify compliance with the foregoing requirements by an authorized representative of that End User. Upon ScanSource's request, You shall promptly provide such certification to ScanSource and acknowledge and agree that ScanSource may share with its applicable licensors. You shall obtain, End User's consent to provide such certification to ScanSource and its licensors; and

5.2.7. Not agree with an End User to a term of Cloud Services that is longer than the Term.

5.3 Cloud Software will be provided to You and, if applicable, End Users solely on a non-perpetual, time-bound subscription basis (unless a different invoicing period applies). Your right, and, if applicable, End User's right to use such Cloud Software will at all times be subject to Your timely payment of the Cloud Fees and compliance with the terms and conditions of this Agreement. Upon expiry or termination of any Cloud Order, all applicable Cloud Software licenses will terminate immediately and any other ScanSource obligations will discontinue, unless termination is due to breach of contract of ScanSource, which is not remedied by ScanSource within 30 days.

5.4 You understand and agree that the Cloud Software, and all copies thereof, including translations, compilations, derivative works and



- partial copies, are and will at all times remain the property of ScanSource or its licensors.
- 5.5 You shall provide ScanSource with written notice of any misappropriation of confidential information or infringement of Intellectual Property Rights by You or an End User as it pertains to Cloud Software and/or any related Documentation or any use of Cloud Software and/or related that exceeds the scope of the licenses authorized, as soon as reasonably practicable upon becoming made aware of the breach.
- 5.6 ScanSource may terminate the license granted under this clause 5 any Cloud Order and / or this Agreement if, within 10 business days of Your receipt of a reasonably detailed written request to cure, You have not: (i) cured all material breaches of license limitations or restrictions; or (ii) terminated End User's access to Cloud Services and right to use Cloud Software in accordance with clause 5.2.5.
- 5.7 Certain Software licenses may be available for purchase from ScanSource on an upfront one-time license fee basis subject to the terms and conditions of this Agreement ("**Capex Software**"). Except as otherwise stated in this clause, You shall, and shall procure that End Users shall, use the Capex Software consistent with this Agreement, Documentation and associated material code description. You shall allocate the Capex Software licenses to a specific End User and You may not re-allocate them for use by any other End User, except as otherwise expressly agreed to by ScanSource in writing. You shall maintain a current maintenance services support coverage for the Capex Software for the entire term of the Cloud Services to such specific End User.
- 5.8 In respect of the Capex Software (if applicable) ScanSource grants to You a personal, nonexclusive, non-transferable, non-sublicensable, limited license to use and exploit the Capex Software during the Term solely linked to the provision of the Cloud Services to End Users in the Territory or Your own internal use. Subject to the provisions set forth in this Agreement, You shall comply with the terms of the Avaya End User License to the same extent as if You were an End User.
- 6. FEES**
- 6.1 You will pay the fees for the Cloud Services in accordance with clauses 6 and 7 of the General Terms. In the event that ScanSource requires You, at any time in the future, to pay the fees by direct debit, ScanSource will notify You of this requirement and You will take all such action and execute all such documents as are necessary to enable You to make such payments by direct debit.
- 6.2 Without prejudice to any other rights and remedies, if You do not pay an amount which is not the subject of a good faith dispute on the due date, ScanSource may suspend the Cloud Services.
- 7. TERM, TERMINATION AND SUSPENSION**
- 7.1 Unless a longer period is stated in the applicable Cloud Order Definition or an accepted Cloud Order, (i) the initial term of any Cloud Order will start on the commencement date of the Order and will end twelve (12) months thereafter; and (ii) Cloud Orders will renew automatically for subsequent twelve (12) month terms at ScanSource's then current price list unless either party gives written notice to the other party of its intent not to renew no later than 90 days in advance of each anniversary of the commencement date of the Order. The Term of any subsequent Cloud Order will be co-terminous with the Term of the underlying initial Cloud Order.
- 7.2 ScanSource may terminate this Agreement at any time if:
- (a) the relevant Supplier Contract terminates; or
  - (b) a Supplier ceases to provide the Cloud Services (or any part thereof); or
  - (c) You default under, or breach any term of this Agreement.
- 7.3 Scansource may suspend all or part of the Cloud Services and/or terminate this Agreement at any time if you fail to comply with the authorization, accreditation and credential requirements referred to in clause 4.6.
- 7.4 Without prejudice to any other rights and remedies ScanSource may have, ScanSource may limit, suspend or cease all or part of the Cloud Services at any time with such notice as is reasonable in the circumstances if the supply or use of the Cloud Services is, or is likely to become illegal or unlawful, or the provision or use of the Cloud Services is liable to cause death or personal injury or damage to property.
- 7.5 Without prejudice to any other rights and remedies ScanSource may have, ScanSource may limit, suspend or cease all or part of the Cloud Services at any time by prior written notice if:
- (a) You do not make payment of any charges on time;
  - (b) You do not use the Cloud Services in accordance with the terms of this Agreement and/or Your use of the Cloud Services interferes with the proper operation of ScanSource's or its Suppliers' networks and You fail to rectify the situation within a reasonable timeframe, as specified by ScanSource.
- 7.6 Without prejudice to any other rights and remedies ScanSource may have, ScanSource may suspend access to any or all Cloud Services forthwith in the event that such suspension is:
- (a) for the purpose of carrying out scheduled or emergency maintenance;
  - (b) to substitute, change, reconfigure, relocate or rearrange the Cloud Services, as agreed with You or as reasonably required by ScanSource; or
  - (c) in accordance with an order, instruction or request of any government entity, regulator, or judicial body.
- 7.7 You may terminate the Cloud Service with one month's prior written notice, however, the minimum order duration before You can terminate the Cloud Service shall (unless any longer period has been set out in the Order), be twelve (12) months. In case of termination by You termination charges set may apply.
- 7.8 You may cancel an order with our prior written approval, provided that You shall pay any applicable termination charges as notified to you in the quotation provided by ScanSource.
- 7.9 Upon termination for any reason, You shall return to ScanSource (or otherwise dispose of as ScanSource may instruct) all documentation, information, licensed or leased goods, equipment or other materials, and all copies of each of the foregoing, supplied by ScanSource or its Supplier. You shall certify in writing that no such documentation, information, licensed or leased goods, equipment, or other materials have been retained or copied by You.
- 7.10 Termination of this Agreement shall not entitle You to any refund

of the fees or any part thereof save such damages are awarded as a common law remedy to You for breach by ScanSource.

## 8. CONFIDENTIALITY

8.1 For the purpose of this clause "Confidential Information" shall mean the provisions of this Agreement, including all terms related to pricing and Cloud Services, ScanSource's and its Suppliers' products, operations, processes, plans or intentions, know-how, trade secrets, customers and business affairs and any non-public information which has been or may be disclosed in the course of discussions leading up to the entering into or performance of this Agreement. The foregoing applies, whether the information is written or oral and whether identified as confidential or not. For the avoidance of doubt, ScanSource's and its Suppliers' performance under this Agreement, the quality of the service performance, and any data provided by ScanSource or its Suppliers to You regarding performance of the Cloud Services shall be deemed Confidential Information under this Agreement.

8.2 You agree:

- (a) to keep the Confidential Information confidential and in safe custody;
- (b) that Confidential Information shall be used solely for the purpose for which it was furnished in connection with the performance of this Agreement;
- (c) You shall not disclose Confidential Information to third parties, save that you may disseminate the Confidential Information amongst Your employees and contractors only on a need-to-know basis for the purpose of performing Your obligations hereunder and provided that they are bound by substantially similar confidentiality provisions as contained in this Agreement.

8.3 The obligations on the use and disclosure of Confidential Information as set out in this clause 8 shall not apply to the extent any information:

- (a) at the date of its disclosure is lawfully in the public domain or subsequently lawfully enters the public domain other than through unauthorised disclosure by You or any third party; or
- (b) the parties agree in writing it need not be kept confidential any longer;
- (c) is required by applicable law, regulation, or a government agency or court order, subpoena, or investigative demand, to be disclosed, including the existence or terms of this Agreement. Where this is the case, You shall use reasonable efforts to minimise such disclosure and obtain an assurance that the recipient shall accord confidential treatment to such Confidential Information, and shall notify ScanSource immediately of such disclosure.

8.4 In the event of a breach or threatened breach of this clause 8, You agree that the harm suffered by ScanSource will not be compensable by monetary damages alone and, accordingly, ScanSource shall, without prejudice to any other legal or equitable remedy, be entitled to an injunction against such breach or threatened breach.

## 9. DATA PROTECTION

9.1 The following definitions apply to this clause 9:

- (a) "Customer Personal Data" means any personal data provided by

or on behalf of You; and

- (b) "data controller", "data processor", "data subject", "personal data" and "processing" bear the respective meanings given them in the Data Protection Act 1998, or with effect from 25 May 2018, General Data Protection Regulation (EU) 2016/679 .

9.2 ScanSource shall, and shall use reasonable endeavours to procure that any Supplier shall:

- (a) only carry out processing of any Customer Personal Data on Your instructions;
- (b) to the extent they process personal data, implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage from the point of receipt of any personal data; and

9.3 Each party shall comply with its obligations under any applicable Data Protection Laws. You shall enter into any separate or additional agreement with ScanSource with regard to the Cloud Services if such additional agreements are required by Data Protection Laws.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 ScanSource or its Supplier (as applicable) shall remain the sole owner of and retain all right, title and interest in any service, technical information and all intellectual property rights ("IPR") in the Cloud Technology. In return for payment of all fees and charges, ScanSource grants You a non-exclusive, non-transferable, non-assignable license, during the Term of the relevant Order to use any IPR provided solely to obtain the Cloud Services purchased under that order. ScanSource and its Suppliers shall be free to provide similar IPR to other parties and shall retain the right to unrestricted use of any data, any and all related concepts, know-how, techniques or IPR either acquired or developed as a result of this Agreement.

10.2 You agree to indemnify ScanSource and keep ScanSource fully and effectively indemnified against all losses, damages, claims, demands, costs and expenses of whatever nature (including reasonable legal fees and court costs) arising out of or in any way connected with Your unauthorised or illegitimate use of the IPR.

## 11. LIABILITY

11.1 Without prejudice to the generality of clause 12 of the General Terms (Indemnities and Limits of Liability), ScanSource's aggregate liability under or in connection with the Cloud Services whether in contract, tort (including negligence), pre-contract or other representations or otherwise shall be the aggregate fees payable by You for the Cloud Services in the twelve month period immediately prior to the date on which the cause of action first arose.

11.2 Additional terms relating to liability shall be set out in Parts 2, 3 and 4 (as the case may be).

## 12. AUDIT RIGHTS

12.1 ScanSource and/or its Supplier may engage an independent accountant from a reputable public accounting firm, which will be subject to confidentiality obligations. Verification will take place upon not fewer than 15 days' notice, during normal business hours

and in a manner that does not interfere unreasonably with Your operations.

- 12.2 In addition to the provisions of clause 12.1, ScanSource, or an independent auditor acting on ScanSource's behalf, may audit You in connection with usage monitoring and invoicing under this Agreement and/or in order to determine compliance with this Agreement. You shall, and shall procure that End Users, provide ScanSource, or an independent auditor acting on ScanSource's behalf, access to any information, data as well as the data centers and premises housing the Hosted Solution (as applicable) and each system configuration containing Cloud Software, on-site and/or remotely, for any actions reasonably required by ScanSource to conduct such audits provided this is in accordance with the applicable (data protection) laws. On-site audits may be conducted upon 5 business days' notice. If ScanSource suspects a breach by an End User under the Avaya End User License then upon ScanSource's request, You shall audit such End User, unless this is prohibited according to applicable law. Upon ScanSource's request, You shall provide the results of the audit to ScanSource, provided this is in accordance with applicable (data protection) law. You shall procure that End Users, fully cooperate with ScanSource in connection with any audits conducted by or on behalf of ScanSource unless this is contrary to applicable law.
- 12.3 By invoking the rights and procedures described in this clause, ScanSource does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.
- 12.4 You shall pass through Your obligations under this Clause 12 to any End User purchasing Cloud Software.

## **Part 2 – Additional terms to apply to Avaya Hosted Solution**

### **13. AVAYA HOSTED CLOUD SOLUTION**

- 13.1 The Cloud Services may be provided solution hosted by Avaya (e.g. currently the Avaya Equinix solution). Where specified in an Order, the additional terms set out in this clause 13 shall apply.
- 13.2 You shall defend, indemnify and hold ScanSource and/ or Avaya (and its affiliates) harmless from any costs, expenses, liabilities, claims and damages arising from or in connection with the provision of any Hosting Solution not provided by ScanSource.

## **Part 3 – Additional terms to apply to Reseller Hosted Solution**

### **14. RESELLER HOSTING SOLUTION**

- 14.1 Where specified in an Order, the additional terms set out in this clause 14 shall apply in addition to those set out in Part 1 above.
- 14.2 You have confirmed that You will provide the Hosting Solution to End Users in accordance with the provisions of this clause 14, taking into account the Authorization Requirements set out in clause 14.5.
- 14.3 Subject to Your observation and compliance with provisions of clause 14.5 and 14.10., You shall be authorized to host the Cloud Software from Your own or Your subcontractor's data center, provided that You shall: (i) first enter into an agreement with Your subcontractor with applicable terms at least as protective of the Cloud Software as the terms of this Agreement (including with respect to compliance with the Avaya End User License, if and to the extent the subcontractor is accessing or using the Cloud

Software in connection with its subcontracting activities, and the confidentiality and protection of the Cloud Software), and You shall cooperate with ScanSource (and as appropriate, with Avaya) in enforcing the terms of such agreement; and (ii) be fully responsible and liable to ScanSource for any harm, damage, liability or injury negligently caused to ScanSource that are involved in the execution of the orders as a result of or in connection with the actions or inactions of Your subcontractor or any breach by the subcontractor of its agreement with You. You shall be fully responsible for the actions or inactions of Your subcontractor as if they were Your own actions or inactions.

- 14.4 To the extent permitted under the applicable Cloud Offer Definition or upon ScanSource's prior written consent certain elements of the Hosted Solution may be installed on End User's premises or downloaded on its devices.
- 14.5 You shall only be permitted to provide the Hosting Solution Yourself if you comply with the following Authorisation Requirements: (i) maintain all accreditations and credentials as detailed in the applicable Cloud Offer Definition and Channel Policies; (ii) comply with best industry practices and standards applicable to the Hosted Solution and Cloud Services; and (iii) such additional requirements as may from time to time be directed by Avaya.
- 14.6 At all times during the term of this Agreement, You will maintain (and procure that the End User maintains) the security of the Hosted Solution, and any information or data used, stored, accessed or processed by the Hosted Solution.
- 14.7 You acknowledge and agree that You shall be solely responsible for: (i) the architecture, design, configuration and capacity management of the Hosted Solution and other architectural requirements to accommodate the expected number End Users in order to properly enable the usage of the Hosted Solution at the desired capacity level and compliance with Avaya's reference architecture and similar requirements as notified to you from time to time; (ii) timely ordering of Cloud Software and related services and any other components of the Hosted Solution; (iii) installation, configuration, maintenance coverage, and other activities in relation to the delivery, deployment, maintenance and support of the Hosted Solution; (iv) provision, at Your own cost, of SIP trunking (if applicable) and all hardware, equipment, software, and services as may be necessary for the deployment of the Hosted Solution and provision of Cloud Services, with the exception of the Cloud Software and related services purchased from ScanSource from time to time. Notwithstanding the foregoing, ScanSource may require You from time to time to make reasonable changes to the Hosted Solution based on the quality, capacity, environmental, safety, security or similar considerations.
- 14.8 In addition to Your co-operation obligations as set out in the Agreement, at no cost to ScanSource, You shall, in a reasonable and timely manner and provided such is in accordance with the applicable law: (i) provide ScanSource with interface and other information regarding access to third party Products in the Hosted Solution; (ii) provide ScanSource, its agents and/or subcontractors with access to the Hosted Solution both at Your, Your subcontractor's, or Cloud End User's premises and remotely; (d) notifying ScanSource in advance of any significant configuration or definition changes in the Hosted Solution.
- 14.9 Subject to the terms and conditions of this Agreement, You shall not use the Hosted Solution except as permitted in this Agreement and only for internal use and not for resale or sublicense.

- 14.10 You shall be responsible for providing that the Hosted Solution complies with all applicable laws and regulations in the relevant territory, including, without limitation, all laws, regulations, taxes, fees or other requirements related to the use, marketing and provision of regulated services and the provisioning, hosting, using installing, de-installing, activating, deactivating and de-commissioning of the Hosted Solution (or any portion thereof) at Your, Your subcontractors or the End User's premises. You shall be responsible for obtaining and maintaining all regulatory notifications, registrations, approvals or consents (as applicable) at Your own cost as may be required under any applicable law from time to time for the duration of this Agreement. Such regulatory consents and approvals include any registration, notification, approval or consent by the duly authorised authorities for the connection, deployment or use of the Hosted Solution and its components or marketing of Cloud Services in the territory or to specific types of resellers or Cloud End Users, such as in particular authorisation to: (i) connect any components of the Hosted Solution to the public telecommunications network; (ii) connect the Hosted Solution to the public electrical/energy grid; (iii) import the Hosted Solution components into the territory; (iv) deploy or use the Hosted Solution in the territory; or (v) offer and market Cloud Services in the territory and/or to specific types of resellers or Cloud End Users. The authorization, accreditation and credential requirements are timely provided in writing to You before parties enter into this Agreement and subject to review and renewal and may be withdrawn or terminated at any time in accordance with this Agreement and the Channel Policies.
- 14.11 In addition to Your obligation to pay taxes in accordance with the Agreement, You shall be solely responsible for the collection and remittance of any and all governmental assessments, surcharges and fees due by You pertaining to Your provision, resale or use of the Hosted Solution or Cloud Services.
- 14.12 Notwithstanding anything to the contrary in the Avaya End User License or the Agreement, You agree, and shall notify End Users in writing that ScanSource grants no warranty whatsoever to You and the End Users with respect to Your Hosted Solution. Any grant of warranty by the Avaya End User License or this Agreement does not extend to End Users, provided such exclusion is in accordance with applicable law.
- 14.13 You shall be responsible for providing support to End Users with regard to any warranty or non-conformance issues or questions concerning the Hosted Solution and filing warranty claims, and with regard to any license issue or question.
- 14.14 You acknowledge and agree that Your hosting of any products, including the Cloud Software, that use or embed certain third party software, such as (by way of example only) Microsoft software or codecs, may require You to independently obtain licenses, at Your expense, directly from the applicable third party supplier. With respect to Microsoft specifically, if You host any products that use or embed Microsoft software, You must independently obtain, at Your expense, an applicable agreement from Microsoft. With respect to codecs, if You are hosting any products that use or embed the g.729 codec, h.264 codec, or h.265 codec, You acknowledge and agree that it is responsible for any and all related fees and/or royalties.
- 14.15 You shall not be permitted to combine the Cloud Services with any additional services unless prior written approval is given by ScanSource. For the avoidance of doubt, any approval given pursuant to this clause 14.15 shall not release You from any obligations or commitments contained in this Agreement.
- 14.16 You shall defend, indemnify and hold ScanSource and/ or Avaya (including any of Avaya's affiliates) harmless from any costs, expenses, liabilities, claims and damages arising from or in connection with: (i) Your failure to comply with any of the obligations set out in this clause 14; (ii) any warranties, representations, commitments or protections You give to End Users greater than the warranty granted by Avaya or ScanSource (as the case may be) hereunder; (iii) any claim, suit or proceeding by a third party against Avaya or ScanSource alleging that the Cloud Services infringe any intellectual property right, except to the extent that such claim, suit or proceeding is based on the Cloud Software; (iv) government assessments, and/or regulatory fees, together with interest and penalties, imposed on Avaya and/or ScanSource as a result of Your failure to report and remit any government assessments, and/or regulatory fees applicable to the Hosted Solution and/or Cloud Services and/or to otherwise comply with any regulatory requirement as applicable from time to time; (v) any assessment that the use of the Cloud Services and/or Hosted Solution by You, your subcontractors and End Users constitutes a regulated service for the purposes of applicable regulatory requirements from time to time.

#### **Part 4 – Additional Terms to apply to ScanSource Hosting Solution**

##### **15. SCANSOURCE HOSTING SOLUTION**

- 15.1 Where specified in an Order, the additional terms set out in this clause 15 shall apply in addition to those set out in Part 1 above.
- 15.2 ScanSource shall provide the Hosting Solution via the Supplier specified in that Order. The additional terms set out in the Order shall apply to such provision.
- 15.3 At all times during the term of this Agreement, You will maintain the security of the Hosted Solution, and any information or data used, stored, accessed or processed by the Hosted Solution.
- 15.4 In addition to Your co-operation obligations as set out in the Agreement, at no cost to ScanSource, You shall, in a reasonable and timely manner and provided such is in accordance with the applicable law: (i) provide ScanSource with interface and other information regarding access to Third Party Products in the Hosted Solution; (ii) provide ScanSource, its agents and/or subcontractors with access to the Hosted Solution both at Your, Your subcontractor's, or Cloud End User's premises and remotely; (d) notifying ScanSource in advance of any significant configuration or definition changes in the Hosted Solution.
- 15.5 Subject to the terms and conditions of this Agreement, You shall not use the Hosted Solution except as permitted in this Agreement and only for internal use and not for resale or sublicense.
- 15.6 You shall at all times during the term of this Agreement: (i) comply with the industry best practices and standards applicable to the Hosted Solution as well as any ScanSource and / or Supplier and/or Authorization Requirements; and (ii) maintain all accreditations and credentials, applicable to the Cloud Services and other products included in the Hosted Solution, as detailed in the applicable Cloud Offer Definition and Channel Policies. The authorization, accreditation and credential requirements are timely provided in writing to You before parties enter into this Agreement and subject to review and renewal and may be withdrawn or terminated at any time in accordance with this Agreement and the Channel Policies.
- 15.7 Notwithstanding anything to the contrary in the Avaya End User License or the Agreement, You agree, and shall notify End Users in writing that ScanSource grants no warranty whatsoever to You and the End Users with respect to Your Hosted Solution. Any grant





of warranty by the Avaya End User License or this Agreement does not extend to End Users, provided such exclusion is in accordance with applicable law.

15.8 You shall provide support to End Users with regard to any warranty or non-conformance issues or questions concerning the Hosted Solution and filing warranty claims, and with regard to any license issue or question.

15.9 You acknowledge and agree that Your hosting of any products, including the Cloud Software, that use or embed certain third party software, such as (by way of example only) Microsoft software or codecs, may require You to independently obtain licenses, at Your expense, directly from the applicable third party supplier. With respect to Microsoft specifically, if You host any products that use or embed Microsoft software, You must independently obtain, at Your expense, an applicable agreement from Microsoft. With respect to codecs, if You are hosting any products that use or embed the g.729 codec, h.264 codec, or h.265 codec, You acknowledge and agree that it is responsible for any and all related fees and/or royalties.

**APPENDIX 1**  
**END USER TERMS AND CONDITIONS**

**1. INSTALLATION AND MAINTENANCE**

1.1 Where it is necessary for the Reseller or its suppliers to effect installation and/or maintenance of Cloud Services, equipment or any other Products at the End User's site, the End User shall provide full access to such site and to the End User's personnel, and any technical help reasonably required by the Reseller or its suppliers for the installation and maintenance of the Cloud Services, equipment or other Products.

The End User shall use any equipment belonging to the Reseller or its suppliers and associated software in strict accordance with any instructions or software licence communicated or made available by the Reseller or its suppliers from time to time, and the Reseller and its suppliers will not be liable for any repairs whatsoever or howsoever arising other than as a result of normal and proper use in accordance with those instructions and software licences.

**2. INSURANCE**

2.1 The End User shall be responsible for insuring any equipment belonging to the Reseller or its suppliers on its site, against loss or damage from all risks, such insurance to be for an amount equal to the full replacement value of the equipment.

2.2 The End User shall be responsible for insuring itself against all loss of or damage/corruption to data. In no event will the Reseller or its suppliers be liable for loss or damage/corruption to any data stored/transmitted on/using the Cloud Services or any equipment or other Products.

**3. IMPROPER USE**

3.1 Any network and/or Cloud Services supplied by the Reseller or its suppliers may only be used by the End User for lawful purposes, and the End User agrees to be bound by the Acceptable Use Policy in relation to the use of the Cloud Services and any network.

3.2 The End User shall not (and shall not authorise or permit any other party to):

(a) use the Cloud Services or any network supplied by the Reseller or its suppliers for the transmission of any information, data or other material which is in violation of any law or regulation, or which is defamatory, menacing, obscene, in breach of any third party intellectual property right (including copyright) or in breach of trade secrets ("Prohibited Material");

(b) use the Cloud Services or any network supplied by the Reseller or its suppliers for the transmission of any material that contains software viruses or any other computer code, files or programs designed or intended to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

(c) use the Cloud Services or any network supplied by the Reseller or its suppliers for mail-bombing or spamming (i.e the act of sending a large number of unsolicited e-mail messages within a short period

of time to one or more individual e-mail accounts) or sending one unsolicited e-mail message to ten or more individual e-mail users, where the message could reasonably be expected to cause complaints from some of the recipients; or

(d) attempting to gain unauthorised access to any account or computer resource not belonging to the End User, or attempt the unauthorised accessing, altering, interfering with, or destruction of any network, system, equipment or information by any means or device.

3.3 Any breach of this clause 3 shall be deemed to be a material breach of this Agreement and shall entitle the Reseller to terminate this Agreement forthwith and for this purpose it shall be irrelevant whether the End User is aware of the content of any information, data or material so transmitted or not. The Reseller may suspend the Cloud Services without notice with immediate effect if in the Reseller's reasonable opinion the End User is in breach of this clause 3.

3.4 The End User acknowledges that the Reseller and its suppliers are unable to exercise control over the content of the information, data and other material passing over any network and/or connections supplied by the Reseller or its suppliers, and/or the Cloud Services, and the Reseller and its suppliers hereby exclude all liability of any kind for the transmission or reception of Prohibited Material of whatever nature.

3.5 The End User hereby agrees to indemnify and hold the Reseller and its suppliers harmless from and against any claim brought by a third party resulting from the use of any network and/or line supplied by the Reseller or its suppliers, and/or the Cloud Services by the End User, including but not limited to infringement of any intellectual property right of any kind, and breach of any legislation or regulation, or otherwise arising out of or in connection with any Prohibited Material. The End User shall pay all costs, damages, awards, fees (including reasonable legal fees) and judgements awarded against the Reseller and/or its suppliers arising from such claims, and shall provide the Reseller and/or its suppliers with prompt notice of such claims, full authority to defend, compromise or settle such claims and all reasonable information, assistance and cooperation necessary to defend such claims, at the End User's sole expense. Such actions will be taken in consultation with the End User.

**4. END USER CONTRACT**

The End User acknowledges and agrees that the Cloud Services are provided pursuant to this Agreement which is exclusively between the End User and the Reseller and that there is no privity of contract and therefore no contractual relationship between the End User and the Reseller's suppliers, and that where a supplier acts it does so on the Reseller's behalf.

## APPENDIX 2

### Flowdown Obligations

The Avaya End user licence Agreement

End User Terms and Other Obligations – Clause 3.5, 3.6

Cloud Software – Clauses 4.1, 4.2, 4.3, 4.5, 4.6, 4.9

Software License for Cloud Software – Clause 5

Audit Rights – Clause 12.2

Part 3 – Clauses 14.3, 14.9, 14.12

Part 4 – Clauses 15.6, 15.7, 15.9