

AVAYA CONSUMER SALES TERMS AND CONDITIONS

The following Avaya Consumer Sales Terms and Conditions ("**Sales Terms**") are entered into by and between Avaya, Inc., a Delaware corporation whose principal place of business is 4655 Great America Parkway, Santa Clara, California 95054-1233 ("**Avaya**") and you ("**Customer**"), and apply to the sale of the Avaya products with which these Sales Terms are provided ("**Products**"). The effective date of these Sales Terms is the date that the Products are sold to Customer ("**Effective Date**").

THE PRODUCTS ARE SOLD AND LICENSED BY AVAYA TO YOU FOR YOUR USE ONLY UNDER THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. ACCEPTING AND USING THESE PRODUCTS INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS AND BECOMES A LEGAL AGREEMENT BETWEEN YOU AND AVAYA. THESE TERMS AND CONDITIONS ARE AVAILABLE ON THE FOLLOWING WEBSITE: [HTTPS://ONECARE.AVAYA.COM/CONSUMERCHANNEL](https://onecare.avaya.com/consumerchannel).

1. **No Resale.** Products are intended and sold for the personal use of Avaya Customers, who are not authorized to resell the Products to any third parties or resellers. Accordingly, Avaya will not be liable in connection with any such resale or use. Avaya reserves the right to refuse to sell or prohibit sale of the Products to customers who are reselling the Products.

2. **Third-Party Service Providers.** Many Products can only be used in connection with the services of a third-party telephone network or internet service provider, who may charge fees for access and/or continuing service. Your ability to use the Products and their performance may be affected by the speed and data availability of these networks and services. You are responsible to confirm with your network or service provider(s) the data volume and any applicable costs and fees.


3. **Intellectual Property Rights.** Avaya and/or its affiliates and suppliers reserve all rights, including, but not limited to, ownership, title, and all other rights and interests in any Intellectual Property that Avaya develops, creates, or otherwise acquires associated with the Products. Customer is not entitled to use any of Avaya's trademarks, trade dress, trade names, service marks, logos, domain names, copyrights, design patents, or utility patents ("**Intellectual Property**") without prior written consent.

4. **Limited Software License.** Avaya grants Customer a non-exclusive, non-transferable limited right and license to use Software and Documentation solely and exclusively for Customer's personal use in accordance with the terms and conditions set forth below in Schedule A – Avaya Global Consumer Software License Terms. Customer is not permitted to copy, edit, modify, alter or create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software (or any part of it). Any resale of Software or Documentation to any person or entity is expressly prohibited. Customer may not sublicense, to any person or entity, any rights to distribute the Software or Documentation.

5. **Limited Warranty.** Avaya may provide Customer a Limited Warranty for the Products. Avaya's Limited Warranty is available on the following website: <https://onecare.avaya.com/consumerchannel>.

6. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER THE LAW, IN NO EVENT WILL AVAYA, ITS AFFILIATES, SUPPLIERS, OR DISTRIBUTORS, CHANNEL PARTNERS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES (COLLECTIVELY "**AVAYA**" FOR PURPOSES OF THIS SECTION) HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF THE AMOUNT PAID FOR THE PRODUCT OR \$500. THIS LIMITATION OF LIABILITY AND THE CAP ON AGGREGATE LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT OR TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE). HOWEVER, THEY WILL NOT APPLY IN CASES OF WILLFUL MISCONDUCT, PERSONAL INJURY OR BREACHES OF AVAYA'S LICENSE RESTRICTIONS. THE LIMITATIONS ON AGGREGATE LIABILITY WILL NOT APPLY TO CONTRACTUAL INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS AGREEMENT. THIS SECTION WILL ALSO APPLY TO ANY LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND SUPPLIERS.

7. **Privacy.** Avaya is committed to the protection of your privacy and personal data. To learn more about how Avaya uses and protects your personal data and information, see our Privacy Policy at <https://www.avaya.com/en/privacy/policy/>. You agree to the use of your personal data and information in accordance with Avaya's Privacy Policy. Under certain state laws, you have the right to request and receive information from Avaya concerning information we collect, how we use and share information, and to request that your personal data or information be corrected or deleted. Any such requests can be made by sending an email to Privacy@Avaya.com.

8.  **California Prop. 65 WARNING:** The Products can expose you to chemicals including LEAD, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

9. FCC Part 68 and ACTA

The Products comply with Part 68 of the Federal Communications Commission ("**FCC**") Rules and with technical requirements adopted by the Administrative Council for Terminal Attachments (ACTA). The label on the back or bottom of each Product contains, among other things, a product identifier. This identifier must be provided to your telephone service provider upon request. The plug and jack used to connect the Products to premises wiring and the telephone networks must comply with the applicable Part 68 rules and technical requirements adopted by ACTA. A compliant telephone cord and modular plug is provided with the Products.

The Ringer Equivalence Number (REN) is used to determine how many devices you may connect to your telephone line and still have them ring when you are called. In most, but not all areas, the sum of all RENs should be five (5.0) or less. For more information, please contact your telephone service provider.

If the Products are causing harm to the telephone network, your telephone service provider may temporarily discontinue your telephone service. The telephone service provider is required to notify you before interrupting service. If advance notice is not practical, you will be given the opportunity to correct the problem and the telephone service provider is required to inform you of your right to file a complaint with the FCC. Your telephone service provider may

make changes in its facilities, equipment, operation, or procedures that could affect the proper functioning of the Products. The telephone service provider is required to notify you if such changes are planned.

10. FCC Part 15. The Products have been tested and found to comply with the requirements for a Class B digital device under Part 15 of the FCC Rules. These requirements are intended to provide reasonable protection against harmful interference in a residential installation. The Products generate, use and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation.

The Products comply with Part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) The products may not cause harmful interference, and (2) the Products must accept any interference received, including interference that may cause undesired operation. Privacy of communications may not be ensured when using the Products.

To ensure safety of users, the FCC has established criteria for the amount of radio frequency energy that can be safely absorbed by a user or bystander according to the intended usage of the product. The Products have been tested and found to comply with the FCC criteria. The handset may be safely held against the ear of the user. The telephone base shall be installed and used such that parts of the user's body other than the hands are maintained at a distance of approximately 20 cm (8 inches) or more.

11. Industry Canada. The Products comply with Industry Canada License-Exempt Radio Standards Specification(s) (RSS). Operation is subject to the following two conditions: (1) Products may not cause harmful interference, and (2) Products must accept any interference received, including interference that may cause undesired operation. The term "IC" before the certification/registration number signifies that the Products meet Industry Canada technical specifications.

12. Governing Law. This agreement and any disputes, claims or controversies arising out of or relating to this agreement ("**Disputes**"), or any issue regarding whether a Dispute is subject to arbitration under this agreement, will be governed by New York State laws, excluding conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods.

13. Arbitration. If a Dispute cannot be settled by good faith negotiation between the parties within a reasonable period of time, 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). The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator. The arbitrator will have authority only to award compensatory damages within the scope of the limitations of Section 6 and will not award punitive or exemplary damages. The arbitrator will not have the authority to limit, expand or otherwise modify the terms of this agreement. The ruling by the arbitrator 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 Avaya and Customer will each bear its own attorneys' fees and other costs associated with the arbitration.

a. **Injunctive Relief.** The parties agree that this arbitration provision 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 pending arbitration.

b. **Time Limit.** Actions on Disputes between the parties must be brought in accordance with this Section within 2 years after the cause of action arises.

c. **Exceptions.** There are two exceptions to this agreement to arbitrate: (1) First, if either party reasonably believes that the other party has in any manner violated or threatened to infringe the intellectual property rights of the other party, the party whose rights have been violated may seek injunctive or other appropriate interim relief in any court of competent jurisdiction. (2) Second, no party shall be precluded from seeking remedies in small claims court for disputes or claims within the scope of its jurisdiction (including amounts) and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis.

d. **WAIVER OF RIGHT TO COURT TRIAL.** SUBJECT TO THE LIMITATIONS ABOVE, YOU HEREBY IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE TO A COURT TRIAL (OTHER THAN SMALL CLAIMS COURT AS PROVIDED ABOVE) OR TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING FILED AGAINST AVAYA AND/OR RELATED THIRD PARTIES.

14. Force Majeure. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, or inability to secure materials or transportation facilities.

15. Product Changes. Avaya may make changes to Products or modify the drawings and specifications relating to Products, or substitute Products of later design, provided that the changes do not adversely and materially impact Product form, fit or function.

SCHEDULE A – AVAYA GLOBAL CONSUMER SOFTWARE LICENSE TERMS

These Avaya Global Consumer Software License Terms ("**Software License Terms**") apply if and to the extent Customer obtains Software from Avaya.

1. Definitions. "**Documentation**" means information published by Avaya in varying media which may include Product information, operating instructions, and performance specifications that Avaya generally makes available to users of its products. Documentation does not include marketing materials. "**Software**" means computer programs in object code, provided by Avaya or an Avaya channel partner, whether as stand-alone Products or pre-installed on hardware Products, and any upgrades, updates, bug fixes, or modified versions thereto. Capitalized terms that are not otherwise defined in this

Section or elsewhere in these Software License Terms will have the meaning given to them in this Agreement. **“Products”** collectively mean the applicable consumer products and any Software contained therein or Documentation.

2. **License Grant.** Avaya grants Customer a non-exclusive, non-transferable limited right and license to install and use the Products solely and exclusively for Customer’s personal use.

3. **All Rights Reserved.** Avaya or its Affiliates and suppliers retains title to and ownership of Products and any modifications or copies thereof. Except for the limited license rights expressly granted in these Software License Terms, Avaya or its Affiliates and suppliers reserve all rights, including without limitation copyright, patent, trade secret, and all other intellectual property rights, in and to the Products and any modifications or copies thereof.

4. **General License Restrictions.**

Customer agrees that it will not, and will not allow any third party to, (i) copy, sell, license, distribute, transfer, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or content that may be presented or accessed through the Software for any purpose, unless otherwise permitted, (ii) use the Software to access, copy, transfer, transcode or retransmit content in violation of any law or third party rights, or (iii) remove, obscure, or alter Avaya’s or any third party’s copyright notices, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software; or (iv) disclose, provide, or otherwise make available to any third party any trade secrets contained in the Products.

5. **Proprietary Rights Notices.** Customer will retain, in the same form and location, all proprietary legends and/or logos of Avaya and/or Avaya’s suppliers on any permitted copies of the Products.

6. **Upgrades.** Customer’s right to use any upgrades to the Software will be conditioned upon Customer having a valid license to use the original Software and paying the applicable license fees, if any, to Avaya.

7. **Termination of License; Effect of Termination/Expiration.** If Customer breaches these Software License Terms and if within 10 business days of Customer’s receipt of Avaya’s written request to cure, Customer has not cured all breaches of license limitations or restrictions, Avaya may, with immediate effect, terminate the licenses granted in these Software License Terms without prejudice to any available rights or remedies Avaya may have at law or in equity. Upon termination or expiration of the license for any reason, Customer will immediately permanently destroy all copies of the Software and any related materials in Customer’s possession or control. Any terms which, by their nature, are intended to survive termination, will survive any termination or expiration of the Software license.

8. **Third-Party Components.** Certain software programs or portions thereof included in the Software may contain software (including open source software) distributed under third party agreements (**“Third Party Components”**), which contain terms regarding the rights to use certain portions of the Software (**“Third Party Terms”**). As required, information regarding distributed Linux OS source code (for those Products that have distributed Linux OS source code) and identifying the copyright holders of the Third Party Components and the Third Party Terms that apply is available in the Documentation or on Avaya’s website at: <http://support.avaya.com/Copyright>, or such successor site as designated by Avaya. Customer agrees to the Third Party Terms for any such Third Party Components.

9. **Personal Data.** The download or use of the Software may require the processing of personal data (including, but not limited to contact name, company address, company phone or fax, or company email) pertaining to Customer or Customer personnel. Such data will be used by Avaya for communication, administrative, and operational purposes related to the Software, including, but not limited to, tracking Software activations, communicating regarding trouble tickets and alarms, and providing Software updates. Personal data required to download or use the Software must be submitted to Avaya. Failing the submission of such data, the download or use of the Software may not be possible. Customer or Customer personnel have a right to access and correct erroneous personal data pertaining to Customer or Customer personnel and to object for legitimate reasons to the processing and transfer of this data. Customer can exercise this right by contacting us at Privacy@Avaya.com or contacting the data privacy officer of the applicable Avaya Affiliate. WE ENDEAVOR (AND REQUIRE OUR AFFILIATES TO ENDEAVOR) TO PROTECT THE INFORMATION YOU PROVIDE TO US BY USING TECHNOLOGIES DESIGNED TO SECURE YOUR INFORMATION AS IT TRANSMITS TO US OVER THE INTERNET AND ONCE IT IS ON OUR SYSTEMS. BUT BECAUSE OF THE INHERENT NATURE OF THE INTERNET AS AN OPEN GLOBAL COMMUNICATIONS VEHICLE, WE CANNOT GUARANTEE THAT SUCH INFORMATION STORED ON SERVERS SUPPORTING THIS SITE, TRANSMITTED TO OR FROM A USER, OR OTHERWISE IN OUR CARE (OR OUR THIRD-PARTY PROVIDERS’ CARE) WILL BE ABSOLUTELY SAFE FROM INTRUSION BY OTHERS, SUCH AS HACKERS. YOU ACKNOWLEDGE THAT YOU UNDERSTAND AND AGREE TO ASSUME THESE RISKS.

10. **HIGH RISK ACTIVITIES.** The Software 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 Software could lead to death, personal injury or significant property damage (**“High Risk Activities”**). Such environments include, among others, control systems in a nuclear, chemical, biological or other hazardous facility, aircraft navigation and communications, air traffic control, and life support systems in a healthcare facility. Customer assumes the risks for its use of the Software in any such High Risk Activities.

11. **U.S. GOVERNMENT END USERS.** The Software is classified as **“commercial computer software”** and the Documentation is classified as **“commercial computer software documentation”** or **“commercial items”**, pursuant to 48 CFR FAR 12.212 or DFAR 227.7202, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Documentation by the Government of the United States will be governed solely by the terms of these Software License Terms and will be prohibited except to the extent expressly permitted by these Software License Terms, and any use of the Software and/ or Documentation by the Government constitutes agreement to such classifications and to these Software License Terms.

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