

## Cloud Services Terms

### Version July 2024

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

By starting to use the Cloud Services or purchasing Cloud Services, the Customer, agrees to these Cloud Services Terms and creates a binding contract between themselves and Avaya, unless Customer is buying the Cloud Services from an authorized Avaya channel partner ("Partner"), in which case this creates a binding contract between Customer and the Partner and these terms form part of your contract with the Partner and does not form a contract directly with Avaya. If Customer is accepting these terms on behalf of a company or other legal entity, Customer represents that they have the authority to bind such entity to these Cloud Services Terms.

#### 1. TERMS OF SERVICE

**1.1 Terms of Service.** Upon acceptance of an Order Avaya will make the Cloud Services available to Customer for the Initial Term. The Initial Term will renew for consecutive Renewal Terms where auto renew is available, unless either party gives the other 30 days (or longer period if expressly stated in the applicable SOW or Supplemental Terms) advance written notice before the end of the Initial Term or current Renewal Term of their intent not to renew.

**1.2 Changes to, and Discontinuation of, the Cloud Service.** From time to time Avaya may update or modify the Cloud Service, including features, functionality and Supplemental Terms, provided that: (a) the change and modification applies to all customers generally, and are not targeted to any particular customer; and (b) one-month prior notice is provided to Customer for any material changes to the Cloud Service or the Supplemental Terms and in such case, Customer has the right to discontinue using the Cloud Service and terminate the respective Order without penalty if any change to the Cloud Service or Supplemental Terms is of material detriment to Customer, by written notice, within 60 days after Avaya notifies Customer of the change.

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

**1.3 System Requirements.** Cloud Services are dependent upon Customer's maintenance of internet access, network access and power. Customer is responsible for maintaining all telecommunications (including mobile service and devices), broadband and computer equipment and services needed to access and use the Cloud Services, and for paying all charges associated with these services.

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

**1.5 Use Policies.** When Customer accesses and uses a Cloud Service, Customer is responsible for complying with these Cloud Services Terms, applicable laws and the Use Policies referenced in the Matrix. The Use Policies are posted on this website: <http://support.avaya.com/TermsOfSale> (or such successor site) and are incorporated into and form part of these Cloud Services Terms. Avaya may update the Use Policies from time to time and will post the updated version. Such updates will become effective on the next calendar month in which Avaya posts the updated version. Customer is responsible for reviewing the Matrix to determine which Use Policy applies to each Service.

**1.6 Third Party Terms.** Customer will be bound by certain additional terms and conditions (as indicated by Avaya) that apply to and/or Third-Party Services ("Third-Party Terms") at <https://www.avaya.com/en/legal-third-party-terms/>. In case of a conflict, the Third-Party Terms take precedence over the Cloud Services Terms only for those Third-Party Services.

of the Cloud Service or chargeable to customers by any governmental entity, including, but not limited to, any government assessment or regulatory fees imposed on Avaya as a result of a material change in the manner in which the Cloud Service or Avaya is regulated.

#### 3. SERVICES PROVIDED, USE OF THE CLOUD SERVICE

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

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

**3.3 Customer's Use of Service.** Customer represents and warrants that Customer has the legal right and authority to install and use the Cloud Services. Customer may use the Cloud Service solely for Customer's internal business use in accordance with and in the countries designated in the applicable Supplemental Terms, these Cloud Services Terms and the Order, and not for further sublicense or resale. Customer shall be solely responsible for all activities that occur under Customer's account. Upon request, Customer will provide Avaya with signed confirmation of its compliance with this provision.

**3.4 Cooperation.** Customer agrees to:

- Cooperate with Avaya as reasonably necessary for Avaya's performance of Cloud Services in a timely manner.
- Provide Avaya with interface and other information regarding access to third party products or services in Customer's network and necessary third-party consents and licenses to enable Avaya's ability to deliver the Cloud Services.
- Adequately secure its networks and systems against unauthorized intrusion or attack.
- Properly use, safeguard, and return to Avaya any Avaya Tools.

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

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

#### 2. CHARGES

**2.1** The following terms are relevant to Avaya's direct Customers only, and do not apply to Customers purchasing from a Partner.

**2.2 Charges.** Unless otherwise stated in the Supplemental Terms or Order, prices are quoted on a consumption and/or subscription basis. Pricing herein does not include charges for taxes, fees, and government-imposed surcharges, which may be included in the invoices. All fees due to Avaya under these Cloud Services Terms are non-cancellable and the sums paid are non-refundable, except as otherwise expressly provided in these Cloud Services Terms.

**2.3** If Customer adds or removes users or numbers, during a month, the applicable Subscription fees will be pro-rated for the month.

**2.4 Price Changes.** Avaya may change the fees associated with any Cloud Services upon 30 days advance written notice. Customer's continued use of the Cloud Service after any price change becomes effective constitutes Customer acceptance of the modified fees, and such amounts shall apply as of the first day of the next month after the fee change was posted or communicated to Customer.

**2.5 Regulatory Fees.** Customer will be responsible for all governmental assessments, surcharges and regulatory fees pertaining to Customer's use of the Cloud Service, that are imposed on Avaya or any Affiliate of Avaya incident to the provision or sale

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

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

**4.2 Expiration/Termination.** Upon expiration of the Service Period or termination pursuant to these Cloud Services Terms, Customer shall immediately cease use of the Cloud Service.

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

- 4.4 Cloud Services Terms Duration.** These Cloud Services Terms begin on the Effective Date and continue until terminated in accordance with this section or until the provision of Cloud Services under the Order finalizes, whatever happens first.
- 4.5 Termination for Breach.** Either Party may terminate these Cloud Services Terms or any accepted Order by giving written notice to the other Party if the other Party breaches any material term of these Cloud Services Terms and fails to cure such breach within 30 days after receipt of such notice.
- 4.6 Termination for Convenience of the Cloud Services Terms.** Either party may terminate these Cloud Services Terms at any time for convenience upon 90 days' prior written notice.
- 4.7 Termination for Convenience of Orders.** Customer may terminate an Order for convenience if and as set forth in the Supplemental Terms. Such termination may be subject to fees.

## 5. IP OWNERSHIP

- 5.1 Avaya Intellectual Property.** Avaya, its Affiliates, licensors and suppliers own all Avaya Intellectual Property. Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works of any Avaya Intellectual Property.
- 5.2 Marks.** Nothing herein grants Customer any right to use any trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features of Avaya or its subcontractors or suppliers. Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, Cloud Services or Software. To the extent Avaya authorizes Customer to use any marks described in this Section 5.2, any goodwill associated with Customer's use shall inure to the benefit of Avaya.
- 5.3 Feedback.** Avaya welcomes Customer Feedback. To the extent not already owned by Avaya, Customer hereby grants Avaya a perpetual, exclusive, royalty-free, irrevocable, worldwide license to use or disclose any suggestions, enhancement requests, recommendations, proposals, ideas or other Feedback Customer provides to Avaya concerning the Cloud Services or Software, and create derivative works thereof, without restriction, compensation, obligation or liability of any kind to Customer or to any third party.

## 6. CUSTOMER CONTENT, APPLICATIONS, AND MARKS

- 6.1** Customer is solely responsible for Customer Content and Applications (including any data, text, images or other content contained therein), including any loss or damage to Avaya, its suppliers or a third party arising from or relating to Customer Content or Applications. Avaya does not certify or endorse any Customer Content or Applications. Customer represents and warrants that it has all necessary rights to, and grants to, Avaya a limited, non-exclusive, non-transferable, non-sublicensable (except to its subcontractors and suppliers) license to access, use, store, archive for a period of time, modify, display, reproduce, prepare derivative works of, and distribute Customer Content and Applications to the extent necessary for the purpose of providing the Cloud Service.
- 6.2** As between Avaya and Customer, Customer retains all right, title and interest in and to Customer Content and Applications. Avaya will not share Customer Content, Other Users' Content or Applications with any third parties unless: (a) Avaya has Customer's written or electronic consent for sharing any Customer Content or Applications; (b) it is required by law; or (c) Avaya provides Customer Content or Applications to third parties (e.g. sub-contractors) to carry out tasks on Avaya's behalf (e.g., data storage, etc.) as directed by Avaya and subject to appropriate agreements with those third parties.
- 6.3** In connection with the provision of the Cloud Service, Customer grants Avaya a limited, non-exclusive, non-transferable, non-sublicensable license to display Customer trade names, trademarks, service marks, logos, domain names and the like ("Customer Marks") and to host and display likenesses and photo images; provided, that the use of Customer Marks in connection with these Cloud Services Terms shall not create any right or title in or to the use of Customer Marks and all such use and goodwill associated with Customer Marks will inure to the benefit of Customer.

## 7. RIGHTS AND DISCLAIMERS

- 7.1** All information transmitted through the Cloud Service is the sole responsibility of the person from whom such information originated. Avaya reserves the right, but is not obligated, to pre-screen, refuse, flag, filter, or remove any material posted on the Cloud Service, including any Customer Content, which Avaya, in its sole discretion, deems inconsistent with these Cloud Services Terms, including any material Avaya has been informed or has reason to believe constitutes intellectual property infringement. Avaya may take the action(s) set out above, or similar actions, without notice or liability to Customer or any other party. Accordingly, Avaya assumes no liability for any action or inaction regarding transmissions, communications, or content provided by Customer or any third parties.

- 7.2** Except to the extent set out in the SD or Order, Avaya may archive Customer Content and may periodically delete Customer Content without notice to Customer. Customer is solely responsible to ensure that any information, including Customer Content, Customer wishes to retain is downloaded, saved and/or backed-up. Avaya may implement reasonable limits as to the size or duration of storage of any Customer Content related to the use of the Cloud Service.
- 7.3** Provided Avaya does not use Customer's Confidential Information, Avaya reserves the right to: (i) develop products or services similar to any of the Applications that Customer may develop in connection with a Cloud Service and (ii) grant similar rights to those provided under these Cloud Services Terms to third parties that may develop or offer products or services which compete with any such Applications.
- 7.4** Any software security feature is not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures.
- 7.5** It is Avaya's policy to respond to notices of alleged copyright infringement that comply with the United States Digital Millennium Copyright Act and where appropriate at Avaya's discretion to terminate the accounts or subscription of infringers. If Customer would like to send Avaya an alleged copyright infringement notice as it pertains to the Cloud Service, go to the following link <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site) and follow the instructions on how to get in touch with Avaya. If Customer has trouble accessing this link, then Customer may contact Avaya for further information at [copyrightagent@avaya.com](mailto:copyrightagent@avaya.com) with the subject line: "DMCA Takedown Request" or by mail to:

Avaya Copyright Agent Notification  
350 Mount Kemble Avenue, Room 2C109  
Morristown, NJ 07960  
1-908-953-2044

## 8. INDEMNIFICATION

- 8.1 Avaya's Indemnification Obligation.** Avaya will defend Customer against third-party claims brought against Customer to the extent arising solely from an allegation that Customer's use of the Cloud Service directly infringes a third-party patent or copyright. Avaya will indemnify Customer against damages (specifically excluding any increased or enhanced damages resulting from Customer's willful infringement) finally awarded against Customer by a court of competent jurisdiction or a settlement amount approved by Avaya. Avaya's obligations under this Section will not apply if the claim results from (a) Customer breach of these Cloud Services Terms, (b) modification to the Cloud Service or use of the Cloud Service outside the scope of the applicable Service Description, (c) combination, operation, or use of the Cloud Service with Third Party Products, third party software, Third Party Services, open source or freeware, (d) Third Party Services, (e) Avaya's compliance with any designs, specifications, requirements or instructions provided by Customer or a third party on Customer's behalf, (f) Customer Content (g) trial or beta use of the Cloud Service, or (h) services Customer provides based on the Cloud Service. In the event a claim is made or likely to be made, Avaya may, (i) procure for Customer the right to continue using the Cloud Service under the terms of these Cloud Services Terms, or (ii) replace or modify the Cloud Service to be non-infringing without material decrease in functionality. If these options are not reasonably available, Avaya may terminate the Cloud Service upon written notice to Customer and refund Customer a pro rata portion of the price Customer may have pre-paid to Avaya for the Cloud Service for the remainder of the unexpired term.
- 8.2 Customer' Defense and Indemnification Obligations.** Customer will defend and indemnify Avaya and its Affiliates, and their respective officers, directors, employees, contractors, suppliers, licensors, partners and agents (each, an "Avaya Indemnified Party") against third party claims brought against an Avaya Indemnified Party arising from (a) Customer's or its end users use of the Cloud Service in a manner not expressly authorized by these Cloud Services Terms or that is in violation of applicable law; (b) Customer Content or Applications or the combination of these with other applications, content or processes; and (c) any dispute between Customer and its end users, clients or third parties (d) Customers or its employees' or agents' negligence or willful misconduct. Customer will defend and indemnify the applicable Avaya Indemnified Party against all damages finally awarded against the Avaya Indemnified Party (or the amount of any settlement entered into by Customer) with respect to such claims.
- 8.3 Indemnification Procedures.** The party against whom a third party claim is brought will (a) timely notify the other party in writing of the claim (provided, that the failure to provide timely notice shall not relieve the indemnifying party of its obligations under this Section unless the indemnifying party's defense of such claim is materially prejudiced by such failure), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. The party that is obligated to defend a claim will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not

include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

- 8.4 **Exclusive Remedy.** THE FOREGOING STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INDEMNIFICATION CLAIMS UNDER THIS SECTION. THE FOREGOING ALSO IS IN LIEU OF, AND AVAYA DISCLAIMS, ALL WARRANTIES OF NON-INFRINGEMENT WITH RESPECT TO THE SERVICE AND ANY OTHER AVAYA INTELLECTUAL PROPERTY.

## 9. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH AND LIMITED HEREIN AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA PROVIDES NO WARRANTIES, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICE, INCLUDING ANY WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER AVAYA, NOR ITS LICENSORS, NOR ITS SUPPLIERS WARRANTS THAT: (A) CUSTOMER'S USE OF THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS; (B) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR FREE FROM ERROR OR VIRUSES; (C) THAT CUSTOMER'S USE OF THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, OR DELETION OF CUSTOMER OR THIRD PARTY DATA; (D) THAT THE CLOUD SERVICES WILL PREVENT TOLL FRAUD; (E) INFORMATION OR CONTENT PROVIDED TO CUSTOMER THROUGH THE USE OF THE CLOUD SERVICES WILL BE ACCURATE OR RELIABLE; (F) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (G) THE SERVICE WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

## 10. LIMITATION OF LIABILITY

FOR PURCHASES THROUGH A PARTNER, THE LIMITATION OF LIABILITY IS SET FORTH IN YOUR AGREEMENT WITH THE PARTNER.

FOR PURCHASES DIRECTLY FROM AVAYA, THE FOLLOWING APPLIES: EXCEPT FOR CLAIMS OF PERSONAL INJURY, WILLFUL MISCONDUCT, INFRINGEMENT OF AVAYA'S OR ITS SUPPLIERS' OR LICENSORS' INTELLECTUAL PROPERTY RIGHTS, AND/OR TO THE EXTENT OF THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THESE CLOUD SERVICES TERMS, IN NO EVENT WILL AVAYA AND ITS AFFILIATES AND LICENSORS OR SUPPLIERS, OR CUSTOMER, BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OTHERWISE FOR: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) TOLL FRAUD, ANY LOSS OF PROFITS, REVENUE, REPUTATION, GOODWILL, OR ANTICIPATED SALES OR SAVINGS, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE, EVEN IF AVAYA OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL LIABILITY OF AVAYA, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS COLLECTIVELY FOR CLAIMS ARISING OUT OF THESE CLOUD SERVICES TERMS, CUSTOMER'S ORDER, OR THE SERVICE SHALL NOT EXCEED THE FEES PAID TO AVAYA FOR THE SERVICE DURING THE TWELVE (12) MONTHS BEFORE THE LAST EVENT THAT GAVE RISE TO THE CLAIM. THE LIMIT IS IN THE AGGREGATE AND NOT PER INCIDENT.

NOTHING IN THESE CLOUD SERVICES TERMS LIMITS OR EXCLUDES LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

## 11. EXTERNAL LINKS AND THIRD-PARTY SERVICES

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

## 12. SOFTWARE LICENSE TERMS AND UPDATES

12.1 If use of the Cloud Service requires Customer to download Software or Software is otherwise made available to Customer, such Software is licensed pursuant to (a) the terms made available to Customer when Customer downloads or installs the Software, or (b) if no such terms exist, then the EULA in effect as of

the Service Activation Date will apply for the sole purpose of using the Cloud Service, and solely for the duration of the Service Period.

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

## 13. RECORDING

If conferences are applicable to the Cloud Service the laws of certain states, provinces or countries require that if a conference is to be recorded, all participants in the conference must be informed of that prior to the recording taking place, so they may consent to being recorded (if required by applicable laws) in the relevant jurisdictions when using recording features. Customer shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Customer's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Avaya shall have no liability to Customer or any user or third party if consent is not obtained.

## 14. DATA PRIVACY

FOR PURCHASES THROUGH THROUGH A PARTNER, THE LIMITATION OF LIABILITY IS SET FORTH IN YOUR AGREEMENT WITH THE PARTNER.

FOR PURCHASES DIRECTLY FROM AVAYA, THE FOLLOWING APPLIES: Avaya respects Customer's privacy and will only use information provided by Customer to Avaya or collected in the provision of the Cloud Services in accordance with Avaya's data privacy policies. To the extent Avaya processes Personal Data on behalf of Customer, the most current Avaya DPA, published on <http://support.avaya.com/TermsOfSale> at the time of the particular order, applies and is incorporated herein by reference. The DPA is considered a Supplemental Term, if applicable.

## 15. EMERGENCY SERVICES, HIPAA and PCI DISCLAIMERS

CUSTOMER HAS READ, UNDERSTOOD, AND AGREES, UNLESS OTHERWISE STATED HEREIN OR IN THE SUPPLEMENTAL TERMS THAT:

- A. THE CLOUD SERVICE, AS PROVIDED BY AVAYA, IS NOT CONFIGURED TO SUPPORT OR PROVIDE EMERGENCY CALLS OR COMMUNICATIONS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO 112, 999, 911 AND E911 SERVICE. TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW, AVAYA AND ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS WILL HAVE NO LIABILITY FOR ANY SUCH CALLS OR COMMUNICATIONS, AND CUSTOMER WAIVES ALL CLAIMS AGAINST AVAYA RELATED TO ANY SUCH CALL OR COMMUNICATIONS.
- B. THE CLOUD SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS ("HIPAA").
- C. THE CLOUD SERVICE DOES NOT COMPLY WITH THE REQUIREMENTS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ALSO REFERRED TO AS PCI OR PCI DSS.

## 16. GENERAL

**Message Routing.** Customer may not use phone numbers provided by Avaya to route Short Messaging Service ("SMS") messages over any other provider's network. All SMS messages sent and received for an Avaya number must be sent and received via the Cloud Services. If Customer uses SMS it is Customer's responsibility to ensure that if Customer initiates any unsolicited SMS, Customer provides Customer's end user with the option to opt in or opt out of receiving those messages as required by applicable law.

## 17. OFFER-SPECIFIC TERMS

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

- 17.1 Customer may install, copy, and use as necessary any Properties, solely in connection with Customer's use of the Service. Customer may not display or otherwise commercially exploit the Properties in any manner unless Customer obtains Avaya's prior written consent.
- 17.2 Customer will not use, and will not authorize any third party to use, any Public Software in connection with Communications API offer in any manner that requires, pursuant to the license applicable to such Public Software, that the Communications API offer (including without limitation any Properties) be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients.
- 17.3 Customer shall ensure that (i) Customer's Application do not violate Avaya's AUP, and (ii) Customer's Application accurately and adequately discloses, either through a privacy policy or otherwise, how Customer collects, uses, stores, and discloses data collected from visitors, including, where applicable,



that third parties (including advertisers) may serve content and/or advertisements and collect information directly from visitors and may place or recognize cookies on visitors' browsers.

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

## 18. MISCELLANEOUS

**18.1 Compliance.** Customer shall not import/export, re-export and/or transfer any work product or content of the Service when accessing and/or using Service in violation of International Trade Laws and regulations. In that regard, Customer represents and warrants that: (a) Customer shall obtain any export, re-export, or import authorizations as required; (b) Customer shall not use the Service, content, or work product from Avaya's Service to design, develop, produce or support missile, chemical/biological, or nuclear weaponry; and (c) neither Customer nor anyone acting on Customer's behalf who accesses or uses the Service, content or work product from Avaya's Service are subject to any sanctions programs.

**18.2 Avaya's Ethics, Compliance and Corporate Responsibility.** Avaya is committed to ethical business conduct and corporate responsibility. We strive to perform in accordance with the Avaya Supplier Code of Conduct found at [https://www.avaya.com/en/documents/supplier\\_code\\_conduct.pdf](https://www.avaya.com/en/documents/supplier_code_conduct.pdf).

### 21.8 Order of Precedence.

If conflicting or inconsistent terms cannot reasonably be read as non-conflicting, consistent and supplemental, the following descending order of precedence will be: (i) Service Description; (ii) AUP; (iii) these Cloud Services Terms and (iv) any other document expressly referred to in these Cloud Services Terms which governs the Cloud Services.

**21.9 Changes to Cloud Services Terms.** Avaya may modify these terms at any time and at its sole discretion by posting the modified terms on <https://www.avaya.com/en/legal-license-terms/> (or such successor site as designated by Avaya). Changes to these Cloud Services Terms will be effective as of the date they are posted unless otherwise stated by Avaya. Customer is responsible for checking for any Cloud Services Terms updates and Customer's continued use of the Cloud Service means that Customer accepts and agrees to any revised terms. In the event Customer does not agree to any such modification, Customer's sole and exclusive remedy is to discontinue using the Cloud Service and terminate these Cloud Services Terms by providing written notice to Avaya of its intent to terminate within fifteen (15) days after Avaya posts the modified terms. In the event Customer notifies Avaya of its intent to terminate these Cloud Services Terms during such fifteen (15) day response period, these Cloud Services Terms shall terminate, and Customer shall cease use of the Cloud Service, effective as of the last day of the billing period during which the Customer notified Avaya of its intent to terminate.

## 22. DEFINITIONS

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

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

**"Avaya Intellectual Property"** means collectively rights, title and interest in and to any intellectual property in the Services, as well as any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it.

**"Avaya Tools"** means items that Avaya lends or makes available to Customer for purposes of the Order (e.g., Secure Access Link, etc.).

**"Customer Content"** means the content of all data, information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by Customer or Customer personnel, including Other Users Content, while utilizing the Service.

**"Effective Date"** means the date in which Avaya accepts an Order or the provision of Cloud Services begins, whatever happens first.

**"External Services and Sites"** means non-Avaya websites, content, or resources or otherwise interface or work with third party services which are not maintained or controlled by Avaya.

**"Feedback"** means comments or suggestions.

**"Initial Term"** means the term of the Cloud Services that is indicated in Customer's order and commences upon the date the Service is available for Customer's use.

**"International Trade Laws"** means all applicable import, export, re-export, in-country transfer, and other foreign trade control statutes, laws, regulations, enactments, directives, and ordinances of any governmental authority with jurisdiction over such International Trade Laws.

**"Matrix"** means the chart that is posted on the following website (or such successor site): <http://support.avaya.com/TermsOfSale> and referred to as the Cloud Matrix that indicates the Schedules and Supplemental Terms that apply to a specific Service. Avaya reserves the right to update the Matrix.

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

**"Order"** means an order placed by the Customer to Avaya or Partner setting out the Cloud Services being purchased by the Customer, and that has been accepted by Avaya by: electronic mail or other agreed upon means of electronic communications (to addresses provided by Customer to Avaya) or upon commencement of Cloud Services performance, or, where the Order has been placed with the Partner, flowed down to and accepted by Avaya in accordance with Avaya's agreement with the Partner.

**"Other Users' Content"** means the content of any information and communications, whether visual, written, audible, or of another nature, sent, displayed, uploaded, posted, published, or submitted by other users while interacting with the Cloud Service, including, without limitation, likenesses or photo images, advertisements or sponsored content.

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

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

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

**"Service Description"** means the applicable description of the Cloud Services then current as of the date of Customer's ordering of the Cloud Services which is incorporated by reference and is available to Customer upon request or via links in the Matrix.

**"Service Period"** means the period of time in which Avaya is providing Cloud Services to Customer, whether the Initial Term or Renewal Term.

**"Supplemental Terms"** means, individually or collectively, the Use Policies and Service Descriptions.

**"Third-Party Product"** means any product made or provided by a party other than Avaya, including products ordered by Customer from third parties, products provided by Avaya that are recognizable as standalone items, and products identified as separate items on Avaya's price list, quotes, order specification forms or Documentation.

**"Third-Party Service"** is any service provided by a party other than Avaya or an Avaya subcontractor.

**"Traffic Data"** means user billing data and/or metadata, including Caller ID, name, number dialed, duration of call, landline or mobile originated call, SMS send / receive destinations.

**“Use Policies”** means the policies or additional terms that are incorporated in these Cloud Services Terms and apply to the provision of certain Cloud Services as identified herein and in the Matrix.