

Terms of Use for Avaya Spaces

Version: May 2022.

These terms of use ("TOU") are a legal agreement between you ("You", "Your" or "Yourself") and Avaya Cloud Inc., having an office at 350 Mount Kemble Ave., Morristown, NJ 07960 USA or the applicable Avaya global affiliate ("Avaya"). Your access to and use of Avaya Spaces ("Services") as further described below is subject to, and governed by, these TOU, except to the extent You have a separate written agreement with Avaya governing the use of this Service

IMPORTANT: The Service is restricted to commercial use for trade purposes only and personal or household use unrelated to a commercial transaction or activity is prohibited. These terms are an agreement that limit Your rights and Avaya's obligation, and require arbitration of disputes and a class action waiver where permitted. The Service, and certain features and functionality may also be subject to additional terms applied to certain uses of the Service and such additional terms shall be supplemental to this TOU. Do not use the Service if you do not agree.

1. Access To and Use of the Services

- 1.1 Registration.** To access the Service, You may be asked to provide certain valid and up-to-date information, including, without limitation, email or physical addresses or other Personal Data, before any use of, or access to, the Service will be permitted. You agree that any registration information shall be accurate, correct, and up to date. You agree to promptly update such information as needed, including but not limited to the physical location of each user. You shall be solely responsible for all activities that occur under Your account or subscription.
- 1.2 Qualifications.** By accepting the TOU, You represent and acknowledge that You are at least the age of majority where you reside and, based on applicable laws, You have a right and all required permissions (if any) to enter into and full perform your obligations under the TOU and that you will only use the Service in the course of commercial activities, which includes receipt of, or communications about, products or services from another user of the Service.
- 1.3 No Guaranty of Services.** Avaya reserves the right to do any of the following, at any time, without prior notice: (i) to modify, suspend or terminate operation of or access to the Services, or any portion of the Services for any reason; (ii) to modify or change the Services, or any portion of the Services ; (iii) to interrupt the operation of the Services, or any portion of the Services, as necessary to perform routine or non-routine maintenance, error correction, or other changes; or (iv) to immediately suspend or terminate Your access to the Services or any portion of the Services.
- 1.4 Acceptable Use Policy.** You shall comply with the Acceptable Use Policy ("AUP") posted at <http://support.avaya.com/LicenseInfo> as applicable (or such successor site as designated by Avaya).

2. Privacy and Data Use.

- 2.1** Specific Personal Data categories to be collected and processed within the Services are disclosed in the "Privacy Factsheet" available for a review here <https://spaces.avayacloud.com/privacy>. You consent to our data practices as set forth in the Privacy Factsheet that is then posted each time you use the Service. You represent and warrant that you will not make any data or other content available to or through the Services for which you do not have all rights and consents necessary to do so consistent with these TOU and our Privacy Factsheet.

2.2 Relationship. You and Avaya agree that (i) Avaya is the Data Processor (the Service Provider) of Your Personal Data and You are the Data Controller (the Business), (ii) Avaya will make the Services available to You in a manner consistent with the functionality of the Services.

2.3 Data Processing Addendum. To the extent Avaya processes Personal Data on Your behalf, the most current Avaya Data Processing Addendum, published on <http://support.avaya.com/TermsOfSale> (or a successor site), applies and is incorporated herein by reference.

3. Intellectual Property.

3.1 Copyright. Avaya and its licensors own all copyrights and all other Intellectual Property rights related to the Services. All rights not expressly granted herein are reserved by Avaya. "Intellectual Property" means any and all: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, algorithms, designs and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

3.2 Digital Millennium Copyright Act. It is Avaya's policy to respond to notices of alleged copyright infringement (including, without limitation, in the United States the Digital Millennium Copyright Act) and, where appropriate and at Avaya's sole discretion, to terminate the accounts or subscription of repeat infringers. If You would like to send Avaya an alleged copyright infringement notice as it pertains to the Services, go to the following link <http://support.avaya.com/AvayaCopyrightAgent> (or such successor site as designated by Avaya) and follow the instructions on how to get in touch with Avaya (if You have trouble accessing this link, then You may contact Avaya for further information at copyrightagent@avaya.com with the subject line: "DCMA Takedown Request" or by mail to:

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

3.3 Trademarks. Avaya and the Avaya logo are trademarks or service marks, registered or not, of Avaya. All other trademarks are the property of their respective owners.

4 License Grant and Data that You Provide.

4.1 You acknowledge that You are solely responsible for the User Content (which shall mean any content You post, upload, display, send, or submit to the Services) and that You, and not Avaya, will have full responsibility for the User Content, including its legality, reliability, appropriateness, originality and copyright. Avaya reserves the right to refuse, flag, filter, or remove any User Content transmitted to the Services, including any of Your User Content, which Avaya, in its sole discretion, deems inconsistent with the TOU, including any User Content Avaya has been notified or has reason to believe constitutes Intellectual Property or any other infringement. Notwithstanding any other provision in the TOU, Avaya may take any such action(s) without notice or liability to You or any other party, although Avaya will have no obligation or responsibility to take any such action or review User Content that is transmitted to the Services. Accordingly, Avaya assumes no liability for any action or

inaction regarding transmissions, communications, or content provided by You or any third parties. AVAYA DISCLAIMS ALL WARRANTIES WITH REGARD TO THIRD PARTY CONTENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

- 4.2** Subject to the terms and conditions of these TOU, Avaya grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable, right to use the Service, such as, and on such additional terms as, we may make it available to you from time-to-time SOLELY FOR COMMERCIAL TRADE PURPOSES, and not for personal or household purposes other than to engage in, or related to, a commercial transaction with another user. While a user may use the Service to help facilitate commercial transactions with other users, no user may act as a service bureau, resell the Services or use the Services in any manner that, in Avaya's sole discretion, competes with or harms Avaya.

5 Restrictions.

- 5.1** You acknowledge that Avaya expressly prohibits and You agree not to: (a) use the Services (including by transmitting User Content), in a manner that is (i) actually or potentially false, inaccurate, misleading, libelous, defamatory, threatening, harmful, abusive, harassing, discriminatory, hateful, vulgar, sexually-oriented, indecent, obscene, otherwise objectionable, in violation of any third party Intellectual Property rights (including, without limitation, the infringement of any copyright, trademark, trade secret or other Intellectual Property right of others) or privacy rights of any person, or is otherwise unlawful under any applicable law or regulation or (ii) for personal or household purposes or otherwise outside of commercial trade activities; (b) misrepresent an affiliation with, or otherwise impersonate, any person or organization; (c) include on the Services any content that cannot be distributed legally over the Services; (d) take any action to circumvent or attempt to circumvent the security and access control measures of the Services; (e) use any robot, spider or other program or device to retrieve or index any portion of the Services; (f) distribute, reproduce, duplicate, copy, transfer, modify, license, sell, trade, or resell any content, unless Avaya expressly agrees otherwise in writing; (g) use any trademark, service mark, trade name, or logo of any company or organization in conjunction with the Services in a manner that is likely or intended to cause confusion about the owner or authorized user of such mark, name, or logo; (h) modify, reverse engineer, disassemble, decompile or otherwise attempt or allow others to attempt to discover the underlying computer code for the Services or (i) engage in any other conduct that (1) restricts, prevents or inhibits anyone's use or enjoyment of the Services, or which, as determined by Avaya, may harm Avaya or users of the Services or expose them to liability; (2) interferes with, disrupts, disables, damages, or overburdens the Services or associated servers, networks, or software; or (3) damages any Avaya or third party property, information or software, including, without limitation, Avaya's confidential information and User Content.
- 5.2** Avaya has the right, but not the duty, to investigate and take any action it deems appropriate, including but not limited to termination or suspension of Your access to the Services, without notice or liability, for any conduct that Avaya, in its sole discretion, believes is in violation of the TOU or any applicable law or regulation or is harmful to the interests of another user, a third-party provider, or a service provider or Avaya. BY ACCEPTING THE TOU YOU WAIVE AND HOLD HARMLESS AVAYA FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND/OR FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER AVAYA OR LAW ENFORCEMENT AUTHORITIES.

6 Hyperlinks

- 6.1** The links on the Services may let You leave it. The linked sites may not be under the control of Avaya and Avaya is not responsible for the contents of any linked site or any link contained in a linked site, or any changes

or updates to such sites. Avaya is not responsible for webcasting or any other form of transmission received from any linked site. Avaya is providing these links to You only as a convenience, and the inclusion of any link does not imply endorsement by Avaya of the site. Your use of any linked site is at Your own risk and is subject to the terms of use and privacy policies located on such site.

- 6.2** Users interact with other users via the Services. Without limitation a user may use the Service to provide a commercial service to other users (e.g., e-learning, training, etc.). The users providing those services that make use of the Services to facilitate communication or distribution of or related to their own products or services, and not Avaya, are responsible for such users' use of the Service and for their activities, products and services, including without limitation their content, data collection, terms of sale and service, warranties, etc. Your use of the Service to interact with other users of the Service is at Your own risk and is subject to the terms and conditions and privacy policies of the other user(s).

7 International Trade Compliance.

- 7.1** The United States, Canada, and Wassenaar Arrangement ("WA") Member States in addition to the World Trade Organizations ("WTO") and World Customs Organizations ("WCO") may prohibit and or impose specific requirements for the import and export of certain technical data and software. No content from the Services may be downloaded or otherwise imported and/or exported in violation of United States, Canada, WA, WTO and WCO rules and regulations or any other local law from where You may be accessing the Services. You agree to comply with all domestic and foreign local laws and regulations applicable to the use of the Services. Users residing in countries on the United States embargo lists including Cuba, Iran, and North Korea, -, or who are a foreign person or entity blocked or denied by the any US or Foreign government agency may not use or access the Services or any information or content available through the Services. You warrant and represent that You are not residing in a sanctioned country nor are You identified on any government agency list or are a foreign person or entity blocked or denied by the United States, Canada, and / or WA Member States to engage in international trade transactions.
- 7.2** **Other jurisdictions.** It is forbidden to access the Services from territories where the legislation provides that the content or use of the Services is illegal. You choose to use the Services at Your own risk and on Your own initiative, and it is Your responsibility to ensure that You conform to all applicable local laws and regulations.

8 Disclaimers (to the fullest extent not prohibited by applicable law).

- 8.1** AVAYA ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF THE SERVICES. AVAYA MAY CHANGE THE SCOPE AND AVAILABILITY OF THE SERVICES AT ANY TIME WITHOUT NOTICE TO YOU. THE SERVICES ARE PROVIDED "AS IS" AND AVAYA DOES NOT PROVIDE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. AVAYA SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES OR ANY CONTENT OR MATERIAL AS PART OF THE SERVICES.
- 8.2** AVAYA MAKES NO WARRANTY THAT (i) THE SERVICES WILL MEET YOUR EXPECTATIONS / REQUIREMENTS; (ii) ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; (IV) ANY ERRORS IN THE SERVICES WILL BE CORRECTED; THE SERVICES ARE APPROPRIATE OR AVAILABLE FOR USE THROUGHOUT THE WORLD FOR THE TRANSACTIONS YOU WANT TO COMPLETE OR THIRD PARTIES YOU WANT TO INTERACT WITH.
- 8.3** YOU AGREE TO ASSUME SOLE RESPONSIBILITY FOR ALL ACTIVITIES THAT OCCUR UNDER YOUR ACCOUNT, AND YOU ACKNOWLEDGE THAT AVAYA WILL NOT BE RESPONSIBLE FOR THE PRIVACY PRACTICES OF WHO YOU INTERACT WITH THROUGH THE SERVICES.

9 Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVAYA, ITS WORLDWIDE AFFILIATES/SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, PARTNERS, LICENSORS OR SUPPLIERS MAY NOT, UNDER ANY CIRCUMSTANCES BE HELD LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF (OR THE INABILITY TO USE) THE SERVICES OR ANY MATERIAL ON THE SERVICES, INCLUDING BUT NOT LIMITED TO USER CONTENT. THIS LIMITATION OF LIABILITY INCLUDES, BUT IS NOT LIMITED TO, WHETHER AS A RESULT OF DIRECT OR INDIRECT DAMAGES, THE LOSS OR CORRUPTION OF DATA, INFORMATION OF ANY KIND, BUSINESS OR PROFIT OR ANY OTHER COMMERCIAL LOSS, EVEN IF AVAYA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR PERSONAL INJURY CLAIMS AND WILLFUL MISCONDUCT, IN NO EVENT SHALL AVAYA'S TOTAL LIABILITY TO YOU IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THESE TOU OR THE SERVICES SERVICE EXCEED THE GREATER OF (A) THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES (IF ANY) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES WHICH GAVE RISE TO SUCH DAMAGES, OR (B) FIVE HUNDRED DOLLARS (\$500). THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SUB-SECTION 9 WILL APPLY EVEN IF ANY LIMITED REMEDY PROVIDED IN THE TOU IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. THIS SUB-SECTION 9 WILL ALSO APPLY TO ANY LIABILITY OF AVAYA'S RELATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, PARTNERS, LICENSORS AND SUPPLIERS.

10 Indemnification.

You agree to defend, indemnify and hold harmless Avaya and its global affiliates, representatives, partners, licensors, suppliers, agents, directors and employees from and against any and all liabilities, claims, losses, damages, costs and expenses, including reasonable attorneys' fees, whether direct or consequential (including without limitation any economic loss or other loss of profits, business or goodwill), that arise out of or in connection with (a) Your use in any way of the Services , including without limitation in a manner that is not authorize by the TOU or applicable law; (b) any transaction related to User Content; or (c) a breach of the TOU, including, but not limited to infringement or violation of any Intellectual Property or other right of any person or entity in connection with Your use of the Services.

11 Assignment.

The TOU may not be assigned or transferred by You without the prior written consent of Avaya. Avaya may assign the TOU to any affiliate or third party in part or in whole.

12 Governing Law and Disputes.

12.1 Governing Law. The TOU 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. Sections 12.2 to 12.6 shall be governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and not by the law of any state to the contrary and is enforceable pursuant to its terms on a self-executing basis. This Section 12 can only be amended by mutual written agreement. Either party may seek enforcement of this Section 12 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

12.2 **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 9 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. You and Avaya agree that we intend that Section 12 satisfies the "writing" requirement of the Federal Arbitration Act.

12.3 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 Sub-Section 12.3 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.

12.4 Time Limit. Actions on Disputes between the parties must be brought in accordance with this Section 12 within two years after the cause of action arises.

12.5 Exceptions. There are two exceptions to this agreement to arbitrate: (a) 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; and/or (b) 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.

12.6 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.

13 Changes to these TOU.

Avaya may modify these TOU at any time at its sole discretion to the extent required to comply with, among other things (a) laws or regulations applicable to the Services, (b) governmental orders, (c) modifications to the Services, (d) obligations imposed by Avaya suppliers, by posting the modified TOU on the Services and / or upon notice to You via email or through some other means designated by Avaya. Changes to these TOU will be effective as of the date Avaya posts them or, at Avaya's discretion, issues the notice to You of such change, unless Avaya specifies a different effective date when Avaya makes a particular change. You are solely responsible for checking for any updates for the TOU. Your continued use of the Services means that you prospectively accept and agree to any revised TOU. In the event You do not agree to any such modification, Your sole and exclusive remedy is to discontinue using the Services and terminate these TOU by providing written notice to Avaya or requesting to delete Your account within thirty (30) business days after Avaya notifies You of (or posts) the modified TOU.

14 Recording.

If conferences are applicable to the Service You are subscribing to, You acknowledge that 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. You acknowledge and agree that You shall be solely responsible for complying with the local laws in the relevant jurisdictions when using recording features (this includes Your 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 You or any user or third party if consent is not obtained.

15 Entire Agreement.

15.1 This constitutes the entire agreement between the parties with respect to the Services and its use and supersedes all prior agreements, proposals, communications between the parties and understandings, whether written or oral.

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

16 Contacting Avaya.

If You have any questions or concerns about the TOU, please contact Avaya at lglnoticescomm@avaya.com or at the mailing address provided below:

by US Postal Mail at
Avaya Cloud Inc
Attn: Director of Contracts
350350 Mount Kemble Ave
Morristown, NJ 07960