

AVAYA BUSINESS ASSOCIATE ADDENDUM

This Avaya Business Associate Addendum (“**Addendum**”) is an agreement between Avaya Cloud Inc. and/or Avaya LLC (individually and collectively hereinafter “**Avaya**”) and You or the entity You represent (“**You**” or “**Your**”) (each a “**Party**” and, collectively, the “**Parties**”), and is an addendum to the agreement (the “**Agreement**”) by and between You and Avaya pursuant to which You have ordered one or more HIPAA-compliant services from Avaya, limited to those identified in <https://www.avaya.com/en/trust-center-compliance/> (“HIPAA Services List”) (the “**Service**” or “**Services**”). This Addendum is effective as of the date Avaya accepts Your order for the Service.

WHEREAS, You are a Covered Entity and/or Business Associate and Avaya is a Business Associate or Subcontractor Business Associate to You;

WHEREAS, pursuant to the Agreement, You may disclose certain Protected Health Information (“**PHI**”) to Avaya or Avaya is to create, receive, transmit, or maintain PHI for or on behalf of You;

WHEREAS, to the extent the Agreement includes one or more Services among those listed at <https://www.avaya.com/en/trust-center-compliance/> (“HIPAA Services List”), the Parties agree that the Avaya entity(ies) that provide(s) the Service, as identified in the HIPAA Service List, shall be the sole Avaya affiliate(s) bound by this Addendum (and that no other Avaya affiliates shall be subject to this Addendum or have any liability under this Addendum).

WHEREAS, in order to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“**HITECH Act**”), and the final regulations to such Acts as set forth in 45 C.F.R. Parts 160, 162, and 164 (collectively, the “**HIPAA Rules**”), the Parties wish to enter into this Addendum;

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

I. Definitions.

A. Electronic Protected Health Information (“ePHI”). “Electronic Protected Health Information” or “ePHI” shall have the same meaning as the term “Electronic Protected Health Information” in 45 C.F.R. §160.103, limited to the information created, received, transmitted, or maintained by Avaya on behalf of or for You in connection with the Agreement and this Addendum.

B. Protected Health Information (“PHI”). “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. §160.103, limited to the information created, received, transmitted, or maintained by Avaya on behalf of or for You in connection with the Agreement and this Addendum.

C. Other Terms. The following terms shall have the meanings provided under the HIPAA Rules: Breach, Business Associate, Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other terms that are used but not otherwise defined in this Addendum shall have the same meaning as given to those terms in the HIPAA Rules. A regulatory reference in this Addendum means the section as in effect or as amended, and for which compliance is required.

II. Avaya's Obligations.

A. Permitted Use and Disclosure of PHI. Avaya shall not use or disclose PHI except as permitted herein. Avaya may use and disclose PHI as permitted by this Addendum and to perform the Services. To the extent that Avaya is to carry out one or more of Your obligations under 45 C.F.R. Part 164, Subpart E, Avaya shall comply with the provisions in 45 C.F.R. Part 164, Subpart E that would apply to You in the performance of such obligations. Avaya shall not use or disclose PHI in any manner that would constitute a violation of the HIPAA Rules if done by You, except that Avaya may:

1. Use PHI for the proper management and administration of Avaya or to carry out its legal responsibilities;
2. Disclose PHI for the proper management and administration of Avaya or to carry out its legal responsibilities, if (a) such disclosure is Required By Law, or (b) if Avaya obtains reasonable assurances from the recipient that the recipient will (i) keep the PHI confidential, and will use or further disclose the PHI only as Required By Law or for the purpose for which it was disclosed to the recipient, and (ii) notify Avaya of any instance of which the recipient is aware in which the confidentiality of the PHI has been breached;
3. Use or Disclose PHI to provide Data Aggregation services to You, if requested by You or if specified in the Agreement; and
4. Use or Disclose PHI to report violations of the law or as otherwise Required By Law.

B. Agents & Subcontractors. Avaya may use agents or subcontractors to fulfill its obligations under this Addendum and the Agreement. Avaya agrees to ensure that any agents or subcontractors that create, receive, maintain, or transmit PHI on behalf of Avaya agree in writing to comply with the requirements, restrictions and conditions required by the HIPAA Rules that apply to Avaya with respect to such PHI.

C. Safeguards. Avaya shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, as required by the HIPAA Rules. Avaya shall comply with the applicable requirements in 45 C.F.R. Part 164, subpart C with respect to Electronic PHI.

D. Minimum Necessary. If applicable, Avaya shall take reasonable steps to request, use and disclose the minimum necessary amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

E. Breaches and Security Incidents.

1. Breach Reporting: Subject to Your compliance with Section II.E.3, Avaya shall report to You any use or disclosure of PHI not permitted by this Addendum, including any Breach of Unsecured PHI, without unreasonable delay, but in no event later than thirty (30) calendar days of discovery. Avaya shall provide the following information as part of the report if known at the time, or promptly thereafter:
 - i. the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Avaya to have been, accessed, acquired, used or disclosed;
 - ii. the date of the Breach;
 - iii. the date of the discovery of the Breach;
 - iv. a description of the types of PHI that were involved; and
 - v. any other details reasonably needed by You to fulfill Your obligations under the HIPAA Rules or other applicable law.
2. Security Incident Reporting: Breach Reporting: Subject to Your compliance with Section II.E.3, Avaya shall report any Security Incident to You within a reasonable amount of time after such Security Incident occurs. Notwithstanding the foregoing, the Parties agree that this Addendum serves as notification, and that no further notification is required, of the ongoing existence of Unsuccessful Security Incidents. For purposes of this Addendum, an Unsuccessful Security Incident shall include, without limitation, activity such as pings and other broadcast attacks on Avaya's firewall, port scans, unsuccessful log-on attempts, denial of service, and any combination of the above, so long as such activity does not result in unauthorized access, use, acquisition, or disclosure of PHI. Avaya shall report a Security Incident that results in actual unauthorized access, use, acquisition, or disclosure to You pursuant to Section II.E.1.
3. Reporting Contact: In order to receive the reports set forth in Sections II.E 1 and 2, You must provide the name, title, email address, mailing address, and telephone number for one (1) individual at Your company who will receive any reports contemplated by this Addendum. It is Your obligation to keep this information updated. This required contact information and any updates thereto must be sent to lglnoticescomm@avaya.com with a Subject Line of "HIPAA BAA Contact Information". Avaya shall have no liability to You for Your failure to create or maintain the required contact information.

F. Access to PHI. The Parties do not intend for Avaya to possess PHI in a Designated Record Set. To the extent that Avaya possesses PHI in an applicable Designated Record Set, and within a reasonable amount of time (but not to exceed fifteen (15) days) of receipt of a request from You to access such PHI, Avaya shall transmit such PHI to You to enable You to fulfill its obligations under 45 C.F.R. § 164.524. If an Individual requests access to PHI directly from Avaya, Avaya will forward such a request in writing to You within a reasonable amount of time (but not to exceed fifteen (15) days). You will be responsible for making all determinations regarding the granting or denial of an Individual's request, and Avaya shall make no such determinations. If Avaya maintains PHI in electronic form, Avaya shall reasonably cooperate with You to provide such PHI in electronic format to You if requested.

G. Amendment of PHI. The Parties do not intend for Avaya to possess PHI in a Designated Record Set. To the extent that Avaya possesses PHI in an applicable Designated Record Set, and within a reasonable amount of time (but not to exceed fifteen (15) days) of receipt of a request from You, Avaya shall make the PHI available to You to make amendments and shall incorporate any amendments directed by You in accordance with 45 C.F.R. § 164.526. Within a reasonable amount of time of receipt of a request by an Individual to Avaya to amend PHI (but not to exceed fifteen (15) days), Avaya shall forward to You any such requests. You shall be responsible for making all determinations regarding amendments to PHI, and Avaya shall make no such determinations.

H. Accounting. Avaya shall document such disclosures of PHI as would be required for You to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Within a reasonable amount of time of receipt of a notice from You requesting an accounting of PHI disclosures (but not to exceed thirty (30) days), Avaya shall provide You with records of such disclosures containing the information outlined in 45 C.F.R. § 164.528(b). Within a reasonable amount of time of receipt of a request by an Individual to Avaya for an accounting of disclosures of PHI (but not to exceed fifteen (15) days), Avaya shall forward to You any such requests in writing. You shall be responsible for providing an accounting of PHI disclosures to the Individual. Avaya will not provide an accounting of its disclosures directly to the Individual.

I. Government Access. Upon request, Avaya shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary to the extent required for determining Your compliance with the HIPAA Rules.

III. Limitation on Liability

IN NO EVENT WILL AVAYA OR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS, OR CONTRACTORS BE LIABLE TO YOU, YOUR EMPLOYEES OR ANY OTHER THIRD PARTY FOR LOST PROFITS, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE AND REGARDLESS OF WHETHER AVAYA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY REMEDY. NOTWITHSTANDING ANY PROVISION IN THE AGREEMENT TO THE CONTRARY, AVAYA'S MAXIMUM LIABILITY TO YOU, YOUR

EMPLOYER, EMPLOYEES, OR ANY OTHER THIRD PARTY RELATED TO OR ARISING OUT OF THIS ADDENDUM SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO AVAYA DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO AVAYA'S LIABILITY THEREFORE.

IV. Your Obligations.

A. Limitations, Permissions, and Restrictions. You shall notify Avaya of any limitation(s) in Your notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Avaya's use or disclosure of PHI. You shall notify Avaya of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such change may affect Avaya's use or disclosure of PHI. You shall notify Avaya of any restrictions to the use or disclosure of PHI that You have agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Avaya's use or disclosure of PHI.

B. Minimum Necessary. You shall disclose to Avaya only the minimum necessary amount of PHI for Avaya to accomplish the intended purpose of the disclosure.

C. Appropriate Requests. You shall not request that Avaya use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by You.

V. Term and Termination.

A. Term. This Addendum shall become effective on the date of Effective Date and shall terminate at the time of the termination or expiration of the Agreement or as otherwise provided in this Addendum, whichever occurs first.

B. Automatic Termination. Avaya may from time-to-time offer for sale or use additional features, capabilities, or services ("**Add-Ons**") to the Services that that may or may not be compliant with HIPAA. The documentation for these Add-Ons will identify the compliance status of the Add-On. Customer acknowledges and agrees that its purchase of a non-compliant Add-On will render the Service non-complaint and will immediately terminate this BAA. In the event of such termination, the provisions of Section V(D) shall apply.

C. Termination for Cause. If either Party reasonably determines that the other Party has violated a material term of this Addendum, the non-breaching Party may provide the breaching Party with thirty (30) days written notice of the alleged material breach and an opportunity to cure the breach or end the violation, immediately after which time (or such other time as the Parties have mutually agreed upon in writing) this Addendum and the Agreement shall be automatically terminated if the breach is not cured or the violation remedied.

D. Effect of Termination. Upon termination or expiration of this Addendum, for any reason, Avaya shall, at Your option as directed in writing, return to You or destroy all PHI received from You, or created or received on behalf of You. Avaya shall not retain any copies of the PHI. In the event that Avaya reasonably determines that return or destruction of the PHI is not feasible, Avaya shall notify You of the conditions that make return or destruction of the PHI not feasible. In such case, Avaya shall extend the protections of this Addendum to such PHI that

is not returned or destroyed, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction not feasible, for as long as Avaya maintains such PHI. If You elect destruction of the PHI, and such destruction is not feasible, Avaya shall, upon request, certify in writing to You that such PHI has been destroyed.

VI. Miscellaneous.

A. Integrations: Notwithstanding any provision to the contrary in any agreement between the Parties, the Parties agree that this Addendum applies only to Your use of Services that are hosted on Avaya's servers or Your servers under the sole and exclusive control of Avaya and not to any Avaya, Your, or third party applications, services, devices or technology that integrate with the Service or that transfer data (including PHI) to or from the Service ("Integrations"). This Agreement does not apply to, and Avaya does not have any obligations with respect to, the privacy and security of Integrations, which are solely Your responsibility. Notwithstanding anything to the contrary, You are responsible for: (i) implementing appropriate privacy and security safeguards within any systems, applications, and software that are hosted by You, (ii) properly configuring authentication and verification mechanisms and other safeguards offered via the Service in order to protect PHI, (iii) implementing appropriate privacy and security safeguards with regard to how Your personnel use the Service in order to protect PHI in compliance with the HIPAA Rules, and (iv) the security and privacy of PHI in transit outside of the Service.

B. Disclaimer and Indemnification. Neither Avaya nor any of its affiliates shall have any liability or obligations to You (and Avaya hereby disclaims all liabilities and other obligations) in the event that Your acts or omissions causes, in whole or part, a Breach, unauthorized Use or Disclosure, or other violation of this Addendum.

C. Amendments. The Parties shall amend this Addendum from time to time as is necessary to achieve and maintain compliance with the HIPAA Rules.

D. Interpretation. Any ambiguity in this Addendum shall be resolved to permit the Parties to comply with the HIPAA Rules.

E. Choice of Law and Venue. Regardless of any Choice of Law or Venue provision in the Agreement, this Addendum and any dispute arising from the terms of this Addendum shall be construed in accordance with the federal laws of the United States of America. No laws of any State of the United States or any other country shall apply. Either party may bring an action or proceeding solely in the United States District Court for the Southern District of New York. Each party consents to the exclusive jurisdiction of this court, including its appellate courts, for the purpose of all actions and proceedings arising under this Addendum.

F. Scope of Agreement. Regardless of the Avaya entity that is a Party to the Agreement and regardless of any Choice of Law or Venue provisions in such Agreement, this Addendum shall apply only to Avaya Cloud Services Inc. and/or Avaya LLC, depending upon the Services You have purchased, in the United States of America. Any attempt to apply the terms of this Addendum to any other Avaya entity or in any other country shall be null and void.

G. Relationship to Other Agreements. In the event that a provision of this Addendum is contrary to a provision of the Agreement, the provisions of this Addendum shall control.

H. Survival. The Parties' respective rights and obligations under Section V of this Addendum shall survive the termination of this Addendum.

I. Waiver. No delay or omission by a Party in exercising any right or power under this Addendum shall impair such right or power or be construed to be a waiver thereof. Any decision by a Party not to enforce a breach of this Addendum shall not be construed to be a waiver of any succeeding breach thereof.

J. No Third-Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

K. Notifications. Unless otherwise stated in this Addendum, any notification required to be made under this Addendum shall be made in the manner specified in the Agreement.

Done this 19th day of September, 2023.

DocuSigned by:

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Vito Carnevale

SVP & General Counsel, Avaya LLC and VP, Avaya Cloud Inc.