



Terms of Use for Avaya Mobile Identity

Version: January 2020

These terms of use ("TOU") are a legal agreement between you ("You", "Your" or "Yourself") and Avaya Inc., having an office at 4655 Great America Parkway, Santa Clara, 95054-1233, California, USA or the applicable Avaya global affiliate ("Avaya"). Your access to and use of Avaya Mobile Identity Services ("AMI") as further described below is subject to, and governed by, these TOU.

1. Your Avaya Digital ID.

- 1.1. AMI is a mobile-centric identity cloud service that (i) leverages biometrics and blockchain technologies to strengthen mobile caller authentication and reduce fraud risks and (ii) is made available to You for use free of charge to authenticate Yourself to Avaya's respective enterprise customers that have subscribed to AMI ("Enterprise Customer(s)"). AMI is only intended for use by end users (data subjects) located in the United States of America. Once You create Your account ("Avaya Digital ID") and start interacting with Avaya's Enterprise Customer(s), You will be empowered to authenticate Yourself to the respective Enterprise Customer(s) and share Your Personal Data with them.
- 1.2. By accepting the TOU, You represent and acknowledge that You are at least 18 years old and, based on applicable laws, You have a right and all required permissions (if any) to enter into the TOU, and You are located in the United States.
- 1.3. 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 AMI, or any portion of AMI, for any reason; (ii) to modify or change AMI, or any portion of AMI; (iii) to interrupt the operation of AMI, or any portion of AMI, as necessary to perform routine or non-routine maintenance, error correction, or other changes; or (iv) to immediately suspend or terminate Your access to AMI or any portion of AMI.

2. Privacy.

- 2.1. To create Your Avaya Digital ID be able to successfully use AMI, Avaya will require You to provide correct, valid and up-to-date Personal Data. Specific Personal Data categories to be collected and processed within AMI are disclosed in the "Privacy Statement" available for a review within AMI web application ("Web App"). Please review our then-current Privacy Statement frequently to be informed about the privacy practices relevant to AMI.

3. Intellectual Property.

- 3.1. Copyright. Avaya, its suppliers or the original creator of the material own all copyrights and all other Intellectual Property rights related to AMI. 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. It is Avaya's policy to respond to notices of alleged copyright or trademark infringement that comply with applicable international Intellectual Property law (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 or trademark infringement notice as it pertains to AMI, 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 grant Avaya and its suppliers an unrestricted, nonexclusive, worldwide, royalty-free, irrevocable, transferable license, under any and all of Your Intellectual Property rights to: (i) record, link to, use, copy, publish, execute, reproduce, display, perform, modify, transmit, distribute, make, have made, and/or otherwise exploit any and all User Content or derivative works thereof and in any media now known or not currently known or invented; and (ii) sublicense to third parties (including Avaya suppliers) those rights to do any, some, or all of the foregoing. "*User Content*" means, collectively: (a) AMI questions, comments, suggestions, content, information, material, software, including in partial or complete form or in source code or binary object code format, or the like posted, uploaded, displayed, sent, or submitted to AMI by You, and (b) any information relating to an identified or identifiable natural person posted, uploaded, displayed, sent, or submitted by You for use on AMI whether visual, written, audible, or of another nature, including, without limitation, Your likeness in photographs or video clips, sound of Your voice in audio clips in any form whatsoever either singularly or in conjunction with other photographs, Your name, biometric information, and metadata derived hereof ("*Personal Data*"). For then-current Personal Data categories please refer to our Privacy Statement. You warrant and represent that You have the rights necessary to grant the licenses described in these TOU.
- 4.2. You acknowledge that You are solely responsible for the User Content You post, upload, display, send, or submit to AMI 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 pre-screen, refuse, flag, filter, or remove any User Content transmitted to AMI, 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 AMI. 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.

5. Restrictions.

- 5.1. You acknowledge that Avaya expressly prohibits and You agree not to: (a) use AMI (including by transmitting User Content), in a manner that is 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; (b) misrepresent an affiliation with, or otherwise impersonate, any person or organization; (c) include on AMI any content that cannot be distributed legally over AMI; (d) take any action to circumvent or attempt to circumvent the security and access control measures of AMI; (e) use any robot, spider or other program or device to retrieve or index any portion of AMI; (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 AMI 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 AMI or (i) engage in any other conduct that (1) restricts, prevents or inhibits anyone's use or enjoyment of AMI, or which, as determined by Avaya, may harm Avaya or users of AMI or expose them to liability; (2) interferes with, disrupts, disables, damages, or overburdens AMI 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 AMI, 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 Web App 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.

7. International Trade Compliance.

- 7.1. USA. The United States, Canada, 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 AMI may be downloaded or otherwise 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 AMI. You agree to comply with all domestic and foreign local laws and regulations applicable to the use of AMI. Users residing in countries on the United States Office of Foreign Assets Control list, currently including Cuba, Iran, North Korea, Sudan and Syria, or who are a foreign person or entity blocked or denied by the United States government may not use or access AMI or any information or content available through AMI. You warrant and represent that You are not residing in a sanctioned country nor are You identified on the United States Office of Foreign Assets Control Denied Parties list or are a foreign person or entity blocked or denied by the United States, Canada, WA Member States, WTO or WCO.
- 7.2. Other jurisdictions. It is forbidden to access AMI from territories where the legislation provides that the content or use of AMI is illegal. You choose to use AMI 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.

- 8.1. AVAYA ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF AMI. AVAYA MAY CHANGE THE SCOPE AND AVAILABILITY OF AMI AT ANY TIME WITHOUT NOTICE TO YOU. AMI IS 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 AMI OR ANY CONTENT OR MATERIAL AS PART OF AMI.
- 8.2. AVAYA MAKES NO WARRANTY THAT (i) AMI WILL MEET YOUR EXPECTATIONS / REQUIREMENTS; (ii) ACCESS TO AMI WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF AMI WILL BE ACCURATE OR RELIABLE; (iv) ANY ERRORS IN AMI WILL BE CORRECTED; (v) YOU WILL BE ABLE TO SUCCESSFULLY PROVE YOUR IDENTITY TO THE THIRD PARTIES YOU INTERACT WITH AND/OR SHARE YOUR RESPECTIVE PERSONAL DATA WITH THEM; (vi) AMI IS APPROPRIATE OR AVAILABLE FOR USE THROUGHOUT THE WORLD FOR THE TRANSACTIONS YOU WANT TO COMPLETE OR THIRD PARTIES YOU WANT TO INTERACT WITH FOR THE PURPOSE OF AUTHENTICATING YOURSELF AND/OR SHARING YOUR PERSONAL DATA.
- 8.3. YOU AGREE TO ASSUME SOLE RESPONSIBILITY FOR ALL ACTIVITIES THAT OCCUR UNDER YOUR AVAYA DIGITAL ID; YOU ACKNOWLEDGE THAT AVAYA WILL NOT BE RESPONSIBLE FOR THE PRIVACY PRACTICES OF ENTERPRISE CUSTOMER(S) YOU INTERACT WITH AND HAS NO CONTROL OR RESPONSIBILITY OVER WHAT SUCH ENTERPRISE CUSTOMER(S) WILL DO WITH YOUR PERSONAL DATA ONCE IT IS PROVIDED OVER TO THEM.

9. Limitation of Liability.

- 9.1. TO THE 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) AMI OR ANY MATERIAL ON AMI, 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 THE TOU OR AMI SERVICE EXCEED 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.

10.1. 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 AMI, 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 AMI.

11. Assignment.

11.1. 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.

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.

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.

13.1. 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 AMI, (b) governmental orders, (c) modifications to AMI, (d) obligations imposed by Avaya suppliers, by posting the modified TOU on the Web App 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 AMI means that you 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 AMI and terminate these TOU by requesting to delete Your Avaya Digital ID within fifteen (15) business days after Avaya notifies You of (or posts) the modified TOU (You will be able to implement such right via the Web App).

14. Entire Agreement.

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

14.2. 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.*

15. Contacting Avaya.

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

by US Postal Mail at
Avaya Inc
Attn: Director of Contracts
4655 Great America Parkway
Santa Clara, CA 95054

- END OF THE TOU -