

## POLYCOM® CLOUD TERMS OF SERVICE

These Polycom Cloud Terms of Service (the "**Agreement**") is a legal agreement governing the access to and use of the Polycom Cloud by each person or entity accessing or using the Polycom Cloud ("**Customer**") and either Polycom (Netherlands) B.V. (if Customer is located in Europe, Middle East, or Africa), Polycom Asia Pacific PTE Ltd. (if Customer is located in Asia Pacific), or Polycom, Inc. (if Customer is located in the rest of the world) (each referred to individually and collectively herein as "**Polycom**").

**By clicking "I Agree" or using the Polycom Cloud you agree to this Agreement (and any referenced Polycom policy (ies)). If you are agreeing to this Agreement for use by an organization, you are agreeing to this Agreement on behalf of that organization, and you represent and warrant that you have the authority to bind that organization to this Agreement.**

**1. DEFINITIONS.** For purposes of this Agreement:

**1.1 "Authorized User"** means an employee of Customer.

**1.2 "Customer Data"** means all electronic data, content or other information that is stored or transmitted by Customer or conferencing participants through the Polycom Cloud or collected and processed by or on behalf of Customer or conferencing participants through the Polycom Cloud, including without limitation audio files or other sounds, videos, photographs or other images, data files, written text, software, and music that Customer or any conferencing participant submits, displays, or posts on or through the Polycom Cloud. Customer Data may include Personal Data (as defined in Section 5.1).

**1.3 "Documentation"** means the most current version of the Polycom published user manuals (whether in print or electronic form) that relate to the use of the Polycom Cloud.

**1.4 "Intellectual Property Rights"** means any and all worldwide rights in and to any patents, patent applications, copyrights, data rights, trademarks, trade names, service marks, trade secrets, or other similar right.

**1.5 "Service Description"** means the formal description of the Polycom Cloud provided by Polycom.

**1.6 "Software"** means the software used by Polycom to provide the Polycom Cloud.

**1.7 "Polycom Cloud"** means the Polycom Cloud provided by Polycom, whether accessed by Customer via video and/or audio endpoints, described in the Service Description, including without limitation hosting of the Software and Customer Data in connection therewith.

**2. POLYCOM CLOUD.** Subject to the terms and conditions of this Agreement and the Service Description, Polycom shall make the Polycom Cloud available to Customer and its Authorized Users.

**3. ACCESS TO AND USE OF THE POLYCOM CLOUD.**

**3.1 Access to the Polycom Cloud.**

**(a) Customer Access to the Polycom Cloud.** Customer's Authorized Users may access the Polycom Cloud, solely for Customer's internal business purposes and only as permitted by this Agreement and the Service Description. Customer acknowledges and agrees that any breach of the terms and conditions of this Agreement by an Authorized User or any other employee, agent, contractor, or conferencing participant of Customer shall be deemed a breach of this Agreement by Customer. Customer shall make no attempt to, and shall not permit any Authorized User or conferencing participant to, make any attempt to: (i) download, reproduce, copy, alter, adapt, modify, improve, translate, create derivative works from, reverse engineer, disassemble, decompile or otherwise attempt to reveal the source code, trade secrets or know how underlying the Software; (ii) interfere in any manner with the hosting of the Polycom Cloud; (iii) use the Polycom Cloud to benchmark or otherwise obtain or develop performance metrics for the Polycom Cloud or Software; or (iv) sublicense, resell, sublease or transfer any of Customer's rights under this Agreement or otherwise use the Polycom Cloud or Software for the benefit of a third party; or (v) use the Polycom Cloud to develop a product that is similar to the Polycom Cloud or the Software or to operate a service bureau.

**(b) Necessary Equipment.** Customer shall be solely responsible, at its own expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software, endpoints and other equipment as may be necessary for it to connect to, access, and use the Polycom Cloud.

### **3.2 Use of the Polycom Cloud.**

**(a) Customer Data.** Customer grants Polycom an irrevocable, worldwide license to and authorizes Polycom to use Customer Data as necessary for Polycom to provide the Polycom Cloud and engage in use and disclosure of Customer Data in accordance with the Privacy, Data Collection and Use provisions set forth below. Customer covenants, represents and warrants that it has any and all authorizations and has fulfilled all legal obligations as may be necessary or appropriate for Polycom's use as permitted by this Agreement. Polycom's obligation to maintain any Customer Data obtained in the course of performance of the Polycom Cloud shall not extend beyond the performance of the applicable Polycom Cloud. Customer authorizes any third party vendor to have access to and to use Customer Data as necessary for Polycom, or its vendor, to provide the Polycom Cloud and any related services and more generally to fulfill its obligations to Customer in relation to the provision of the Polycom Cloud to Customer as well as its obligations to Polycom.

**(b) Certain Obligations and Restrictions.** Customer (i) is responsible for ensuring that each Authorized User and conferencing participant is bound by the terms and conditions of this Agreement and for Authorized Users' and conferencing participants' compliance with, and any breach of, the terms and conditions of this Agreement, (ii) is responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data, (iii) will use reasonable efforts to prevent unauthorized use of the Polycom Cloud or their related systems or networks, and will notify Polycom promptly of any unauthorized use, and (iv) will use the Polycom Cloud only in accordance with the Documentation, and applicable laws and government regulations. Customer will not (A) make the Polycom Cloud available to anyone other than Authorized Users and their conferencing participants, (B) sell, resell, rent or lease the Polycom Cloud, or any access to or use thereof (in whole or in part), (C) interfere with or disrupt the integrity or performance of the Polycom Cloud or third-party data contained in the Polycom Cloud, (D) attempt to gain unauthorized access to the Polycom Cloud or its related Software, systems or networks, or (E) exceed any established usage limits, if applicable, for the Polycom Cloud.

**(c) Acceptable Use Policy.** Customer shall at all times be responsible for ensuring that its Authorized Users and conferencing participants adhere to any applicable Customer use policy. Without limiting the foregoing, Customer shall not, and shall not permit any Authorized User or conferencing participant to, store, transmit or otherwise provide Customer Data or other information or content in a manner that: (i) infringes or violates any intellectual property rights, publicity/privacy rights, or other third party rights; violates any law or regulation (including without limitation export control laws and regulations and laws and regulations requiring consent to recordation of communications); or is defamatory, tortious, abusive, threatening, obscene, harmful to minors, child pornographic or otherwise illegal under any applicable law or regulation; (ii) contains any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents, programs or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information; or (iii) is materially false or misleading.

**(d) Remedial Action; Suspension of Service.** Polycom shall be entitled, in its discretion, to take remedial action, automatically and as of right without prior notice, including without limitation to suspend or terminate Customer's access to and use of the Polycom Cloud if (i) Polycom does not receive all fees related to Customer's use of the Polycom Cloud as set forth in the Service Description, (ii) Customer or any conferencing participant fails to comply with any term, condition or restriction of this Agreement or the Service Description, or (iii) Polycom determines that Customer, an Authorized User, or a conferencing participant has used or is using the Polycom Cloud to transmit or store, or otherwise with respect to, Customer Data or other content or information that Polycom determines to be objectionable, including without limitation in violation of Section 3.2(c) or Section 3.2(d). Polycom, however, is under no obligation to review Customer Data or other content or information for accuracy, potential liability, or compliance with these or any other terms and conditions of this Agreement.

#### 4. PROPRIETARY RIGHTS.

**4.1 Customer.** Subject to the rights granted herein, Customer retains all of its worldwide right, title and interest in and to the Customer Data.

**4.2 Polycom.** Subject to the access rights set forth herein, Polycom and its licensors retain all worldwide right, title and interest in and to the Polycom Cloud and all software, materials, and Polycom confidential information made available to Customer via the Internet or otherwise, in connection with the Polycom Cloud, and all Intellectual Property Rights with respect thereto, including without limitation, the Software, Documentation, and any and all improvements, derivative works, updates, and modifications thereto, whether made in conjunction with this Agreement or otherwise. There are no implied licenses or rights granted by Polycom under this Agreement; any rights not expressly granted by Polycom hereunder are reserved.

**4.3 Feedback.** Customer grants to Polycom and its Affiliates a royalty-free, fully paid, worldwide, irrevocable, perpetual license to use and incorporate into the Polycom Cloud any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Authorized Users relating to the Polycom Cloud, or the operation thereof.

#### 5. PRIVACY, DATA COLLECTION AND USE.

**5.1 Definitions.** The terms "Controller", "Data Subject", "Personal Data", "Processor" and "Processing" shall have the meanings given to these terms in applicable data protection, privacy and similar laws and regulations, including without limitation the EU Data Protection Directive 95/46/EC, as implemented into national law and as amended by the EU General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) when it comes into effect (collectively, "**Data Protection Laws**").

**5.2 Roles of the parties.** Polycom also may obtain Customer Data as a Processor, when providing the Polycom Cloud on behalf of Customer. The parties acknowledge that Customer acts as a Controller and has the sole and exclusive authority to determine the purposes and means of the Processing of Personal Data by Polycom to provision the Polycom Cloud under this Agreement. Polycom confirms and warrants that it acts as a Processor and uses, discloses, retains or otherwise Processes the Personal Data only on behalf of and in accordance with the instructions of the Controller, this Agreement, and the Polycom privacy policy located at <http://www.polycom.com/company/privacy-policy.html>. The Polycom privacy policy is expressly incorporated into this Agreement.

**5.3 Suppliers and subcontractors.** Customer acknowledges and agrees that Polycom reserves the right to use suppliers and subcontractors including without limitation for processing, hosting and storage of Personal Data.

**5.4 Obligations of the parties.** Customer confirms and warrants that it will ensure compliance with applicable Data Protection Laws with regard to the Personal Data that is Processed under this Agreement by Polycom and any supplier or subcontractor, in particular by providing information to, collecting consent of, and providing access to Data Subjects when and as required under applicable law. Each party agrees to cooperate as reasonably requested by the other party to ensure compliance with this Agreement. Should a party fail to cooperate with the other party as reasonably requested, the other party may suspend this Agreement, upon reasonable notice to the party that fails to cooperate.

**5.5 International transfers of Personal Data.** To provide the Polycom Cloud, Polycom may need to transfer Personal Data to recipients in countries other than the country in which the data were originally collected, including without limitation the United States. Customer agrees to such Personal Data transfers and confirms and warrants that it will comply with any requirements under applicable Data Protection Laws with regard to such Personal Data transfers.

**5.6 Notice.** If applicable law requires that Authorized Users or conference participants must be informed of or must consent prior to any recording of their communications, Customer and/or Authorized Users shall be solely liable for complying with such laws and shall obtain required consent and undertake any necessary formalities prior to using any recording functions.

**5.7 Requests from individuals.** Polycom will assist Customer in responding to Data Subjects

exercising their rights to their Personal Data processed under this Agreement.

**5.8 Security.** Each party shall take adequate technical and organizational measures against unauthorized or unlawful processing or further processing of Personal Data, and against accidental loss or destruction of, and damage to, Personal Data.

**6. DISCLAIMER.** The Polycom Cloud, Software, Documentation, and all other data and materials made available via the Internet or otherwise provided to Customer in connection with this Agreement by Polycom are provided "AS IS" and "AS AVAILABLE," without representations or warranties of any kind. POLYCOM AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, BY OPERATION OF LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. POLYCOM DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, SECURE, OR VIRUS-FREE. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT POLYCOM MAY NOT AS A MATTER OF LAW DISCLAIM ANY WARRANTY, THE PARTIES AGREE THAT THE SCOPE AND DURATION OF ANY SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW. Neither Polycom, nor its third-party service or software providers, suppliers or subcontractors shall have any liability whatsoever for the accuracy, completeness, timeliness, security, or integrity of the Customer Data, or for any decision made or action taken by Customer or any conferencing participant in reliance upon any Customer Data. The parties agree and acknowledge that Polycom shall in no event be held responsible for any problems with the Polycom Cloud attributable to the public Internet infrastructure or Customer's ability to be connected to the Internet.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL POLYCOM (OR ITS SUPPLIERS AND LICENSORS) BE LIABLE FOR COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING BUT NOT LIMITED TO NEGLIGENCE), INCLUDING, BUT NOT LIMITED TO, DAMAGES THAT RESULT FROM INTERRUPTED COMMUNICATIONS, LOST OR ALTERED DATA, OR LOST PROFITS, OR DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE POLYCOM CLOUD OR RELATED PRODUCTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. Polycom's entire liability arising out of or in connection with this Agreement shall not exceed the amounts actually received by Polycom for the Polycom Cloud in the three (3) month period immediately preceding the date the cause of action arose ("**Cap**"). This Cap is an aggregate for all causes of action and shall not be increased by multiple causes of action subject to the same, or overlapping, three (3) month periods. In addition, Polycom's aggregate liability arising out of or in connection with this Agreement, for all causes and claims, shall not exceed the amounts received by Polycom for Customer's use of the Polycom Cloud.

**8. INDEMNITY.** Customer shall indemnify, defend and hold Polycom (and its officers, directors, employees, agents and representatives) harmless from and against all claims, suits, losses, expenses, judgments and liabilities (including but not limited to Polycom's reasonable attorney's fees) to the extent arising out of (i) breach of this Agreement, including without limitation the Acceptable Use Policy and Privacy, Data Collection and Use provisions, by Customer or any failure of any Authorized User or conferencing participant to comply with the terms and conditions of this Agreement, including without limitation use of the Polycom Cloud or any Software other than as permitted by this Agreement or (ii) Customer Data.

**9. SUPPORT.** Customer is entitled to Polycom Cloud support services directly from Polycom. Polycom shall have responsibility in providing Customer support services associated with the Polycom Cloud as set forth in the Service Description.

## **10. GENERAL PROVISIONS.**

**10.1 Entire Agreement; Modification; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of the Agreement. Polycom reserves the right, in its sole discretion, to modify this Agreement at any time without further notice. It is Customer's responsibility to periodically review the current Terms of Service as Customer's continued use of the Polycom Cloud after any such changes constitutes Customer's acceptance of the new Terms of Service. All waivers must be in writing. Any waiver

or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Polycom reserves the right, in its sole discretion, to modify or discontinue, temporarily or permanently, the Polycom Cloud (or any part thereof) at any time without further notice. Customer agrees that Polycom will not be liable to you or to a third party for any modification, suspension or discontinuance of the Polycom Cloud.

**10.2 Assignment.** Either party may assign or transfer this Agreement solely in connection with a transfer of all or substantially all of that party's business assets, whether by merger, sale of assets, sale of stock or otherwise, provided that the acquiring party agrees in writing to be bound by all the terms hereof. Any other attempted assignment or transfer by Customer in violation of the foregoing will be void.

**10.3 Compliance with Laws.** Customer represents and warrants that it will comply with all applicable laws and regulations (including but not limited to export regulations), and communications common carrier tariffs, and use the Polycom Cloud solely for lawful purposes. Polycom reserves the right to take all actions, including but not limited to termination of the Polycom Cloud, which it believes necessary to comply with applicable laws and regulations.

**10.4 Independent Contractors.** The relationship established by this Agreement is that of independent contractors. Customer shall not incur any obligation or commitment on behalf of Polycom unless specifically approved in writing, in advance by an authorized Polycom executive.

**10.5 Force Majeure.** If the performance of this Agreement, or any obligation hereunder, except the making of payments hereunder, is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, including, but not limited to, acts of God, acts of civil or military authority, third party illegal activity, failure or interruption of utilities, fires, floods, earthquakes, riots, wars, sabotage, computer hacking or computer crime, or governmental actions, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

**10.6 Governing Law; Venue.** This Agreement will be governed by the laws of the State of California, USA, without giving effect to any choice of law principles that would require the application of the laws of a different state. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought exclusively in a court of competent jurisdiction, federal or state, located within the City and County of San Francisco, California, and in no other jurisdiction. The parties hereby consent to personal jurisdiction and venue in, and agree to service of process issued or authorized by, such court. This Agreement shall be written and construed in the English language. Notwithstanding the foregoing, either party may bring action for injunctive relief in any jurisdiction pending final disposition of the dispute.

**10.7 Notice.** Except as otherwise specified, all notices shall be in writing and may be delivered by facsimile, USPS, or overnight delivery service, to the address indicated on the first page of this Agreement or to such other address as the parties shall specify by written notice. Any such notices to Polycom shall be sent to the attention of the Chief Financial Officer, with a copy sent to the General Counsel.

**10.8 Severability.** If any provision of this Agreement is adjudicated to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.