

# AVVYLAND TERMS OF SERVICE – MOBILE APP EULA

Updated: 2 June 2021

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING OUR APP**

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## 1. WHO WE ARE AND HOW TO CONTACT US

We are Avvyland, Inc., a company registered in the State of Delaware, registration no. 3163433, having its address at 919 North Market Street, Suite 950, Wilmington, New Castle, Delaware, 19801 (“we”, “us”, “AVVYLAND”, or the “Company”).

We developed the AVVYLAND universe where, through our mobile application “**AVVYLAND**” (our “**App**”) or otherwise, you can create your own virtual worlds – Branes – for creative, commercial, or social activities. You can realize your ideas by building 3D objects in augmented reality (AR) and placing them in the real world, share your experiences with others and use other features and services (the “**Services**”).

These terms of service (the “**Terms**”) are a legally binding agreement between you (“user”, “you”) and AVVYLAND, which sets forth the terms and conditions, including your rights and obligations, for accessing and using the App (including all related documentation) and the Services.

To contact us, please email us at [support@avvyland.com](mailto:support@avvyland.com).

For the general terms, governing use of our website [www.avvyland.com](http://www.avvyland.com), read our Terms of Use.

## 2. ACCEPTING THESE TERMS

BY DOWNLOADING, INSTALLING, CLICKING THE “I AGREE” BUTTON, ACCESSING OR USING THE APP, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THESE TERMS AND AGREE TO COMPLY WITH THEM.

IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, ACCESS, OR USE THE APP.

THESE TERMS INCORPORATE OUR PRIVACY POLICY AND COMMUNITY GUIDELINES. BY AGREEING TO THESE TERMS, YOU ALSO AGREE TO ALL OF THE TERMS OF THE FOREGOING DOCUMENTS, PLEASE

READ THEM CAREFULLY.

YOU SHOULD SAVE A COPY OF THESE TERMS FOR YOUR RECORDS.

### **3. YOUR PRIVACY**

Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes, and your rights in relation to your personal data and how to exercise them. This information is provided in our Privacy Policy, and it is important that you read it.

### **4. USE OF THE APP AND SERVICES**

#### **4.1. WHO MAY USE OUR APP AND SERVICES**

You must be at least 18 years old to use our App and Services or such greater age required in your country of residence to consent to the processing of personal data and to register for and/or use our App and Services.

You must be eligible under the applicable laws of your country of residence to enter into this agreement and use the App and Services. You may not access or use the App or Services if you are not fully able and legally competent to agree to these Terms or are authorized to use the App and Services by your parent or legal guardian (where applicable).

#### **4.2. OPERATING SYSTEM REQUIREMENTS**

The App requires a device with iOS compatible with ARKit and a device with Android operating system compatible with ARCore.

Device Requirements (iOS):

- A9 processor and newer (iPhone 6S and newer).
- Version of the operating system iOS 11.0 and later.

Device Requirements (Android):

- Android 7.0 or later (some models require newer versions as noted below)
- A device that originally shipped with the Google Play Store
- Internet access, in order to install or update Google Play Services for AR

The full list of supported Android devices is available at:

<https://developers.google.com/ar/discover/supported-devices>.

#### **4.3. SUPPORT FOR THE APP AND HOW TO TELL US ABOUT PROBLEMS**

**Contacting us (including with complaints).** If you think the App or Services are faulty or misdescribed or wish to contact us for any other reason, please email our customer service team at [support@avvyland.com](mailto:support@avvyland.com).

**How we will communicate with you.** If we have to contact you, we will do so through the App or otherwise, using the contact details you have provided to us.

#### **4.4. YOU MAY NOT TRANSFER THE APP TO SOMEONE ELSE**

We are giving you personally the right to use the App and Services as set out in these Terms. You may not otherwise transfer the App or Services to someone else, whether for money, for anything else or for free. If you sell any device on which the App is installed, you must remove the App from it.

#### **4.5. UPDATE TO THE APP AND CHANGES TO THE SERVICE**

From time to time, we may (but we do not have to) automatically update the App and change the

Services to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update the App for these reasons.

If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Services.

#### **4.6. IF SOMEONE ELSE OWNS THE PHONE OR DEVICE YOU ARE USING**

If you download or stream the App onto any phone or other device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with these Terms, whether or not you own the phone or other device.

#### **4.7. CHANGES TO THESE TERMS**

We may change these Terms from time to time to reflect changes in law or best practice, or to deal with additional features which we introduce, or for any other reason.

We will use commercially reasonable efforts to provide you a reasonable notice of any change by notifying you of such change when you next start the App.

Your continued access or use of the App after the date of the new Terms constitutes your acceptance of the new Terms. If you do not accept the notified changes, you will not be permitted to continue to use the App and the Services. In such a case, please stop using the App and the Services.

#### **4.8. APP STORE'S TERMS ALSO APPLY**

The ways in which you can use the App may also be controlled by the rules and policies of the app stores, where you download the App, and such app store's rules and policies will apply instead of these Terms where there are differences between the two. See Section 15 below for more details.

### **5. LICENSE TO USE**

#### **5.1. LICENSE GRANT**

Subject to your compliance with these Terms, we grant you a non-exclusive, personal, limited, revocable, non-transferable and non-sublicensable license to:

- download, install, and use the App for your personal, non-commercial use on a mobile device owned or otherwise controlled by you ("**Mobile Device**") strictly in accordance with the App's documentation; and
- access, stream, view, display, download, and use on such Mobile Device the Services and the Content (as defined in Section 7 below) made available in or otherwise accessible through the App, strictly in accordance with these Terms.

#### **5.2. LICENSE RESTRICTIONS**

You agree that you **WILL NOT**:

- copy the App, except where it is necessary for the purpose of back-up or operational security;
- modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the App;
- reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the App or any part thereof;
- remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the App, including any copy thereof;
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the App, or any features or functionality of the App, to any third party for any reason, including by making the App available on a network where it is capable of being accessed by more than one device at any time;
- remove, disable, circumvent, or otherwise create or implement any workaround to any copy

protection, rights management, or security features in or protecting the App; or

- use the App in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including any power generation systems; aircraft navigation or communication systems, air traffic control systems, or any other transport management systems; safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire, or other safety response systems; and military or aerospace applications, weapons systems, or environments.

You also agree that you will comply with all applicable technology control or export laws and regulations that apply to the technology used or supported by the App or any Service.

### **5.3. RESERVATION OF RIGHTS**

You acknowledge and agree that the App is provided under license, and not sold, to you.

You do not acquire any ownership interest in the App under these Terms, or any other rights thereto other than to use the App in accordance with the license granted, and subject to all terms, conditions, and restrictions, under these Terms. The Company and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the App, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in these Terms.

## **6. INTELLECTUAL PROPERTY RIGHTS**

**Copyright.** We respect copyright law and expect our users to do the same. We take claims of copyright infringement seriously and we reserve the right, with or without notice, at any time and at our own discretion to block access to any user who infringes or is alleged to infringe any copyright or other intellectual property rights.

If you are a copyright owner, or are authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through our App by contacting us at [support@avyland.com](mailto:support@avyland.com).

**Trademarks.** Graphics, logos, page headers, button icons, scripts, and service names included in or made available through our website, App and Services are trademarks or trade dress of the Company in the United States and other countries. The Company's trademarks and trade dress may not be used in connection with any product or service that is not the Company's, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits the Company. All other trademarks not owned by the Company that appear on our website, App and/or the Services are the property of their respective owners, who may or may not be affiliated with, or connected to, the Company.

Please read our Terms of Use for more information related to the intellectual property rights protection.

## **7. USER CONTENT**

By "**Content**" we mean any text, software, scripts, graphics, Branes, 3D blocks and creations, photos, sounds, music, videos, audio-visual combinations, communications, interactive features, works or authorship of any kind, and information or other materials that are generated, provided, or otherwise made available through our App and Services, including User Content.

Users of the App and Services may be permitted to upload, post, transmit or otherwise make available content through the Services including, without limitation, any 3D blocks and creations, text, photographs, user videos and sound recordings ("**User Content**").

If you make any User Content available on or through our App and Services, you or the owner of your User Content still own the copyright in it. We do not claim ownership of such User Content. Instead, when you share, post, or upload User Content on or through our App and Services, you hereby grant to us a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license with the permission

to host, use, copy, modify, adapt, distribute, and publicly display such User Content. This permission is irrevocable, and you also agree that we can permit other people to use, copy, modify, adapt, distribute, and publicly display such Content. If you do not want to give us these permissions, do not make User Content available on or through our App.

If you make any User Content available on or through our App and Services, it must not be offensive or illegal, it must be your creation, or you must have permission or the legal right to make it available. You must not and you agree that you will not make any content available on or through our App and Services that infringes the rights of others.

You must not create and/or share any User Content (whether by using 3D blocks or otherwise) that is obscene, endangers other persons, or participates in or expresses support for terrorism or hatred of societal groups (based on race, ethnicity, religion, sexual identity or gender status), or encourages or publicizes suicide or self-injury.

Please read our Community Guidelines which set out the detailed rules of user conduct, content standards, and more. Community Guidelines make part of these Terms, and you must comply with them. Although we have no obligation to screen and moderate any User Content, **we reserve the right to take down any content at our discretion.**

No information and materials shared by users through our App and Services have been verified or approved by us. The views expressed by other users on our App do not represent our views or values.

If you wish to complain about information and materials shared by other users through our App and Services, please contact us at [support@avvyland.com](mailto:support@avvyland.com).

## **8. PUBLIC INFORMATION**

When you share User Content using our App, your content will be public. This means that such User Content can be seen by anyone, on our App or through third-parties' services. This includes any information and any User Content (such as 3D blocks placed in real world) you share using our App and Services.

You and other users may also provide access to or otherwise reshare public information (including your User Content) with anyone, including people and businesses outside the audience you shared your content with, through our App (for example, by making a video with you or the blocks you built) or through third-party services such as apps, websites, and other services. For example, when you place your 3D creation in the real world, other users can share a link, screenshot, or make a video with it and reshare that Content to others.

If you do not want to make some or all of your User Content public, please do not share it through our App and Services.

If you share any Content, published on or made with our App (such as built blocks), on social media platforms, you understand that your activity on such other platforms is governed by their terms of service and other applicable documents. We do not control and are not responsible for the practices of these third-party platforms.

## **9. USER CONDUCT**

### **9.1. ACCEPTABLE USE RESTRICTIONS**

You must **NOT**:

- use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms and our Community Guidelines, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App, any Service or any operating system;
- infringe our intellectual property rights or those of any third party in relation to your use of the

App or any Service;

- transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; or
- collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

We reserve the right to refuse to provide you with our Services, remove or edit your User Content if you are in breach of applicable laws, these Terms, our Community Guidelines, or any other applicable terms and conditions, guidelines or policies.

## **9.2. YOUR SAFETY**

While you are using our App and Services, please **be aware of your surroundings and act safely**. You agree that your use of the App and Services is at your own risk, and that you will not use them to violate any applicable law, regulation, or instructions as set forth in these Terms, and you will not encourage or enable any other individual to do so.

IT IS YOUR RESPONSIBILITY TO CONTROL YOUR SURROUNDINGS AND MOVEMENTS AT ALL TIMES WHEN USING OUR APP AND SERVICES TO ENSURE THAT YOU DON'T INJURE YOURSELF, ANY OTHER PERSONS, OR DAMAGE ANY PROPERTY. FALLING, STRIKING OR OTHERWISE CONTACTING ANYTHING WHILE USING OUR APP AND SERVICES MAY LEAD TO PERSONAL INJURY, PROPERTY DAMAGES, AND EVEN CAUSE DEATH. ANY USE OF OUR APP AND SERVICES IS AT YOUR OWN RISK. IF YOU ARE USING THE AUGMENTED REALITY FEATURES OF OUR APP OUTDOORS YOU ARE SOLELY RESPONSIBLE FOR CONTROLLING THE SURROUNDINGS. DON'T USE THE AR FEATURES IN LOCATIONS WITH TRAFFIC, CROWDED AREAS, HAZARDOUS SURROUNDINGS.

## **9.3. YOUR INTERACTION WITH OTHER PEOPLE**

You agree that in connection with your use of our App and Services, you will maintain safe and appropriate contact with other users and other people in the real world. You will not harass, threaten, or otherwise violate the legal rights of others. You will not trespass, or in any manner attempt to gain or gain access to any property or location where you do not have a right or permission to be and will not otherwise engage in any activity that may result in injury, death, property damage, or liability of any kind.

**You must comply with our Community Guidelines which set out the detailed rules of user conduct. Please read this legal document carefully.**

## **10. THIRD-PARTY MATERIALS**

The App may display, include or make available content, data, information, applications or materials from third parties ("Third-Party Materials") or provide links to certain third-party websites. Among other things, you may encounter content that may be deemed offensive, indecent, or objectionable, which may or may not be identified as having explicit language.

By using our App and Services, you acknowledge and agree that the Company is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third-Party Materials or websites.

## **11. TERM AND TERMINATION**

The term of these Terms commences when you install the App and acknowledge your acceptance of these Terms and will continue in effect until terminated by you or Company as set forth in this Section 11.

You may terminate these Terms by deleting the App and all copies of it from your Mobile Device.

Company may terminate these Terms at any time without notice if it ceases to support the App, which Company may do in its sole discretion.

We may suspend or terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you, including if (a) you fail to comply with these Terms; (b) we suspect fraud, cheating, or misuse by you of App, Services or Content; or (c) we suspect any other unlawful activity associated with your use of the App.

Upon termination:

- all rights granted to you under these Terms will also terminate; and
- you must cease all use of the App and delete all copies of the App from your Mobile Device.

Termination will not limit any of Company's rights or remedies at law or in equity.

## **12. DISCLAIMER OF WARRANTIES**

**You expressly acknowledge and agree that, to the extent permitted by applicable law, use of the App and the Services performed by or accessed through the App is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you.**

Our App and Services are made available free of charge, except where otherwise expressly indicated. We do not guarantee that our App or any content on it, will always be available or be uninterrupted. We may suspend or withdraw or restrict the availability of all or any part of our App for business and operational reasons. We will try to give you reasonable notice of any suspension or withdrawal.

THE APP IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

## **13. LIMITATION OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP OR THE CONTENT AND SERVICES FOR: (A) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES; (B) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APP.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

**We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors, or for fraud or fraudulent misrepresentation.

#### 14. INDEMNITY

You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the App or your breach of these Terms, including but not limited to the content you submit or make available through the App and Services.

#### 15. MISCELLANEOUS

- A. **Please back-up content and data used with the App.** We recommend that you back up any content and data used in connection with the App, to protect yourself in case of problems with the App or the Service.
- B. **You must comply with the laws that apply to you in the country of your residence** and any other location where you download and install our App and/or access and use our Services from. If any laws applicable to you restrict or prohibit you from using our App and/or Services, or any part thereof (certain features, functionalities, etc.), you must comply with those legal restrictions.
- C. You may have legal rights in your country of residence which would prohibit the limitations in these Terms from applying to you, and where prohibited they will not apply to you.
- D. When you purchase the App or related Services from a mobile platform, including in-app purchases, the payment for such purchases (where applicable) may be processed either by third parties on our behalf, or directly by the owner of the mobile platform.
- E. The Company, its affiliates and/or its partners may, from time to time, organize contests or similar promotions within or related to the Services ("**Promotion**"). Such Promotions will be governed by separate terms in addition to these Terms which will be published by the Company at the time of the Promotions.
- F. Any download of our App and use of our Services shall be in compliance with all relevant international, U.N., or US sales, export or import restrictions and regulations and you agree to comply with them. You represent and warrant that you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; (ii) you are not listed on any U.S. Government list of prohibited or restricted parties; and (iii) you comply with relevant U.N. and EU sanctions and embargoes.
- G. **US Government Rights.** The App is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to our App, Documentation (if any) and Services as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.
- H. **Notice for Apple Device users.** In case you download, install or access the App or the Services through your device made by Apple, Inc. ("Apple") ("Apple Device"), you specifically acknowledge and agree that the following additional terms shall apply (in case of conflict between these terms in this section and other terms of the Terms, the terms of this section shall

prevail):

- These Terms are concluded between you and us only, not with Apple, and Apple is not responsible for the App, the Services, or the content thereof.
- Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
- In the event of any failure of the App to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price for the relevant App to you (where applicable). To the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the App.
- Apple is not responsible for addressing any claims by you or a third party relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy or similar legislation.
- To the extent we are required to provide indemnification by applicable law, we and not Apple, shall be solely responsible for the investigation, defense, settlement and discharge of any third-party claim that the App or your possession and use of the App infringes that third party's Intellectual Property Rights.
- Apple and its subsidiaries are third party beneficiaries of these Terms and upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms.

- I. **Google Play.** By downloading our App from Google Play (or its successors) operated by Google, Inc. or one of its affiliates ("Google"), you specifically acknowledge and agree that:
- to the extent of any conflict between (a) the Google Play Developer Distribution Agreement or such other terms which Google designates as default end user license terms for Google Play (together referred to as the "Google Play Terms"), and (b) the other terms and conditions in these Terms, the Google Play Terms shall apply with respect to your use of the App that you download from Google Play, and
  - these Terms are concluded between you and us only, not with Google, and Google will not be responsible for, and will not have any liability whatsoever under these Terms.
- J. **Open source.** The App contains certain open-source software. Each item of open-source software is subject to its own applicable license terms which can be found here.
- K. **California Consumer Rights Notice.** Under California Civil Code Section 1789.3, California users of our App and Services receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at the contact information set forth at: [https://www.dca.ca.gov/about\\_us/contactus.shtml](https://www.dca.ca.gov/about_us/contactus.shtml).

## 16. GOVERNING LAW

These Terms are governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule.

## 17. DISPUTE RESOLUTION

Most concerns can be solved quickly by contacting us at [support@avvyland.com](mailto:support@avvyland.com). In the unlikely event that we cannot solve your concern, disputes will be resolved as described below.

YOU AGREE THAT DISPUTES BETWEEN YOU AND THE COMPANY WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

THIS SECTION DOES NOT APPLY: (1) IF YOU ARE A RESIDENT OF ANY JURISDICTION WHICH DOES NOT ALLOW SUCH ARBITRATION AGREEMENT, (2) IF YOU OPT OUT OF ARBITRATION AS DESCRIBED IN THIS SECTION BELOW, OR (3) TO CERTAIN TYPES OF DISPUTES DESCRIBED BELOW.

- A. **Mandatory Arbitration of Disputes.** We each agree that any dispute, controversy or claim arising out of, relating to or in connection with these Terms, including breach, termination, interpretation or validity thereof, or the use of the App and Services (collectively, "**Disputes**") will be resolved **solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding.** You and the Company agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and the Company are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.
- B. **Exceptions and Opt-out.** Without limitation to the preceding paragraph, (i) you may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights. Notwithstanding this arbitration agreement, the Company reserves the right to bring an action in any court of competent jurisdiction against you to stop and/or seek compensation for the intentional or willful misuse or abuse (e.g. hacking or falsifying location) of its IP, products, and Services.

In addition, **you will retain the right to opt out of arbitration entirely and litigate any Dispute**, if you provide us with a written notice of your desire to do so by email at [support@avvyland.com](mailto:support@avvyland.com) within thirty (30) days following the date you first agree to these Terms ("**Arbitration Opt-Out Notice**")

- C. **Arbitration Rules.** The arbitration will be conducted by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (the "**AAA Rules**") then in effect, except as modified by these Terms. The AAA Rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.
- D. **Conducting Arbitration.** A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form of Demand for Arbitration at [www.adr.org](http://www.adr.org). If your claim is for U.S. \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video-conference hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds U.S. \$10,000, the right to a hearing will be determined by the AAA Rules. Any arbitration hearings will take place in the county (or parish) where you live unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.
- E. **Arbitration Costs.** Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. If we prevail in arbitration, we'll pay all of our attorneys' fees and costs and won't seek to recover them from you. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law.
- F. **Class Action Waiver.** YOU AND THE COMPANY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, if the parties' dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.
- G. **Severability.** With the exception of any of the provisions in the Class Action Waiver described in subsection 17 (F) above, if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

To the extent that these Terms allow you or the Company to initiate litigation in a court, other than for small claims court actions, both you and the Company agree to the exclusive jurisdiction of and venue in the state and federal courts located in the State of Delaware. Each of the parties hereto waives any objection to jurisdiction and venue in such courts.

## **18. FINAL PROVISIONS**

### **18.1. WE MAY TRANSFER THIS AGREEMENT TO SOMEONE ELSE**

We may transfer our rights and obligations under these Terms to another organization. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under these Terms.

### **18.2. YOU NEED OUR CONSENT TO TRANSFER YOUR RIGHTS TO SOMEONE ELSE**

You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

### **18.3. GEOGRAPHIC RESTRICTIONS**

The App and Services are provided for access and use by persons residing in the USA. You acknowledge that you may not be able to access the App and Services outside of the listed jurisdictions and that access thereto may not be legal by certain persons or in certain countries. If you access the App and Services from outside of the listed jurisdictions, you are responsible for compliance with local laws.

### **18.4. ENTIRE AGREEMENT**

These Terms together with the documents incorporated herein constitute the entire agreement between you and the Company with respect to the App and the Services, and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the App.

### **18.5. SEVERABILITY**

Each Section of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

### **18.6. EVEN IF WE DELAY IN ENFORCING THIS AGREEMENT, WE CAN ENFORCE IT LATER**

Even if we delay in enforcing these Terms, we can still enforce them later. If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking these Terms, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.