# Avaya OneCloud™-Private Trial (“Trial”) Terms of Use (“Terms”)

# Misuse of Demonstration Service and Limitations on Phone Service

Avaya does not provide emergency service calls (i.e. 911), information calls (i.e. 411) calls to 000 or international emergency numbers. The Trial is not HIPAA or PCI-compliant and is not a telecommunications service. The Trial may not be used with production data or to process personal data. The Trial is intended as a demonstration of the Avaya solution described in the Avaya OneCloud™-Private Trial Guide (“**Guide**”), and not as a production system. Customer may not use the solution demonstrated in the Guide in production or using production data. Any charges or misuse of the Trial is Customer’s responsibility and Avaya will not be held liable for any such charges or misuse. Customer shall report any such misuse to Avaya upon discovery and Avaya may in its discretion cancel the Trial and remove users from the Trial. The Trial will run for up to thirty (30) days (“**Trial Period**”), unless another time period has been agreed upon in writing by Avaya.

**Security Standards for Customer**

Customer is responsible to ensure that all endpoint connections to the Trial are using the most current anti-virus anti-spyware updates, operating system patches, and firewall software. Customer will prevent unauthorized persons from accessing the Trail.

**Feedback**: Any feedback Customer provides will become the property of Avaya, without any payment or other conditions owed to Customer. By participating in the Trial, Customer hereby assign to Avaya all right, title, and interest in and to such feedback. Avaya does not commit to implement any of Customer’s feedback in any future releases of the products and services. Customer agrees that any data or content provided by Customer in connection with the Trial (e.g., non-production data the customer inputs into or submits through the Trial) may be shared with necessary third parties as part of providing the Trial (e.g., Avaya subcontractors providing support and/or services for the Trial). Such third parties may be located either within or outside of the United States.

 **End of Trial**: Customer will cease all access to the Trial at the conclusion of the Trial Period and will within 5 days of the end of the Trial permanently delete from its systems all software associated the Trial. If requested by Avaya, a duly authorized representative of Customer will certify such destruction. Avaya may share such certification with applicable suppliers whose software is part of the Trial (if applicable). If applicable, Customer will return any product applications or any other products or materials provided by or on behalf of Avaya in connection with the Trial to Avaya in the same condition as Customer received them and in accordance with any instructions from Avaya, and will stop using the Trial and any such products and materials at the earlier of (i) Avaya’s request, or (ii) the end of the Trial Period.

 **IP/License/Use**: Avaya and/or its Affiliates, licensors or suppliers own all right, title, and interest in and to the Trial and any and all intellectual property included in the Trial, any and all deliverables provided to Customer in connection with the Trial as well as any know-how, derivative works, inventions, processes, databases, documentation, training materials, and any other intellectual property and any tangible embodiments of it (collectively, “**Avaya Intellectual Property**”). Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Avaya Intellectual Property, the solution, or any software. Avaya hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to access and use of the Trial during the Trial Period solely for Customer’s internal evaluation purposes. Customer will not reverse engineer or decompile, sublicense, lease, assign, copy, modify, merge or transfer the Trial, Avaya Intellectual Property or any product provided to Customer or accessed by Customer as part of this Trial. Customer is responsible for ensuring compliance with the provisions of the Guide and these Terms by Customer’s users and contractors that use the Trial. Trial Software is licensed for the duration of the Trial pursuant to (1) the terms and conditions made available to Customer when Customer downloads or installs the software portion of the Trial service or (2) if no such license exists, then the Avaya Global Software License Terms posted at <http://support.avaya.com/LicenseInfo> (or such successor site as designated by Avaya), as of first day of the Trial Period.

**Legal Compliance**: Customer shall observe all applicable laws and regulations when accessing and/or using the Trial and any work product or content of the Trial service, including, but not limited to, any export and import laws and/or regulations. The Trial and these Terms will be governed by and construed in accordance with the laws of the State of New York, United States of America, excluding conflict of law principles, and the United Nations Convention on Contracts for the International Sale of Goods. If a actions or proceedings arising or related to this Trial arose in the United States or is based upon an alleged breach committed in the United States it may be brought solely in either the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York. Except as otherwise stated each party consents to the exclusive jurisdiction of those courts, including their appellate courts, for the purpose of all actions and proceedings arising out of or relating to this Trial or these Terms. Any action or proceeding that: (i) arose anywhere other than in the United States or is based upon an alleged breach committed anywhere other than in the United States will be conclusively resolved by a final and binding arbitration proceeding 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, except that if the aggregate claims, cross claims and counterclaims by any one party against the other party exceed One Million US Dollars ($1,000,000.00) at the time all such claims  are filed, the proceeding will be held in accordance with the Rules of Arbitration of the International Chamber of Commerce by a panel of three (3) arbitrator(s) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language, at a location agreed by the parties or (failing agreement) ordered by the arbitrator(s). The arbitrator(s) will have authority only to award compensatory damages within the scope of the limitations of the Exclusion and Limitations stated herein and will not award punitive or exemplary damages. The arbitrator(s) will not have the authority to limit, expand or otherwise modify these terms. The ruling by the arbitrator(s) 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 will each bear their own attorneys' fees and other costs associated with the arbitration. The parties, their representatives, other participants and the arbitrator(s) will hold the existence, content and results of the arbitration in strict confidence to the fullest extent permitted by law. Any disclosure of the existence, content and results of the arbitration will be as limited and narrowed as required to comply with the applicable law. By way of illustration, if the applicable law mandates the disclosure of the monetary amount of an arbitration award only, the underlying opinion or rationale for that award may not be disclosed. All actions must be brought within two (2) years after they arise.

**DISCLAIMERS**: THE TRIAL AND ANY OTHER PRODUCTS, SUPPORT, AND SERVICES PROVIDED BY OR ON BEHALF OF AVAYA, ITS AFFILIATES, AND/OR THEIR RESPECTIVE SUPPLIERS, IN CONNECTION WITH THIS TRIAL ARE PROVIDED “**AS IS**”. USE OF THE TRIAL SERVICE IS AT CUSTOMERS OWN RISK. AVAYA DISCLAIMS ALL EXPRESS, STATUTORY, IMPLIED OR OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. THE TRAIL SERVICE IS NOT A TELECOMMUNICATIONS SERVICE. THE TRAIL SERVICE MAY NOT BE CONNECTED TO THE PUBLIC TELEPHONE NETWORK, AND CUSTOMER MAY NOT USE CONFIDENTIAL, PERSONAL, PERSONALLY IDENTIFIABLE, PRIVATE, OR PERSONAL HEALTH INFORMATION WHEN USING THE TRIAL SERVICE. THE TRIAL MAY NOT BE USED FOR ANY HIGH RISK ACTIVITIES. THE TRIAL MAY BE USED AND ACCESSED BY CUSTOMER ONLY IN THE COUNTRY STATED IN THE GUIDE. CALLS MAY NOT BE PLACED BY OR PLACED TO CUSTOMER LOCATIONS OUTSIDE OF THE COUNTRY STATED WHERE CUSTOMER SIGNING UP FOR TRIAL IS LOCATED. CUSTOMER IS REQUIRED TO OBTAIN ALL NECESSARY CONSENTS IN CONNECTION WITH THE INFORMATION AND DATA PROVIDED FOR THE TRIAL. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT THE TRIAL IS NOT INTENDED TO SUPPORT OR CARRY EMERGENCY CALLS OR COMMUNICATIONS OF ANY NATURE TO ANY TYPE OF EMERGENCY SERVICES OF ANY KIND, INCLUDING 911 AND E911 SERVICE WHICH MAY BE LIMITED OR UNAVAILABLE, AND AVAYA IS NOT LIABLE IN ANY MANNER FOR SUCH CALLS. CUSTOMER MUST RETAIN OR OBTAIN AN ALTERNATIVE MEANS OF ACCESSING E911/911. CUSTOMER MUST INFORM ALL USERS USING THE TRIAL SERVICE THAT IT IS NOT FOR EMERGENCY COMMUNICATIONS.

Customer acknowledges and agrees that the TRIAL described herein and in any related documentation is not designed to comply with the health insurance portability and accountability act, as amended, and its implementing regulations also referred to as HIPAA. Customer agrees that it will not use the TRIAL SERVICE to create, receive, transmit, maintain, use, disclose, or otherwise cause the TRIAL Service to handle protected health information as defined under HIPAA. Customer retains full responsibility to ensure that the TRIAL is only applied to use-case scenarios where the TRIAL SERVICE provides the necessary level of security and privacy protections under applicable law. Customer’s agreement to this provision is a material condition of making the TRIAL available to Customer.

**EXCLUSIONS AND LIMITATIONS**: EXCEPT FOR PERSONAL INJURY CLAIMS, WILLFUL MISCONDUCT OR CUSTOMER’S BREACH OF AVAYA’S LICENSE RESTRICTIONS, AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, AVAYA AND ITS AFFILIATES, LICENSORS, RESELLERS AND SUPPLIERS, AND CUSTOMER AND BOTH PARTIES’ DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS SHALL NOT BE LIABLE FOR, REGARDLESS OF WHETHER THEY WERE ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER THE LIMITED REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT, OR CONSEQUENTIAL DAMAGES; (B) ANY LOSS OF PROFITS, REVENUE, OR DATA, TOLL FRAUD, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE; OR (C) ANY DIRECT DAMAGES ARISING UNDER THE TRIAL IN EXCESS OF $10,000 (USD). THE LIMITATION OF LIABILITY WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, NEGLIGENCE), EQUITY, OR OTHERWISE.

Additional terms and conditions, including the [Avaya Terms of Use for Hosted Services](http://support.avaya.com/LicenseInfo), may apply to any paid order for the applicable Avaya OneCloud™ - Private UCaaS order and these Terms will be null and void for all paid orders.