



## OPENQM CLOUD SERVICES TRIAL TERMS AND CONDITIONS

The Cloud Services Trial Terms and Conditions (the "Agreement") provides the terms and conditions for the access and use of an applicant ("Company") to Pick Cloud, Inc.'s (PCI) provided Trial Services, as defined herein, and takes effect when the Company agrees to such terms by submitting request for free trial form.

PCI's Trial Cloud Services consists of 1 vCPU, 4GB of RAM and up to 30GB of additional storage as well as 5 OpenQM licenses.

### **The Company acknowledges and agrees the Trial Services, or its components:**

- Are for Company's trial of the services only and Pick Cloud, Inc. has no responsibility for any Company data and information Company elects to create, store, maintain, transmit or make accessible through the Trial Services or any of its components;
- May be terminated, supplemented or modified without notice by Pick Cloud, Inc. at any time during the Term as defined herein;
- Are non-transferrable and Pick Cloud, Inc. has no obligation to transfer the Trial Services into a commercially available product;
- Company neither owns nor will it acquire any claim or right of ownership to any IP addresses assigned to Company for the use of the Trial Services;
- Service Level Agreement(s) ("SLA(s)") or similar service arrangements, including service outage credits do not apply to the Trial Services.

**Term.** The term begins on the First Day of Availability, as defined herein, and continues for the duration of the Trial Service ("Term"). Upon expiration of the Term, this Agreement shall terminate.

**Trial.** Company may use the Trial Services free of charge for the Term of this Agreement. At Pick Cloud, Inc.'s sole discretion, Company will receive access credentials in an invitation email from Pick Cloud, Inc. that shall provide Company access to the Trial Services for the Term ("First Day of Availability")

**Company's Access to Data.** Upon termination of this Agreement, Company will not have access to Company's data and Pick Cloud, Inc. shall destroy any Company data that remains after the Term. Any data that remains after the Term shall be unrecoverable by either party.

**Ownership of Intellectual Property.** Each party retains all rights and title to its own respective trade secrets, inventions, copyrights, licenses, and other intellectual property and nothing in the Agreement or performance thereof shall convey, license or otherwise transfer any right, title, or interest to the other party.

**Acceptable Use Policy.** Company agrees to use the Trial Service to store, retrieve and serve software applications, data and/or content owned, licensed or lawfully obtained by Company. Company agrees to not use, nor shall it permit others to use, the Trial Service: for 1) any unlawful, immoral, invasive, infringing, defamatory, fraudulent, or obscene purpose; 2) to send email of any kind that does not adhere to the guidelines set forth under the CAN-SPAM Act of 2003; 3) to send any virus, worm, Trojan horse or harmful code or attachment; 4) to alter, steal, corrupt, disable, destroy, trespass or violate any security or encryption of any computer file, database or network so as to interfere with the use of the Pick Cloud, Inc. network by other companies or authorized users; 5) in a manner that may expose Pick Cloud, Inc. to any criminal or civil liability; or 6) in a manner which is inconsistent with the generally accepted rules of Internet etiquette and conduct. If Company, or a third party through Company, violates any of the foregoing prohibitions, Pick Cloud, Inc. may immediately suspend the Trial Services and/or terminate this Agreement for cause and without further liability or obligation to Company. Company shall cooperate with Pick Cloud, Inc. in investigating and correcting any apparent breach of this Acceptable Use Policy. Company shall be solely responsible for any material that it maintains, transmits, downloads, views, posts, distributes, or otherwise accesses or makes available using the Trial Services.

**Indemnification.** Company shall indemnify and hold harmless Pick Cloud, Inc. and its officers, directors, agents and employees, from and against any and all claims, demands, causes of action, losses, damages, costs and expenses, including attorney fees (collectively, hereinafter "Claims") arising out of or in any manner relating to Company's breach of any of the terms of this Agreement.

**Limitation of Liability.** NEITHER PICK CLOUD, INC. NOR ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES OR SUPPLIERS SHALL BE LIABLE TO

COMPANY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRIAL SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Pick Cloud, Inc.'s liability for all claims of any kind arising out of or related to this Agreement, whether based on contract, tort, including, without limitation, strict liability and negligence, warranty or on other legal or equitable principles shall be limited to zero (\$0.00) dollars.

**No Warranties.** Company assumes total responsibility for use of the Trial Services. Pick Cloud, Inc. shall provide the Trial Service 'AS IS'. Pick Cloud, Inc. has no responsibility for the security, loss, intrusion or unauthorized access of stored data or any loss or damage caused by any action, omission or failure to comply with the terms of this Agreement by Company.

PICK CLOUD, INC. MAKES NO WARRANTY TO COMPANY OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY PICK CLOUD, INC. ARE HEREBY EXCLUDED AND DISCLAIMED.

**Export Matters.** Company represents and warrants that Company is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons to whom Pick Cloud, Inc. is legally prohibited to provide the Trial Service. Company may not use the Trial Service for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may Company provide administrative access to the Trial Service to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

**Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

Upon any termination or expiration of the Agreement, Company will immediately cease all use of the Trial Services and have no rights whatsoever to further test, evaluate, or use the Trial Services under this Agreement. At the termination or expiration of this Agreement, Company may elect to enter into a separate commercial Cloud Services Agreement with Pick Cloud, Inc.