

CloudM Standard Reseller Terms

Version	Date published
v1	03/11/2022

These standard reseller terms (**SRTs**) together with the Order Form and any other terms referred to in these terms and conditions constitute your agreement with CloudM for the provision of software and/or services (as defined below) ("**Agreement**").

This Agreement is made between the legal entity named as "Customer" in the Order Form (**Reseller** or **you**) and Cloud Technology Solutions Ltd trading as CloudM, a company incorporated in England & Wales with company number 06738954, whose registered office is at 17 Marble Street, Manchester M2 3AW, United Kingdom (**CloudM, we or us**).

1. Definitions and Interpretation

The following definitions and rules of interpretation in this clause apply in these SRTs.

1.1 Definitions:

Affiliate: means any person or entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

Authorised User: means a person contractually connected to the End User in the form of an employee, contractor, agent or consultant who is authorised by the End User (i) to the use of a single mailbox or object for a single user on a single physical or virtual computer or within a directory environment; or (ii) the use of a single licence for a single user on a single domain or tenant; in accordance with these SRTs. The acts or omissions of any Authorised User are considered an act or omission of the End User;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Business Hours: the period from 9.00 am to 5.00 pm in England on any Business Day;

Charges: means the amounts payable by the Reseller to CloudM for the CloudM Products as indicated in the relevant Order Form and/or Statement of Work;

CloudM Automate: means CloudM's software as a service subscription that enables automation and management of the End User's licence base. Functions include but are not limited to user lifecycle management, domain management, people finder, monitoring and reporting and dynamic groups;

CloudM SaaS Subscription Agreement: the subscription agreement setting out the end user terms for CloudM Migrate (Hosted), CloudM Automate, CloudM Archive and CloudM Email Signature as set out at <https://www.cloudm.io/legal/cloudm-saas-subscription-agreement>;

CloudM Brand Guidelines: means the brand guidelines available in the "Content Hub > Marketing > Listing Pack" section of the Partner Portal or from CloudM upon request;



CloudM Migrate (Hosted): CloudM's proprietary hosted software-as-a-Service module for data and user migration;

CloudM Migrate (Self-Hosted): CloudM's proprietary self-hosted software for data and user migration;

CloudM Migrate EULA: the end user licence agreement for CloudM Migrate (Self-Hosted) as set out at <https://www.cloudm.io/legal/cloudm-migrate-self-hosted-eula>;

CloudM Modules: CloudM's proprietary modules CloudM Migrate (Hosted), CloudM Migrate (Self-Hosted), CloudM Automate, CloudM Archive and CloudM Email Signature, together with any other modules developed by CloudM which the Reseller may purchase from CloudM;

CloudM Products: means the CloudM Modules, Serviced Migrations, Smart Starts and any other product or service developed by CloudM which the Reseller may purchase from CloudM;

Confidential Information: information that is proprietary or confidential and is either clearly identified as such or would be regarded as confidential by a reasonable business person;

Consumer Prices Index: the Consumer Prices Index (all items) (United Kingdom);

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: has the meaning given in the Data Protection Legislation;

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

Effective Date: the earlier of (i) the date of execution of the Order Form; or (ii) the date on which CloudM commences supplying CloudM Products to the Customer.

End User: means the final purchaser that has acquired the CloudM Product from the Reseller for its internal use and not for resale, remarketing or distribution;

Insolvency Event: an insolvency event arises when:

- (a) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (b) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of a party;



- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (e) the holder of a qualifying floating charge over the assets of a party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of the assets of a party or a receiver is appointed over all or any of the assets of a party;
- (g) a creditor or encumbrancer of a attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of a party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sections (a) to (g) (inclusive);
- (i) a party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Legislation: any statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party;

Order Form: the order form executed by CloudM and the Reseller, the order form completed by the Reseller on the Partner Portal, or any other document agreed between CloudM and the Reseller and detailing the CloudM Products purchased by the Reseller, as the case may be;

Partner Portal: CloudM's partner portal accessible at <https://portal.cloudm.io>;

Partner Portal Terms: means the terms and conditions governing the access to the website hosting the Partner Portal available at <https://www.cloudm.io/legal/terms-of-use>;

Rate Card: the pricing information set out in the "Rate Card" section of the Partner Portal;

Reseller Brand Guidelines: the brand guidelines provided by the Reseller to CloudM from time to time by email to marketing@cloudm.io;

Serviced Migrations: the migration of End User data from one data system to another data system managed and performed by CloudM, its agents or contractors using CloudM



Migrate (Self-Hosted) in accordance with the Statement of Work agreed with the Reseller;

Smart Starts: advice and support from CloudM in either a bronze, silver or gold package to the End User in connection with the implementation of the CloudM Modules as more specifically described at <https://www.cloudm.io/resources/support/smart-starts>;

Smart Start Terms: the terms and conditions for Smart Starts set out at <https://www.cloudm.io/legal/smart-starts-terms>;

Statement of Work (SoW): means the statement of work for Serviced Migrations and other ancillary services or products agreed between CloudM and the Reseller;

Term: means the duration of the supply of CloudM Products under the Order Form;

Trade Marks: the registered trade mark and trade mark applications and all unregistered trademarks and logos anywhere in the world, including CloudM, Cloud Technology Solutions and CTS together with any further trade marks which CloudM may permit or procure permission for the Reseller by notice in writing to use in respect of the CloudM Products;

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018, the UK GDPR, and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.9 A reference to **writing** or **written** includes e-mail, but not fax.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.



- 1.11 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

2. How this Agreement works

- 2.1 This Agreement is formed upon the Order Form being executed by the parties, and each validly executed Order Form forms a separate agreement between the parties on the terms of these SRTs.
- 2.2 The Reseller may opt to purchase all or only certain CloudM Products, and only the terms of this Agreement relevant to the CloudM Products indicated in the Order Form apply.
- 2.3 During the duration of this Agreement, the Reseller undertakes not to:
- (a) purchase the CloudM Products from any person or entity other than CloudM; or
 - (b) sell either directly or indirectly, or assign or transfer, any CloudM Products to any person or entity when Reseller knows or has reason to suspect that the person or entity may resell any or all of the CloudM Products to a third party.
- 2.4 The Reseller shall not sell any of the CloudM Products through a sales agent or to a sub-Reseller or re-seller without the express written permission of CloudM. Where CloudM agrees to any such appointment, the Reseller shall ensure that it enters into a written contract with such sales agent, sub-Reseller or re-seller on terms which provide at least the same level of protection to CloudM as set out in this Agreement.
- 2.5 The Reseller shall not resell CloudM Products to any federal, provincial, local or foreign government or political division thereof, any court or arbitrator (Government Authority), without the express written approval from CloudM.
- 2.6 This clause 2 only grants to the Reseller a licence to resell the CloudM Products, and does not transfer any right, title or interest to any such CloudM Products to the Reseller or its customers. Use of the terms "sell", "licence", "purchase", "licence fees" and "price" will be interpreted in accordance with this clause.
- 2.7 The Reseller may not sell any CloudM Modules to any End Users unless the End User accepts the terms of the CloudM Migrate EULA and/or CloudM SaaS Subscription Agreement (as the case may be) with CloudM setting out the terms of use of the CloudM Modules.
- 2.8 The terms of this Agreement prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of the Reseller's general terms and conditions contained in any purchase order or other document issued by the Reseller unless otherwise agreed between the parties.

3. Reseller's undertakings

- 3.1 The Reseller warrants and represents to CloudM that it will:
- (a) use its best endeavours to promote the resale of the CloudM Products;



- (b) where applicable install the CloudM Modules solely in accordance with the instructions supplied by CloudM from time to time in writing;
- (c) ensure that End Users and Authorised Users of the CloudM Modules are aware of and accept the CloudM Migrate EULA and/or CloudM SaaS Subscription Agreement (without amendments) prior to using the relevant CloudM Modules;
- (d) employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Reseller's obligations under this Agreement;
- (e) within 14 days of a written request from CloudM, provide such information as is reasonably requested by CloudM about the Reseller's processes and controls to support compliance with this Agreement;
- (f) keep all copies of the CloudM Modules (on whatever media) in conditions appropriate for their storage and provide appropriate security for the CloudM Modules all at its own cost;
- (g) on request from CloudM and subject to clause 15, provide CloudM with such information about End Users as is required by CloudM for the purposes of managing and enforcing the terms of the CloudM Migrate EULA and CloudM SaaS Subscription Agreement with such End Users;
- (h) inform CloudM immediately of any changes in ownership of the Reseller and of any change in its organisation or method of doing business which might affect the performance of the Reseller's obligations under this Agreement;
- (i) comply, and ensure that End Users comply, with all applicable Legislation.

4. CloudM undertakings

4.1 CloudM undertakes:

- (a) to provide such information and support as may be reasonably requested by the Reseller to enable it properly and efficiently to discharge its duties under this Agreement;
- (b) to approve or reject any promotional information or material submitted by the Reseller within 14 days of receipt.

4.2 Without prejudice to all other remedies of CloudM, the Reseller shall defend, indemnify and hold harmless CloudM, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial and otherwise), expenses and costs directly or indirectly arising out of or in connection with a breach by the Reseller of the terms of this Agreement and Reseller's marketing, installation, sale, payment and/or support in connection with the CloudM Modules.

5. Ordering CloudM Products

5.1 The Reseller shall submit a request for approval to CloudM for each prospective End User. The Reseller shall provide sufficient information to CloudM in its request for approval to enable CloudM to make a decision in respect of the prospective End User and this information shall include: the full legal name of the prospective End User; the products or services to be supplied to the prospective End User; the date from which the Reseller intends to give access to the CloudM Modules to the prospective End User and the date on which such access is proposed to end;



and/or, if the Reseller requests a Serviced Migration, the proposed timescales for the same.

- 5.2 Following receipt of the Reseller's request under clause 5.1, CloudM shall determine, in its sole discretion, whether the prospective End User is approved to be an End User of the Reseller and be granted access to CloudM Modules and/or provided with a Serviced Migration and/or Smart Starts for the duration specified in the Reseller's request.
- 5.3 CloudM shall not be obligated to approve a prospective End User.
- 5.4 The Reseller shall not resell or grant access to the CloudM Modules without CloudM's prior written approval.
- 5.5 Upon CloudM's approval of a prospective End User, the Reseller shall provide CloudM with the End User's registered name, address and contact information, the CloudM Modules quantities, relevant domains, pricing and other applicable metrics, and CloudM will generate an executable Order Form.
- 5.6 Where the CloudM Products listed on the Order Form include a Serviced Migration, CloudM and the Reseller shall work together to prepare and execute a Statement of Work detailing the scope of the Serviced Migration, a risk/assumptions/issues/dependencies ("RAID") analysis, the approach to project delivery and management and any further commercial or legal terms that may apply to the Serviced Migration.
- 5.7 Where the CloudM Products listed on the Order Form include a Smart Start to be delivered to the End User, the Reseller shall ensure that its agreement with the End User includes terms substantially identical to the Smart Start Terms.

6. Changes to the CloudM Products

- 6.1 CloudM is entitled to make changes to the CloudM Products which do not adversely affect the CloudM Products and shall give written notice of such changes to the Reseller as soon as reasonably practicable.

7. Serviced Migrations

- 7.1 When the Reseller orders a Serviced Migration from CloudM on behalf of an End User CloudM shall act as the Reseller's subcontractor in performing such Serviced Migration, and the Reseller shall ensure that it has appropriate terms in place with the End User for the provision of serviced cloud migrations.
- 7.2 With respect to the performance of the Serviced Migration, the Reseller shall be liable to the End User for any liabilities, costs, expenses, damages and losses arising out of the Serviced Migration (**Migration Claim**).
- 7.3 CloudM shall:
 - (a) perform the Serviced Migration with all reasonable care and skill and in accordance with Good Industry Practice and substantially in accordance with this Agreement;



- (b) use reasonable endeavours to meet any performance dates specified in the Statement of Work, but any such dates shall be estimated only and time shall not be of the essence for performance of the Agreement;
 - (c) appoint a CloudM representative in respect of the Serviced Migration to be performed, as identified in the Order Form or relevant Statement of Work;
 - (d) deliver the Serviced Migration remotely from CloudM offices unless otherwise set out in the Statement of Work in which case CloudM shall use reasonable endeavours to observe all health and safety and security requirements that apply at the End User's premises and that have been communicated in writing to CloudM within a reasonable period of time prior to any commencement of the Serviced Migration provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement; and
 - (e) ensure that personnel and subcontractors (if any) used by CloudM in the performance of the Serviced Migration are adequately skilled or experienced for the activities they are required to perform.
- 7.4 In the event that the Serviced Migration does not conform to the SoW as agreed between CloudM and the Reseller, CloudM will use commercially reasonable efforts to correct the non-conforming results (**Fault**) at no additional charge to the Reseller and in the event CloudM fails to successfully correct the Fault within a reasonable time of receipt of a written notice from the Reseller detailing the Fault, then the Reseller shall be entitled to terminate the applicable Serviced Migration set out in the relevant Order Form and receive an immediate refund of any prepaid, unused Charges for the non-conforming Serviced Migration. This clause 7.4 sets out the Reseller's exclusive remedy and CloudM's entire liability in the event that CloudM breaches the provisions of clause 6.3 above.
- 7.5 If CloudM's performance of a Serviced Migration is prevented or delayed by any act or omission of the Reseller or End User or failure by the Reseller or End User to perform any relevant obligation (**Reseller Default**), CloudM shall give the Reseller written notice of such Reseller Default (**Default Notice**). If, 5 Business Days after receipt of a Default Notice the Reseller has not remedied the Reseller Default CloudM (without limiting or affecting any other right or remedy available to it), shall be entitled to:
- (a) suspend performance of the Serviced Migration until the Reseller remedies the Reseller Default, and to rely on the Reseller Default to relieve it from the performance of any of its obligations in each case to the extent the Reseller Default prevents or delays CloudM's performance of the Serviced Migration;
 - (b) CloudM shall not be liable for any costs or losses sustained or incurred by the Reseller arising directly or indirectly from the Reseller Default; and
 - (c) the Reseller shall reimburse CloudM on written demand for any costs or losses sustained or incurred by CloudM arising directly or indirectly from the Reseller Default.
- 7.6 The Reseller may request a change to the CloudM Migration Services via the change control procedure set out in the relevant Statement of Work.



- 7.7 The Reseller may cancel a Serviced Migration subject to the payment by the Reseller of a cancellation charge equivalent to:
- (a) if the cancellation takes effect within 10 Business Days, but not less than 5 Business Days, of the agreed start date of the Serviced Migration, a payment equal to twenty five per cent of the total Charges relating to the Serviced Migration; or
 - (b) If the cancellation takes effect within 5 Business Days of the agreed services start date, a payment equal to forty per cent of the total Charges relating to the Serviced Migration.

8. Partner Portal

- 8.1 If CloudM has granted the Reseller access to the Partner Portal, the Reseller agrees to comply with the Partner Portal Terms.

9. Charges and payment

- 9.1 The Charges shall be as stated in the Order Form.
- 9.2 Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under this Agreement shall be paid by the Reseller unless CloudM has expressly agreed beforehand in writing to pay such expenses, costs and charges.
- 9.3 CloudM shall invoice the Reseller upon execution of the relevant Order Form, and the Reseller shall pay the full amount invoiced to it by CloudM in the currency indicated in the Order Form within 30 days of the date of invoice unless otherwise agreed in writing between CloudM and the Reseller.
- 9.4 The Reseller shall not be entitled by reason of any set-off, counterclaim, abatement, or other similar deduction to withhold payment of any amount due to CloudM.
- 9.5 The Reseller shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the CloudM Products. All amounts payable by the Reseller exclude amounts in respect of value added tax (VAT) or any equivalent taxes in the relevant jurisdiction, which the Reseller may additionally be liable to pay to CloudM where applicable.
- 9.6 If the Reseller fails to make any payment due to CloudM under this Agreement by the due date for payment, then, without limiting CloudM's remedies under clauses 9.8 and 18.3, the Reseller shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Reseller shall pay the interest together with the overdue amount.
- 9.7 The Reseller shall reimburse CloudM for all costs incurred by CloudM in collecting any late payments or interest, including legal fees, court costs and collection agency fees.



- 9.8 If payment remains overdue for 30 days, CloudM may disable, or withhold, suspend or revoke its grant of a licence of, or performance of service in relation to the CloudM Products for which payment is so overdue until all overdue amounts and interest have been paid.
- 9.9 If increases in the Consumer Prices Index exceed 5% over any consecutive twelve-month period, CloudM shall have the right to adjust the Charges to reflect that increase for any future invoicing periods. CloudM shall give the Customer not less than one month's prior notice in writing of the proposed changes to the Charges. and it is the responsibility of the Reseller to ensure it is able to pass such increase on to the End-User. CloudM shall give the Reseller not less than one month's prior notice in writing of the proposed changes.

10. Advertising and promotion

10.1 The Reseller shall:

- (a) be responsible for the advertising and promotion and reselling of the CloudM Products in accordance with good business practice, provided that the use by the Reseller of any advertising materials and promotional literature containing the Trade Marks or other references to the CloudM Products shall be subject to the prior written consent of CloudM;
- (b) observe all directions and instructions given to it by CloudM, including complying with the CloudM Brand Guidelines, in relation to the promotion and advertisement of the CloudM Products to the extent that such promotions or advertisements refer to the CloudM Products or otherwise use the Trade Marks, and shall not make any written statement as to the quality or manufacture of the CloudM Products without the prior written approval of CloudM;
- (c) have sufficient knowledge, of the industry and products competitive with each CloudM Product (including specifications, benefits and features) so as to explain them in detail to End Users;
- (d) conduct its business in a manner that reflects favourably at all times on CloudM and the good name, good-will and reputation of CloudM and not enter into any contract or engage in any practice detrimental to the interests of CloudM in the CloudM Products; and
- (e) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to CloudM, the CloudM Products or the public and shall not publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to CloudM or the CloudM Products.

11. Compliance with laws and regulations

- 11.1 The Reseller shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the CloudM Modules in the Reseller's territory, or their delivery to the Reseller, and the Reseller shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the CloudM Modules.
- 11.2 The Reseller warrants to CloudM that it has informed CloudM of all legislation affecting the sale of the CloudM Modules which are in force in the territory in



which the Reseller operates or any part of it (**Local Regulations**) at the date of this Agreement.

- 11.3 The Reseller shall give CloudM as much advance notice as reasonably possible of any prospective changes in the Local Regulations.
- 11.4 On receipt of notification from the Reseller under clause 11.3, CloudM shall ensure that the CloudM Modules comply with any change in the Local Regulations by the date of implementation of that change or as soon as is possible thereafter where reasonably practicable, or cease to provide the Reseller with any CloudM Product which does not comply with the Local Regulations as amended.

12. Anti-bribery

12.1 The Reseller shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption or any similar laws, regulations, code and sanctions in any relevant jurisdiction, including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 or any similar laws in any jurisdiction, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 12.1(b) and will enforce them where appropriate;
- (d) promptly report to CloudM any request or demand for any undue financial or other advantage of any kind received by the Reseller in connection with the performance of this Agreement; and
- (e) immediately notify CloudM (in writing) if a foreign public official becomes an officer or employee of the Reseller (and the Reseller warrants that it has no foreign public officials as officers or employees or direct or indirect owners at the date of this Agreement).

12.2 Without prejudice to clause 12.1 the Reseller shall ensure that any person associated with the Reseller who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Reseller in this clause 12 (**Relevant Terms**). The Reseller shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in all circumstances be directly liable to CloudM for any breach by such persons of any of the Relevant Terms howsoever arising.

12.3 Breach of this clause 12 shall be deemed a material breach, which is not capable of being remedied, under clause 18.3(a).

12.4 For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that



Act and section 8 of that Act respectively. For the purposes of this clause 12 a person associated with the Reseller includes any subcontractor of the Reseller.

13. Intellectual Property Rights

- 13.1 Unless otherwise agreed between the parties, all Intellectual Property Rights in and to the CloudM Products belong, and shall belong, to CloudM and/or its licensors.
- 13.2 The Reseller shall, at the expense of CloudM, take all such steps as CloudM may reasonably require assisting CloudM in maintaining the validity and enforceability of the Intellectual Property Rights of CloudM during the term of this Agreement.
- 13.3 Without prejudice to the right of the Reseller or any third party to challenge the validity of any Intellectual Property Rights of CloudM, the Reseller shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of CloudM and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 13.4 CloudM makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the CloudM Products and the Trade Marks.
- 13.5 CloudM grants to the Reseller a non-exclusive, revocable, personal licence (subject to the terms and conditions of this Agreement and during its term and solely for the purpose of performing the Reseller's obligations under this Agreement) to:
 - (a) use such reasonable copies of the CloudM Products as may reasonably be required for the purposes of demonstrating, marketing and selling the CloudM Products to prospective End Users; and
 - (b) use and copy the documentation supplied by CloudM in connection with the CloudM Products (whether in electronic, hard copy or otherwise) for the purposes of complying with its obligations under this Agreement;
 - (c) use the Trade Marks for the purpose of the promotion, advertisement and sale of the CloudM Modules.
- 13.6 The Reseller shall not:
 - (a) copy the CloudM Modules or any part of any of them except to the extent and for the purposes expressly permitted by this Agreement;
 - (b) modify, adapt, develop, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the CloudM Modules except and only to the extent that it is expressly permitted by applicable law. The Reseller is granted no rights under this Agreement except as expressly stated and CloudM expressly reserves all Intellectual Property Rights and its other rights in and to the CloudM Modules.
- 13.7 The Reseller shall ensure that each reference to, and use of, any of the Trade Marks by the Reseller is in a manner from time to time approved by CloudM and accompanied by an acknowledgement in a form approved by CloudM that the same is a trade mark (or registered trademark) of CloudM.



- 13.8 The Reseller shall not:
- (a) use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of CloudM therein;
 - (b) use in relation to the CloudM Products any trade marks other than the Trade Marks without obtaining the prior written consent of CloudM; or
 - (c) use any trademarks or trade names so resembling any trademark or trade names of CloudM as to be likely to cause confusion or deception.
- 13.9 Other than the licence expressly granted under this Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in this Agreement, the Reseller shall have no rights in respect of any trade names or trademarks used by CloudM in relation to the CloudM Products or their associated goodwill, and the Reseller hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, CloudM.
- 13.10 At the request of CloudM, the Reseller shall do or procure to be done (at CloudM's reasonable cost) all such further acts and things (including the execution of documents) as CloudM shall reasonably require to give CloudM the full benefit of this Agreement.
- 13.11 The Reseller shall promptly give notice in writing to CloudM in the event that it becomes aware of:
- (a) any infringement or suspected infringement of the Trade Marks or any other Intellectual Property Rights in or relating to the CloudM Products; and
 - (b) any claim that any CloudM Product or the manufacture, use, sale or other disposal of any CloudM Product, whether or not under the Trade Marks, infringes the rights of any third party.
- 13.12 In the case of any matter falling within clause 13.11(a):
- (a) CloudM shall determine what action, if any, shall be taken in respect of the matter; and
 - (b) CloudM shall have sole control over and shall conduct any consequent action as it shall deem necessary; and
 - (c) the costs of any such action shall be borne, and all damages and other sums which may be paid or awarded as a result of any such action shall be shared, by the parties equally.
- 13.13 In the case of any matter falling within clause 13.11(b):
- (a) CloudM and the Reseller shall consult to decide what steps shall be taken to prevent or terminate the infringement and the proportions in which they shall share the cost of those steps and any damages and other sums which may be awarded in their favour or against them; and
 - (b) failing agreement between the parties, either party shall be entitled to take all action as it shall consider to be necessary or appropriate at its own expense to defend such a claim and shall be entitled and subject to all damages and other sums which may be recovered or awarded against it as a result of any such action.
-
-



- 13.14 The foregoing states the Reseller's sole and exclusive rights and remedies, and CloudM's entire obligations and liability, in the case of any matter falling under clause 13.12(b)
- 13.15 Each party shall, at the request and expense of the other, provide all reasonable assistance to the other (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by the other party, provided that that party is given such indemnity as it may reasonably require against any damage to its name.

14. Confidentiality

- 14.1 Each party may have access to Confidential Information of the other party under this Agreement. A party's Confidential Information shall not include information that:
- (a) is or becomes publicly known through no act or omission of the receiving party; or
 - (b) was in the other party's lawful possession prior to the disclosure; or
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 14.3 Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.5 This clause 13 shall survive termination of this Agreement, however arising.

15. Protection and processing of personal data

- 15.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.2 The parties acknowledge that where the Reseller or any of its sub-contractors, as part of the fulfilment of its obligations under this Agreement, processes personal



data as a processor on behalf of CloudM, then, for the purposes of the Data Protection Legislation, CloudM is the processor and the Reseller is the Controller.

- 15.3 Without prejudice to the generality of clause 15.1, the Reseller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to CloudM for the duration and purposes of this Agreement.
- 15.4 Without prejudice to the generality of clause 15.1, CloudM shall, in relation to any personal data processed in connection with the performance by CloudM of its obligations under this Agreement:
- (a) process that personal data only on the documented written instructions of the Reseller unless CloudM is required by the laws of any member of the European Union or by the laws of the European Union applicable to CloudM and or Domestic UK Law (where **Domestic UK Law** means the Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where CloudM is relying on Applicable Laws as the basis for processing personal data, CloudM shall promptly notify the Reseller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit CloudM from so notifying the Reseller;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by CloudM, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the prior written consent of the Reseller has been obtained and the following conditions are fulfilled:
 - (i) CloudM or the Reseller has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) CloudM complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) CloudM complies with reasonable instructions notified to it in advance by the Reseller with respect to the processing of the personal data.
 - (d) assist the Reseller, at the Reseller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach



notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Reseller without undue delay on becoming aware of a personal data breach;
- (f) at the written direction of the Reseller, delete or return personal data and copies thereof to the Reseller on termination of the Agreement unless required by Applicable Law to store the personal data;
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 14; and
- (h) provide to the Reseller on request a copy of all personal data held by it pursuant to this Agreement, in the format and on the media reasonably specified by the Reseller, and shall promptly inform the Reseller if any such data is lost or destroyed or becomes damaged, corrupted, or unusable. The Reseller will restore such data at its own expense.

15.5 The Reseller consents to CloudM appointing the sub-processors of personal data listed below:

Sub processor	Purpose	Location	Website
Google	Cloud Services Provider	US/EU	https://cloud.google.com/terms/data-processing-terms
Microsoft	Cloud Services Provider	US/EU	https://docs.microsoft.com/en-gb/legal/gdpr
Salesforce	CRM supporting business processes	US	https://www.salesforce.com/
Hubspot	Marketing processes	US	https://www.hubspot.com/
Atlassian (Jira)	Developer process management	EU	https://www.atlassian.com/software/jira
Zendesk	Customer support	EU	https://www.zendesk.com/

15.6 Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

16. Warranties

16.1 Each party represents, warrants and undertakes that:

- (a) it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that these SRTs are accepted by its



duly authorised representative and represents a binding commitment on it;

- (b) without affecting its other obligations under this Agreement, it shall comply with all applicable Legislation in the performance of its obligations under this Agreement; and
 - (c) this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 16.2 CloudM warrants to the Reseller that the CloudM Modules supplied by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the applicable part(s) of the Specifications as they may be amended from time to time.

16.3 **Disclaimer.** Except as expressly provided in this Agreement, to the maximum extent permitted by applicable law, CloudM does not make any warranty of any kind, whether express, implied, statutory or otherwise, including merchantability, fitness for a particular use and non-infringement.

17. Limitation of liability

17.1 The following provisions set out the entire financial liability of the parties (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Reseller in respect of:

- (a) any breach of this Agreement howsoever arising; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement, breach of statutory duty, or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 17.2 Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.
- 17.3 Nothing in this Agreement excludes the liability of either party:
- (a) for death or personal injury caused negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) under the indemnity at clause 4.2.
- 17.4 Other than in relation to any liability under clause 17.3, neither party shall in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of goods; or
 - (f) loss of use; or
 - (g) loss or corruption of data or information; or



- (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 17.5 Subject to the provisions of clauses 17.3, 17.4, 17.6 and 17.7, the parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to 125% of the amount actually paid by the Reseller to CloudM under this Agreement in the 12 months preceding the date on which the claim arose.
- 17.6 In the event of any breach of CloudM's warranty in clause 16 (whether by reason of defective materials, production faults or otherwise) the Reseller's sole remedy and CloudM's only obligation and liability to the Reseller shall be, at CloudM's option, to provide either:
- (a) a replacement of CloudM Product in question; or
 - (b) repayment of any applicable price paid for CloudM Product.
- 17.7 CloudM's total aggregate liability for breach of clauses 12 (Confidentiality) and 13 (Protection and Processing of Personal Data) shall in all circumstances be limited to £3,000,000 in aggregate.

18. Term and termination

- 18.1 The Agreement shall commence on the Effective Date and continue for the duration of the Term unless terminated earlier in accordance with this clause 18.
- 18.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability in any circumstances to the other if:
- (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) the other party is subject to an Insolvency Event.
- 18.3 Without prejudice to any other rights or remedies to which CloudM may be entitled, CloudM may terminate the Agreement without liability in any circumstances to the Reseller if:
- (a) there is a change of control of the Reseller within the meaning of section 1124 of the Corporation Tax Act 2010 or equivalent in any other jurisdiction to which CloudM reasonably objects; or
 - (b) the Reseller purports to assign any of its rights or obligations under this Agreement.

19. Effects of termination

- 19.1 Upon termination or expiry of this Agreement however arising:
- (a) the Reseller shall (at its sole cost) return (or at CloudM's option, destroy) all media on which the CloudM Modules are held and the Reseller shall stop selling the CloudM Modules;



- (b) the Reseller shall promptly return to CloudM, or otherwise dispose of as CloudM may instruct, all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent to the Reseller and relating to CloudM's business (other than correspondence which has passed between the parties) which the Reseller may have in its possession or under its control;
 - (c) the Reseller shall immediately cease to represent itself as a Reseller of CloudM Modules, and otherwise cease from all conduct or representations that might lead the public or trade to believe that Reseller is authorised by CloudM to sell the CloudM Modules;
 - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry shall not be affected or prejudiced;
 - (e) the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced; and
 - (f) all rights and licences of the Reseller under this Agreement shall terminate.
- 19.2 The termination of this Agreement shall not of itself give rise to any liability on the part of CloudM to pay any compensation to the Reseller for loss of profits or goodwill, to reimburse the Reseller for any costs relating to or resulting from such termination, or for any other loss or damage howsoever arising.

20. Publicity

- 20.1 Each party grants the other a non-exclusive licence to the other's name and logo in sales and marketing material for the duration of this Agreement.
- 20.2 In exercising its rights under clause 20.1, the Reseller shall comply with the CloudM Brand Guidelines, and CloudM will comply with the Reseller Brand Guidelines, if any have been provided.

21. General

- 21.1 **Force majeure** - Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 7 days' written notice to the affected party.
- 21.2 **Assignment and other dealings** - CloudM may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under this Agreement save that CloudM will only assign or novate this Agreement to a CloudM Affiliate, and shall give the Reseller prior written notice of such dealings. The Reseller may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.



- 21.3 **Entire agreement** - This Agreement constitutes the entire agreement between CloudM and the Reseller. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 21.4 **Variation** - No variation of this Agreement shall be valid unless it is made in writing and signed by the parties (or their representatives), save that CloudM may at any time vary the Smart Start Terms, CloudM Migrate EULA and/or CloudM SaaS subscription Agreement.
- 21.5 **Waiver** - A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 21.6 **Severance** - If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause 21.6, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.7 Notices

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- i. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - ii. sent by email to the following addresses (or an address substituted in writing by the party to be served):

Reseller: the address indicated in the Order Form.

CloudM: legal@cloudm.io, with copy to the Reseller's account manager as indicated on the Partner Portal; or

- iii. in the case of notices given by CloudM, posted on the Partner Portal or CloudM's website (accessible at www.cloudm.io).
- (b) Any notice shall be deemed to have been received:
- i. if delivered by hand, at the time the notice is left at the proper address;
 - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or



- iii. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume; or
- iv. if posted on the Partner Portal or CloudM's website, on the next Business Day following the day the notice was posted.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.8 Third party rights - Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

21.9 Governing law - This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21.10 Jurisdiction - Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.