



CloudM Standard Terms And Conditions for Direct Customers

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These terms and conditions only apply to direct customers of CloudM - if you have purchased CloudM Products from an authorised CloudM reseller, please refer to the terms of your agreement with your reseller.

These standard terms and conditions (**STCs**) together with your 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 in the Order Form (**Customer** 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 this Agreement.

1.1 Definitions

Affiliate: any business entity from time to time controlling, controlled by, or under common control with, either party;

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: the amounts payable by the Customer to CloudM for the CloudM Products as indicated in the relevant Order Form;

CloudM Archive: CloudM's software-as-a-service module assisting End Users with their storage and archiving needs;

CloudM Automate: CloudM's software-as-a-service module assisting End Users with their personnel on-boarding and off-boarding management;

CloudM Email Signature: CloudM's software-as-a-service module assisting End Users with their email signature management;

CloudM Subscription Agreement: the software-as-a-service 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 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 including CloudM Migrate (Hosted), CloudM Migrate (Self-Hosted), CloudM Automate, CloudM Archive and CloudM Email Signature, together with any other modules developed by CloudM from time to time;

CloudM Products: the CloudM Modules, Serviced Migrations, Smart Starts and any other product or service developed by CloudM from time to time;

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, including the Charges and any bespoke terms agreed between CloudM and the Customer;

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

Data Processing Agreement (DPA): the data processing agreement set out at <https://www.cloudm.io/legal/data-processing-agreement>, or such other data processing agreement as agreed between the parties, which forms part of this Agreement;

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.

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 agreed by CloudM and the Customer which sets out the CloudM Products purchased by the Customer;

Serviced Migrations: the migration of Customer 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 Customer;

Smart Starts: advice and support from CloudM to the Customer 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 set out at <https://www.cloudm.io/legal/smart-starts-terms>, as may be amended by CloudM from time to time;

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

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 Customer by notice in writing to use in respect of the CloudM Products;

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



- 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 This Agreement is made up of the following and in the event of any conflict or inconsistency among the following documents, the order of precedence shall be as follows: (a) the Order Form; (b) the Statement of Work, if any; (b) these STCs; (c) the DPA; (d) the CloudM Migrate EULA and/or CloudM Subscription Agreement, as applicable; (e) the Smart Start Terms, if applicable.

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 STCs.
- 2.2 The Customer 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 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 Customer's general terms and conditions contained in any purchase order or other document issued by the Reseller unless otherwise agreed between the parties.

3 Customer's undertakings

- 3.1 The Customer warrants and represents to CloudM that it will:



- (a) where applicable, install the CloudM Products solely in accordance with the instructions supplied by CloudM from time to time in writing;
- (b) accept the CloudM Migrate EULA and/or CloudM Subscription Agreement (without amendments) prior to accessing the relevant CloudM Modules;
- (c) accept the DPA prior to accessing the relevant CloudM Products;
- (d) within 14 days of a written request from CloudM, provide such information as is reasonably requested by CloudM about the Customer's use of the CloudM Products to confirm compliance with this Agreement;
- (e) 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;
- (f) comply with all applicable Legislation.

4 Ordering CloudM Products

- 4.1 The CloudM Products to be supplied to the Customer by CloudM shall be indicated in the Order Form.
- 4.2 Where the CloudM Products listed on the Order Form include a Serviced Migration:
 - (a) The Customer shall provide CloudM with as much information as CloudM reasonably requests to prepare a draft Statement of Work;
 - (b) Following receipt of the information requested from the Customer, CloudM and the Customer 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.
- 4.3 Each Statement of Work shall be incorporated in the Order Form and this Agreement and will not form a separate agreement.
- 4.4 Once accepted by CloudM, orders for CloudM Products are final and may not be cancelled by the Customer, and no refund shall be due in the event of early termination, save for Serviced Migrations which may be cancelled in accordance with the provisions of clause 6.5.

5 Supply of CloudM Modules

- 5.1 Where the Customer purchases CloudM Modules, CloudM shall supply on the agreed form of media:
 - (a) within a reasonable period following the Effective Date, the latest version of the CloudM Modules; and
 - (b) during the term of this Agreement, such updates or new releases to the CloudM Modules as indicated in the Order Form as such updates or new releases become generally available.
- 5.2 The terms of the CloudM Migrate EULA and/or CloudM Subscription Agreement shall apply to the provision of the CloudM Modules by CloudM to the Customer.



6 Serviced Migrations

6.1 Where the Customer purchases Serviced Migrations, 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 the Statement of Work;
- (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 Statement of Work. That person shall have authority to contractually bind CloudM on all matters relating to the 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 Customer'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 CloudM shall not be liable under this Agreement if, as a result of such observation, CloudM 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.

6.2 In the event that the Serviced Migration does not conform to the SoW as agreed between CloudM and the Customer, CloudM will use commercially reasonable efforts to correct the non-conforming results (**Fault**) at no additional charge to the Customer and in the event CloudM fails to successfully correct the Fault within a reasonable time of receipt of a written notice from the Customer detailing the Fault, then the Customer 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 6.2 sets out the Customer's exclusive remedy and CloudM's entire liability in the event that CloudM breaches the provisions of clause 6.1 above.

6.3 If CloudM's performance of a Serviced Migration is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**), CloudM shall give the Customer written notice of such Customer Default (**Default Notice**). If, 5 Business Days after receipt of a Default Notice the Customer has not remedied the Customer 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 Customer remedies the Customer Default, and to rely on the Customer Default to relieve CloudM from the performance of any of its obligations, in each case to the extent the Customer 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 Customer arising directly or indirectly from the Customer Default; and
- (c) the Customer shall reimburse CloudM on written demand for any costs or losses sustained or incurred by CloudM arising directly or indirectly from the Customer Default.



- 6.4 The Customer may request a change to the CloudM Migration Services via the change control procedure set out in the Statement of Work.
- 6.5 The Customer may cancel a Serviced Migration subject to the payment by the Customer 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 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 Charges relating to the Serviced Migration.

7 Smart Starts

- 7.1 Where the Customer purchases Smart Starts, the Smart Start Terms shall be incorporated into the Agreement.

8 Charges and payment

- 8.1 The Charges shall be indicated in the Order Form.
- 8.2 CloudM shall invoice the Customer upon execution of the relevant Order Form, and the Customer 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 Customer.
- 8.3 The Customer 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.
- 8.4 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT) or any equivalent taxes in the relevant jurisdiction, which the Customer may additionally be liable to pay to CloudM where applicable.
- 8.5 If the Customer fails to make any payment due to CloudM under this Agreement by the due date for payment, then, without limiting CloudM's remedies under clause 16:
- (a) the Customer 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 Customer shall pay the interest together with the overdue amount;
 - (b) CloudM may suspend the Customer's access to the CloudM Products, including suspending the performance of a Serviced Migration where applicable, until payment has been made in full; and
 - (c) CloudM may recover its reasonable costs, expenses and charges (including legal costs and expenses) in collecting the late payment.



- 8.6 If payment remains overdue for 30 days, CloudM may terminate this Agreement. In the event of such termination, the Customer shall not be entitled to a refund of any amounts previously paid under this Agreement.
- 8.7 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.

9 Compliance with laws and regulations

- 9.1 The Customer shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the CloudM Modules in the Customer's territory, or their delivery to the Customer, and the Customer 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.

10 Anti-bribery

- 10.1 The Customer 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 10.1(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 Customer 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 Customer (and the Customer warrants that it has no foreign public officials as officers or employees or direct or indirect owners at the date of this Agreement).
- 10.2 Without prejudice to clause 10.1 the Customer shall ensure that any person associated with the Customer 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 Customer in this clause 10 (**Relevant Terms**). The Customer 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.



- 10.3 Breach of this clause 10 shall be deemed a material breach, which is not capable of being remedied, under clause 16.2(a).
- 10.4 For the purpose of this clause 10, 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 10 a person associated with the Customer includes any subcontractor of the Customer.

11 Intellectual Property Rights

- 11.1 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.
 - 11.2 The Customer 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.
 - 11.3 Without prejudice to the right of the Customer or any third party to challenge the validity of any Intellectual Property Rights of CloudM, the Customer 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.
 - 11.4 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.
 - 11.5 The Customer 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.
 - 11.6 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 Customer 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 Customer hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, CloudM.
 - 11.7 At the request of CloudM, the Customer 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.
 - 11.8 The Customer shall promptly give notice in writing to CloudM in the event that it becomes aware of:
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- (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.
- 11.9 In the case of any matter falling within clause 11.8(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.
- 11.10 In the case of any matter falling within clause 11.8(b):
- (a) CloudM and the Customer 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.
- 11.11 The foregoing states the Customer's sole and exclusive rights and remedies, and CloudM's entire obligations and liability, in the case of any matter falling under clause 11.8(b).
- 11.12 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.

12 Confidentiality

- 12.1 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.



- 12.2 Subject to clause 12.4, 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.
- 12.3 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.
- 12.4 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 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 This clause 12 shall survive termination of this Agreement, however arising.

13 Protection and processing of personal data

- 13.1 The terms of the DPA are incorporated into this Agreement by reference and shall apply to the processing of personal data under this Agreement.

14 Warranties

- 14.1 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.
- 14.2 **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. CloudM is not responsible or liable for the deletion or failure to store any Customer data and other communications maintained or transmitted through the use of the CloudM Products. The Customer is solely responsible for securing and backing up its applications, projects and data.

15 Limitation of liability

- 15.1 The following provisions set out the entire financial liability of CloudM (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer 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.
- 15.2 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.
- 15.3 Nothing in this Agreement excludes CloudM's liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other type of liability which cannot be excluded by law.
- 15.4 Other than in relation to any liability under clause 15.3, CloudM shall in no circumstance 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.
- 15.5 Other than in relation to any liability under clauses 15.3 and 15.6, CloudM's 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 Customer to CloudM under this Agreement in the 12 months preceding the date on which the claim arose.
- 15.6 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.

16 Term and termination

- 16.1 This Agreement shall commence on the Effective Date and continue for the duration of the Term unless terminated earlier in accordance with this clause 16.
- 16.2 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.
- 16.3 Without prejudice to any other rights or remedies to which CloudM may be entitled, CloudM may terminate the Agreement immediately on notice, without liability in any circumstances to the Customer if:
 - (a) the Customer commits a breach of the CloudM Migrate EULA or the CloudM Subscription Agreement, where applicable;
 - (b) there is a change of control of the Customer within the meaning of section 1124 of the Corporation Tax Act 2010 or equivalent in any other jurisdiction to which CloudM reasonably objects; or
 - (c) the Customer purports to assign any of its rights or obligations under this Agreement;
 - (d) The provisions of clause 8.6 apply.

17 Effects of termination

- 17.1 Upon termination or expiry of this Agreement however arising:
 - (a) the Customer shall (at its sole cost) return (or at CloudM's option, destroy) all media on which the CloudM Modules are held and the Customer shall stop accessing the CloudM Modules;
 - (b) the Customer shall promptly return to CloudM, or otherwise dispose of as CloudM may instruct, all samples, technical pamphlets, catalogues, specifications and other materials, documents or papers whatsoever sent to the Customer and relating to the CloudM's Products (other than correspondence which has passed between the parties) which the Customer may have in its possession or under its control;
 - (c) 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 this Agreement which existed at or before the date of termination or expiry shall not be affected or prejudiced;
 - (d) the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced; and
 - (e) subject to the provision of clauses 17.1(a) to (d), all rights and licences of the Customer under this Agreement shall terminate.
- 17.2 The termination of this Agreement shall not in itself give rise to any liability on the part of CloudM to reimburse the Customer for any costs relating to or resulting from such termination, or for any other loss or damage howsoever arising.

18 General



- 18.1 **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.
- 18.2 **Assignment and other dealings** - we 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 we will only assign or novate this Agreement to one of our Affiliates, and we shall give you prior written notice of such dealings. You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under this Agreement without our prior written consent.
- 18.3 **Entire agreement** - This Agreement constitutes the entire agreement between CloudM and you. 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.
- 18.4 **Variation** - No variation of the Agreement shall be valid unless agreed in writing (excluding email) and signed by the parties, save that CloudM may vary the Smart Start Terms, CloudM Migrate EULA and CloudM Subscription Agreement at any time on notice to the Customer in accordance with their respective terms. Any variation to the Order Form or Statement of Work shall only be valid if made in writing and signed by the parties (or their representatives).
- 18.5 **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.
- 18.6 **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 18.6, 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.
- 18.7 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):



CloudM: legal@cloudm.io, with copy to the Customer's account manager as indicated in the Order Form;

Customer: the email address indicated in the Order Form.

- (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.
- (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.

18.8 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.

18.9 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.

18.10 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.