CloudM Migrate Self-Hosted End User Licence Agreement

Version	Date published
v1	03/11/2022

CloudM Migrate Users: Please note that this EULA only applies to the self-hosted (or software) version of CloudM Migrate - if you have subscribed to the hosted (or SaaS) version of CloudM Migrate, you can access the relevant terms at https://www.cloudm.io/legal/cloudm-saas-subscription-agreement;

This end user licence agreement (**EULA**) is a legal agreement between the legal entity identified in the Order Form (as defined below) (**End User** or **you**) and Cloud Technology Solutions Limited trading as CloudM, a company registered in England and Wales with company number 06738954, whose registered office is at 17 Marble Street, Manchester, England, M2 3AW (**CloudM**, **we** or **us**).

By downloading CloudM Migrate (as defined below), you agree to the terms of this EULA and will bind you, the End User, and your employees, and you warrant and represent that the person accepting the terms of this EULA is authorised to enter into the same on behalf of the End User, and to bind the End User to its terms.

If you do not agree to the terms of this EULA, you may not download CloudM Migrate and access the associated documents.

You should print a copy of this EULA for future reference, however please note that we may update its terms and the version available at
https://www.cloudm.io/legal/cloudm-migrate-self-hosted-eula represents the terms in force from time to time.

1. Definitions and interpretation

1.1 Definitions

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

Authorised User: 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 to access and make use of CloudM Migrate;

Charges: the charges paid or payable by the End User for CloudM Migrate as stated in the Order Form;

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

CloudM Professional Support: the support package included with your licence for CloudM Migrate, as further described at https://www.cloudm.io/resources/support;

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;

Customer Success Manager: the customer success manager allocated by CloudM to the End User;

Direct Customer: an End User who has entered into an Order Form with CloudM directly;

Documentation: the CloudM Migrate documentation available at https://support.cloudm.io/hc/en-us and any additional user guides or other technical information made available to you by CloudM in relation to CloudM Migrate;

Domain: the Microsoft 365 or Google Workspace domain the End User intends to migrate data to using CloudM Migrate;

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 EULA.

Indirect Customer: an End User who has entered into an Order Form with a Partner;

Licence Key: the licence key allowing the End User to download and access CloudM Migrate;

Order Form: the order form for CloudM products or services between the End User and either (i) CloudM for Direct Customers; or (ii) the relevant Partner for Indirect Customers;

Partner: the CloudM authorised reseller who has entered into an Order Form with the End User, where the End User is not a Direct Customer.

Specifications: the CloudM Migrate specifications set out at https://support.cloudm.io/hc/en-us/articles/360008477819-CloudM-Migrate-System-Requirements;

Usage Levels: the usage levels indicated in the Order Form, expressed by reference to either the number of End User's Domain users or volume of data to be migrated using CloudM Migrate.

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.

2. Grant and scope of licence

2.1 In consideration of your commitment to comply with the terms of this EULA, we grant you a non-exclusive, non-transferable licence to use CloudM Migrate and the Documentation on the terms of this EULA.

2.2 You may:
   (a) download, install and use CloudM Migrate for your internal business purposes only, and only in relation to the Domain(s) indicated in the Order Form; and
   (b) receive and use any free supplementary software code or update of CloudM Migrate incorporating "patches" and corrections of errors (**Software Updates**) as may be made available by us from time to time. The Software Updates will be made available at https://support.cloudm.io/hc/en-us/articles/360016505140-Latest-Release-Notes-and-Download-Links-for-CloudM-Migrate and you will be responsible for regularly monitoring this page for any available Software Update.

3. Your obligations

3.1 You are responsible for:
   (a) ensuring that the information in the Order Form is accurate, correct and complete in all material respects;
   (b) maintaining Confidential Information as confidential, including any passwords;
   (c) designating Authorised Users with authorised access to CloudM Migrate; and
   (d) ensuring that all activities that occur in connection with CloudM Migrate comply with this EULA.

3.2 You agree that CloudM's responsibilities do not extend to the internal management or administration of CloudM Migrate on your behalf.

3.3 If you have ordered CloudM Migrate through a Partner, such Partner may have access to admin accounts and Authorised User accounts, and you are solely responsible for:

    (a) any access by the Partner to the End Users account or the Authorised User accounts; and

    (b) your compliance with the terms of your agreement with the Partner, including any obligations relating to the payment of the Charges.

3.4 You will obtain and maintain all required consents from Authorised Users for CloudM or the Partner to have access to relevant accounts in order to provide use of CloudM Migrate.

3.5 You will use commercially reasonable efforts to prevent unauthorised use of CloudM Migrate and to immediately terminate any unauthorised use by any third party. You will promptly notify us of any unauthorised use of, or access to, CloudM Migrate of which you become aware.

3.6 You undertake not to allow anyone other than Authorised Users who need to use CloudM Migrate or the Documentation to have access to the same. You agree to ensure that any Authorised User is under contractual obligations substantially similar to those contained in this EULA.

3.7 You acknowledge and undertake that you will be responsible for any acts or omissions of your Authorised Users as if they were your own acts or omissions. You indemnify and hold harmless CloudM for any damages, loss, expenses or costs (including reasonable legal fees) incurred by CloudM as a result of non-compliance with this EULA.

3.8 You undertake that you will:

    (a) take back up copies of all source data; and

    (b) only use CloudM Migrate in accordance with the Documentation and Specifications, unless otherwise agreed in writing with us.

3.9 You will use the most current version of CloudM Migrate available and ensure that you accept any updates provided by CloudM.

3.10 You are responsible for obtaining and maintaining any rights necessary for your use of the Domain specified in the Order Form.

3.11 You acknowledge and agree that you are responsible for the security, monitoring and performance of the infrastructure on which you install CloudM Migrate.

4. Audit

4.1 We have the right to inspect or audit by remote polling or other reasonable means during normal business hours to determine your compliance with this EULA, including but not limited to Usage Levels.

4.2 In the event that the inspection or audit described at clause 4.1 uncovers actual usage levels above the usage levels indicated in the Order Form, then without prejudice to our termination rights under this EULA, you shall promptly enter into an Order Form, with CloudM for Direct Customers, or the Partner for Indirect Customers, for the additional usage.

5. Support

5.1 Your licence for CloudM Migrate gives you access to CloudM Professional Support, which can be accessed at https://www.cloudm.io/resources/support (**Support Page**). Please note that the SLAs set out on the Support Page are indicative only and not legally binding on CloudM.

5.2 CloudM will provide the CloudM Professional Support with all reasonable care and skills, in accordance with good industry practice, using adequately skilled and experienced personnel.

5.3 In order to provide you with the best possible CloudM Professional Support experience, CloudM may require access to your instance of CloudM Migrate in order to debug and resolve any issues you may encounter (**CloudM Support Access**). CloudM Support Access is enabled by default, but you may opt-out by disabling CloudM Support Access from your settings area. By disabling CloudM Support Access, you understand and agree that you may not be able to receive all the benefits of CloudM Professional Support.

5.4 We may use data analytics for support and marketing purposes.

6. Restrictions

6.1 Except as expressly set out in this EULA or as permitted by any local law, you undertake:
   (a) not to copy CloudM Migrate or the Documentation except where such copying is incidental to normal use of CloudM Migrate, or where it is necessary for the purpose of back-up or operational security;
   (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify CloudM Migrate or the Documentation;
   (c) not to make alterations to, or modifications of, the whole or any part of CloudM Migrate, nor permit CloudM Migrate or any part of it to be combined with, or become incorporated in, any other programs;
   (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of CloudM Migrate nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of CloudM Migrate with another software program, and provided that the information obtained by you during such activities:
      i. is used only for the purpose of achieving inter-operability of CloudM Migrate with another software program;

      ii.   is not unnecessarily disclosed or communicated without our prior written consent to any third party; and

      iii. is not used to create any software which is substantially similar to CloudM Migrate;

(e)   to keep all copies of CloudM Migrate secure and to maintain accurate and up-to-date records of the number and locations of all copies of CloudM Migrate;

(f)   to supervise and control the use of CloudM Migrate and ensure that CloudM Migrate is used by your employees and representatives in accordance with the terms of this EULA;

(g)   to include our copyright notice and a copy of this EULA on all entire and partial copies you make of CloudM Migrate on any medium;

(h)   not to provide or otherwise make available CloudM Migrate in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person without prior written consent from us; and

(i)   to comply with all applicable laws, technology control or export laws and regulations.

7.   Intellectual Property Rights

7.1   You acknowledge that all intellectual property rights in CloudM Migrate and the Documentation anywhere in the world belong to us (or our licensors), that rights in CloudM Migrate are licensed (not sold) to you, and that you have no rights in, or to, CloudM Migrate or the Documentation other than the right to use them in accordance with the terms of this EULA.

7.2   You acknowledge that you have no right to have access to CloudM Migrate in source code form.

8.   Limited Warranty

8.1   We warrant that:

(a)   CloudM Migrate will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Specifications; and

(b)   that the Specifications correctly describe the operation of CloudM Migrate in all material respects,

for a period of 90 days from the date of your installation CloudM Migrate (**Warranty Period**).

8.2   If, within the Warranty Period, you notify us in writing of any defect or fault in CloudM Migrate as a result of which it fails to perform substantially in accordance with the Specifications, we will, at our sole option, either repair or replace CloudM Migrate, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.

8.3   The warranty does not apply:

(a)   if the defect or fault in CloudM Migrate results from you having altered or modified CloudM Migrate;

(b)   if the defect or fault in CloudM Migrate results from you having used CloudM Migrate in breach of the terms of this EULA; and

(c)   if the defect or fault in CloudM Migrate results from the set-up, design or any other aspect of your network set-up or computer systems.

9.   Limitation of liability

9.1   You acknowledge that CloudM Migrate has not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the facilities and functions of CloudM Migrate as described in the Specifications meet your requirements.

9.2   We only supply CloudM Migrate and the Documentation for internal use by your business, and you agree not to use CloudM Migrate or the Documentation for any re-sale purposes.

9.3   We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this EULA for:
(a)   loss of profits, sales, business, or revenue;
(b)   business interruption;
(c)   loss of anticipated savings;
(d)   loss or corruption of data or information;
(e)   loss of business opportunity, goodwill or reputation;
whether any of the losses set out at clauses 9.3(a) to 9.3(e) are direct or indirect; or
(f)   any special, indirect or consequential loss, damage, charges or expenses.

9.4   Other than the losses set out in clause 9.3 (for which we are not liable), our maximum aggregate liability under or in connection with this EULA whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 125% of the Charges. This maximum cap does not apply to clause 9.5.

9.5   Nothing in this EULA shall limit or exclude our liability for:
(a)   death or personal injury resulting from our negligence;
(b)   fraud or fraudulent misrepresentation;
(c)   any other liability that cannot be excluded or limited by English law.

9.6   This EULA sets out the full extent of our obligations and liabilities in respect of the supply of CloudM Migrate and the Documentation. Except as expressly stated in this EULA, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of CloudM Migrate and the Documentation which might otherwise be implied into, or incorporated in, this EULA whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

10. Termination

10.1 CloudM Migrate will automatically expire at the earliest of (i) completion of a one off use of CloudM Migrate or (ii) within 12 months from the effective date set out in the Order Form.

10.2 This EULA will remain in full force and effect for the duration of the term set out in the Order Form, and may be terminated in accordance with any additional terms incorporated in, or applying to, such Order Form.

10.3 In addition, if we become aware of an End User's or Authorised User's violation or breach of this EULA, we may, at our sole discretion:
   (a) suspend your access to CloudM Migrate. The duration of any suspension by CloudM will be until you have cured or rectified the breach which caused the suspension; or
   (b) terminate this EULA immediately by written notice to you if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

10.4 On termination for any reason:
   (a) all rights granted to you under this EULA shall cease;
   (b) you must immediately cease all activities authorised by this EULA; and
   (c) you must immediately and permanently delete or remove CloudM Migrate from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of CloudM Migrate and the Documentation then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

11. Communications between us

11.1 We may update the terms of this EULA at any time on notice to you in accordance with this clause 11. Your continued use of CloudM Migrate following the deemed receipt and service of the notice under clause 11.4 shall constitute your acceptance of the terms of this EULA as varied. If you do not wish to accept the terms of the EULA (as varied) you must immediately stop using and accessing CloudM Migrate on the deemed receipt of the notice.

11.2 If we have to contact you, we will do so by email, by pre-paid post to the address you provided in the Order Form, or by posting a notice on our website, at https://support.cloudm.io/hc/en-us/articles/360016505140-Latest-Release-Notes-and-Download-Links-for-CloudM-Migrate and you are responsible for regularly monitoring such webpage to ensure you receive any notice so given. Where your Order Form is with an Authorised Reseller, you authorise the Authorised Reseller to communicate your contact details as indicated in the Order Form to CloudM for the purpose of this clause 11.

11.3 Notices addressed to CloudM should be sent by email to legal@cloudm.io, with copy to your Customer Success Manager.

11.4 Any notice:

(a) given by us to you will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and

(b) given by you to us will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.

11.5 In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

12. Publicity

12.1 You grant CloudM a non-exclusive licence to use your name and logo in our sales and marketing material for the duration of this EULA and for a period of 2 years after termination of the EULA, save that, should you object to such use of your name and logo, you can opt-out of this clause 12.1 by giving us notice by email to marketing@cloudm.io no later than 30 days following you first downloading CloudM Migrate.

12.2 You may withdraw your consent under clause 12.1 at any time by giving us 7 days' prior written notice of the same, to be sent to marketing@cloudm.io.

12.3 In publicising your use of CloudM Migrate, we will comply with any brand guidelines you provide us by email to marketing@cloudm.io.

13. Protection and processing of personal data

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

14. General

14.1 **Force majeure** - Neither party shall be in breach of this EULA 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 EULA by giving 7 days' written notice to the affected party.

14.2 **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 EULA, save that we will only assign or novate this EULA to one of our Affiliates, and we will 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 EULA.

14.3 **Entire agreement** - This EULA constitutes the entire agreement between CloudM and you. Each party acknowledges that in entering into this EULA it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this EULA. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this EULA.

14.4 **Variation** - We reserve the right to amend the terms of this EULA at any time. Any amendment will be effective on the posting of an updated version at https://www.cloudm.io/legal/cloudm-migrate-self-hosted-eula.

14.5 **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.

14.6 **Severance** - If any provision or part-provision of this EULA 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 EULA. If any provision or part-provision of this EULA is deemed deleted under this clause 14.6, 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.

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

14.8 **Governing law** - This EULA 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.

14.9 **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 EULA or its subject matter or formation.