



CloudM Inc. Standard Reseller Terms

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These terms apply to orders placed by resellers only - if you are a direct customer of CloudM Inc, please refer to the [CloudM Inc. Standard Terms and Conditions for Direct Customers](#).

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 CloudM, Inc., a Delaware corporation, whose registered office is at 251 Little Falls Drive, Wilmington 19808, Delaware 19808 (**CloudM, we** or **us**).

1. Interpretation

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

1.1 Definitions:

Actual Usage: the End User's Onboarding Count, Offboarding Count, Migrate Count, Signature Count and Archive Count for the relevant Billing Period;

Affiliate: any person or entity that directly or indirectly controls, is controlled by, or is under common control with another entity. For purposes of this definition, the term **control(s)**, means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by trust, management agreement, contract or otherwise;;

Archive Count: the number of End User's users whose data has been archived using CloudM Archive, calculated on the basis of the highest number of such users during the relevant Billing Period;

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

Billing Period: a calendar month, the first such period to be the calendar month in which the relevant Order Form has been executed by the parties (First Billing Period);

Business Day: a day other than a Saturday, Sunday or federal holiday in the United States;

Business Hours: the period from 9.00 am to 5.00 pm 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 license 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 license 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 U.S. Consumer Price Index for All Urban Customers, U.S. City Average – All Items published by the U.S. Bureau of Labor Statistics;;

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

Data Protection Legislation: all legislation and regulatory requirements of the United States and its states and any other jurisdictions 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) under this Agreement; and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. Data Protection Legislation may include, without limitation, the California Consumer Privacy Act, and/or the Data Protection Act 2018, the retained EU law version



of the GDPR, as it forms part of the laws of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European (Withdrawal) Act 2018 as amended by Schedule 1 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) (**UK GDPR**), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426);

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, as indicated in the Order Form;

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;
- (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, or makes or seeks to make a general assignment for the benefit of its creditors;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for voluntary or involuntary bankruptcy or otherwise 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, receiver, trustee, custodian, or similar agent to take charge of or sell any material portion of its property or business (**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 similar and related rights, trademarks 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;

List Price: the pricing information set out in the "List Price" section of the Partner Portal or such other location as indicated by CloudM from time to time;

Migrate Count: the number of CloudM Migrate (Hosted) licenses requested by the Customer;

Offboarding Count: the number of users that have been successfully offboarded using CloudM Automate;

Onboarding Count: the number of users that have been successfully provisioned into the domain using CloudM Automate;

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>;

PAYG Modules: CloudM Migrate (Hosted), CloudM Automate, CloudM Email Signature and CloudM Archive, together with any other modules developed by CloudM, when supplied on a "pay-as-you-go" (PAYG) basis as indicated in the Order Form;

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;

Signature Count: the number of users that have an email signature applied via CloudM Email Signature calculated on the basis of the highest number of such users during the relevant Billing Period;

Smart Starts: advice and support from CloudM 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 Starts 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 either (i) the duration of the supply of CloudM Products under the Order Form, or (ii) in respect of the PAYG Modules only, rolling terms of 1 calendar month;

Trademarks: the registered trademark and trademark applications and all unregistered trademarks and logos of CloudM or its Affiliates anywhere in the world, including CloudM, Cloud Technology Solutions and CTS together with any further trademarks which CloudM may permit or procure permission for the Reseller by notice in writing to use in respect of the CloudM Products.

- 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 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 or sub-reseller on terms which provide at least the same level of protection to CloudM as set out in this Agreement; and Reseller shall not be released from its responsibility for its obligations under this Agreement, and any failure by such sales agent, sub-Reseller or re-seller to comply with the terms hereof shall constitute a breach of this Agreement by the Reseller.
- 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 license 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", "license", "purchase", "license 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).
- 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 expressly agreed between the parties.

3. Reseller's undertakings

- 3.1 The Reseller warrants and represents to CloudM that it will:
 - (a) use its best efforts 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 Authorized 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 confirm 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 Affiliates, and their respective officers, directors and employees (each, an **Indemnitee**) 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) a breach by the Reseller of the terms of this Agreement; and (b) Reseller's marketing, installation, sale, payment and/or support in connection with the CloudM Modules; and (c) any fraud, gross negligence or willful misconduct by Reseller or its personnel. CloudM will promptly give written notice of the such a claim to Reseller, provided, however, that the omission of such notice shall not relieve Reseller of its obligations with respect to such claim, except to the extent that Reseller can establish actual prejudice as a result thereof. Reseller will have the right to control the defense of an indemnified claim at Reseller's expense; however CloudM shall have the right to monitor the defense undertaken by Reseller and to participate in any litigation, negotiations, and/or settlements related to a claim at Reseller's expense and with counsel of its choosing. Reseller shall not agree to any settlement that requires Indemnitee to incur liability (other than the payment of a monetary amount, which is to be paid by Reseller), admit liability or fault, or otherwise suffer any adverse consequence without CloudM's prior written consent. In addition, Reseller shall not settle a claim unless the settlement fully releases the affected Indemnitee. If Reseller does not promptly assume control over the defense of an indemnified claim, then CloudM may defend the claim with counsel of its choosing or settle the claim, each at Reseller's expense pursuant to Reseller's obligations under this clause 4.2.

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 full legal name, state of formation, address and contact information, the CloudM Modules quantities, relevant domain(s), 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.
- 5.8 Order Forms for CloudM Products shall continue in full force and effect until:
 - (a) in respect of Serviced Migration, completion of the project in accordance with the Statement of Work;
 - (b) in respect of Smart Starts, the earliest of (i) completion of the delivery of the Smart Start package selected in the Order Form, or (ii) 6 months from the date of the first scheduled Smart Start meeting;
 - (c) in respect of CloudM Migrate (Self-Hosted) and CloudM Migrate (Hosted), the earliest of (i) completion of a one-off migration per licence, or (ii) 12 months from the date of issue of the relevant licence key(s);
 - (d) in respect of CloudM Automate, CloudM Email Signature, and CloudM Archive, the duration of the term indicated in the Order Form (**Initial Term**), thereafter renewing automatically for consecutive periods of 12 months (each a **Renewal Term**), unless and until terminated by either party on 30 days' prior notice to the other party, such notice to expire at the end of the Initial Term or then current Renewal Term, as the case may be.
- 5.9 CloudM shall be entitled to amend the Charges for CloudM Automate, CloudM Email Signature and/or CloudM Archive (as the case may be) upon 60 days' notice to the Reseller, such notice to expire at the end of the Initial Term or then current Renewal Term.
- 5.10 The Reseller shall ensure that the terms of its agreement with the End User includes provisions substantially identical to clauses 5.8 and 5.9 above.



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.
- 7.3 CloudM shall:
- (a) perform the Serviced Migration with reasonable care and skill and in accordance with applicable industry standards and substantially in accordance with this Agreement;
 - (b) use reasonable efforts 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 efforts 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 a prompt refund of any prepaid, unused Charges for the non-conforming Serviced Migration. This clause 7.4 sets out the Reseller's sole and 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 more than 5 Business Days before the agreed start date of the Serviced Migration, a payment equal to 25% of the total Charges relating to the Serviced Migration; or
 - (b) If the cancellation takes effect within 5 Business Days of the agreed start date of the Serviced Migration, a payment equal to 40% 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 Subject to the provisions of clause 5.9, 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 For PAYG Modules, CloudM shall invoice the Reseller monthly in arrears for the Charges calculated based on the End User's Actual Usage during the relevant Billing Period (and for the First Billing Period, the Charges shall be calculated pro-rata to the number of days in the First Billing Period, on the basis of a 30-days calendar month) as determined by CloudM, within 5 days of the end of the relevant Billing Period, 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 the invoice unless otherwise agreed in writing between CloudM and the Reseller.
- 9.4 For all CloudM Products (except for PAYG Modules), 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.

- 9.5 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.
- 9.6 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.
- 9.7 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 the Federal Reserve's base rate from time to time (or the highest amount permitted by law). 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.
- 9.8 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.
- 9.9 If payment remains overdue for 30 days, CloudM may disable, or withhold, suspend or revoke its grant of a license 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.
- 9.10 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.
- 9.11 CloudM may in the future request payment by credit or debit card, on a recurring basis, for the CloudM Modules. The Reseller agrees to provide and maintain valid credit or debit card details upon request from CloudM and authorizes CloudM to automatically charge the card on a recurring basis within 5 days of receipt of the invoice issued under clauses 9.3 or 9.4 above. In the event that CloudM has exercised its right to request card payments, the Reseller may cancel the recurring card payments at any time by notifying CloudM in writing and the cancellation will take effect from the next payment due date.

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 Trademarks or other references to the CloudM Products shall be subject to the prior written consent of CloudM (notwithstanding any consent of CloudM, the Reseller shall remain responsible for compliance with all applicable Legislation related to its advertising and promotion and reselling of the CloudM Products);

- (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 Trademarks, 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 favorably 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 CloudM Products and/or services may be subject to United States and foreign export controls. The Reseller agrees that it shall comply with all applicable laws, regulations, codes and sanctions relating to import and export in connection with its performance under this Agreement. Without limiting the foregoing:

- (a) the Reseller shall be responsible for obtaining any necessary import licenses 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.
- (b) The Reseller acknowledges and agrees that the CloudM Products and services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (**Embargoed Countries**), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (**Designated Nationals**). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Reseller represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.



- 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 U.S. Foreign Corrupt Practices Act (**Relevant Requirements**);
 - (b) not engage in any activity, practice or conduct which would constitute an offense under the U.S. Foreign Corrupt Practices Act or under sections 1, 2 or 6 of the UK 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 to ensure compliance with the Relevant Requirements 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 any Relevant Requirements. 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 authorize 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 authorize 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 Trademarks.
- 13.5 CloudM grants to the Reseller a non-exclusive, revocable, personal license (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 Trademarks 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 Trademarks 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 Trademarks 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 trademarks other than the Trademarks 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 license expressly granted under this Agreement, neither party grants any license 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 Trademarks 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 Trademarks, 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 14 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 or transfers personal data to CloudM for processing, 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, in relation to any personal data processed in connection with the performance by CloudM of its obligations under this Agreement, the parties agree that, to the extent that the California Consumer Privacy Act (**CCPA**) applies to the parties' processing of personal data, CloudM is a "service provider" as defined in the CCPA and shall process such personal data in accordance with the requirements of the CCPA for a "service provider". CloudM



shall process the personal data only as reasonably necessary and proportionate to achieve the Business Purpose for which the personal data is provided. CloudM shall not Sell any personal data. CloudM is also prohibited from: (a) from retaining, using, or disclosing personal data for any purpose other than for the specific purpose of performing the services specified in the Agreement; (b) further collecting, selling, or using personal data except as necessary to perform such services; and (c) from retaining, using or disclosing any personal data other than performing the services specified in the Agreement. For purposes of this clause, the terms "Business Purpose," "Consumer," "Sell" (and its derivatives) "Process" and "Service Provider," shall have the meanings ascribed to them in the CCPA. If CloudM, directly or indirectly, receives a request submitted by a Consumer to exercise a right it has under Applicable Data Protection Laws, it shall promptly provide a copy of the request to Reseller who will handle the verification and response to such requests. Reseller acknowledges that CloudM may receive and share personal data with its Affiliates or service providers in order to provide the services under this Agreement; and CloudM shall enter into written agreements with such entities that contain CCPA terms substantially equivalent to this clause 15.4.

- 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 The parties acknowledge that applicable Data Protection Legislation are subject to change; and the parties shall reasonably cooperate with each other to amend the terms of this Agreement, including executing any applicable data processing addenda, to the extent necessary for compliance with amended and/or additional applicable Data Protection Legislation.

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 licenses referred to in this Agreement and that these SRTs are accepted by its duly authorized 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, ALL CLOUDM PRODUCTS AND SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE" AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOUDM DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

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 THE LIMITATIONS OF LIABILITY OF THIS CLAUSE 17 SHALL NOT APPLY TO THE LIABILITY OR OBLIGATIONS 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.
- 17.3 OTHER THAN IN RELATION TO ANY LIABILITY UNDER CLAUSE 17.2, 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.
- 17.4 OTHER THAN IN RELATION TO ANY LIABILITY UNDER CLAUSES 17.2, 17.5 AND 17.6, 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 150% 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 (OR IN THE EVENT OF LIABILITY RELATED TO NON-PAYMENT BY RESELLER, 150% OF THE AMOUNT PAYABLE BY RESELLER TO CLOUDM, IF HIGHER).
- 17.5 EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR BREACH OF CLAUSES 14 (CONFIDENTIALITY) AND 15 (PROTECTION AND PROCESSING OF PERSONAL DATA) SHALL IN ALL CIRCUMSTANCES BE LIMITED TO \$3,000,000.
- 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 and exclusive 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 the relevant CloudM Product.

18. Term and termination

- 18.1 The Agreement shall commence on the Effective Date and continue for as long as the relevant Order Form remains in force in accordance with the provisions of clause 5.8, 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 to which CloudM reasonably objects (for purposes of this clause, **Change of Control** means (i) an acquisition, reorganization, merger, or consolidation of Reseller by or with a third party in which the holders of the voting securities of Reseller outstanding immediately before such transaction cease to beneficially own at least fifty percent (50%) of the combined voting power of the surviving entity, directly or indirectly, immediately after such transaction; (ii) a transaction or series of related transactions in which a third party, together with its Affiliates (if applicable), becomes the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of Reseller; or (c) the sale or other transfer to a third party of all or substantially all of Reseller's assets; and "beneficial owner" (together with the correlative terms "beneficially owned" and "beneficially own" shall meanings correlative to that of "beneficial owner") shall be determined in accordance with Rule 13d-3 of the U.S. Securities Exchange Act of 1934); 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 authorized 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 licenses 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 license 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, transfer, 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 provided 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 **Amendment**- No amendment or modification 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 mail (United States Postal Service certified mail, return receipt requested) or by nationally recognized courier service (next working day delivery) 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 mail or nationally recognized courier 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 No third party beneficiaries - Unless it expressly states otherwise, this Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns and does not give rise to any rights or remedies, nor may any provision hereof be enforced by, any other person. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other entity.

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 the State of Delaware, without regard to conflict of law principles.

21.10 Jurisdiction - Each party irrevocably agrees that the state and federal courts of the State of Delaware 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.