CloudM Subscription Agreement
for CloudM SaaS Modules and associated services

Version	Date published
v1	04/11/2022
v2	02/05/2023

CloudM Migrate Users: Please note that this Subscription Agreement only applies to the hosted (or SaaS) version of CloudM Migrate - if you have purchased a licence to the self-hosted (or software) version of CloudM Migrate, you can access the relevant terms at https://www.cloudm.io/legal/cloudm-migrate-self-hosted-eula.

This CloudM subscription agreement for CloudM Modules and associated services (**Subscription Agreement**) 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 accessing the CloudM Modules (as defined below), you agree to the terms of this Subscription Agreement that apply to the relevant CloudM Module and will bind you, the End User, and your employees, and you warrant and represent that the person accepting the terms of this Subscription Agreement 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 Subscription Agreement, you may not access the CloudM Modules, associated support services and documents.

You should print a copy of this Subscription Agreement for future reference, however please note that we may update its terms and the version available at https://www.cloudm.io/legal/cloudm-saas-subscription-agreement 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 the CloudM Modules;

Charges: the charges paid or payable by the End User for the CloudM Modules as stated in the 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; (please note – certain documentation and webpages may refer to CloudM Automate as "CloudM Manage");

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

CloudM Migrate: CloudM's proprietary hosted software-as-a-service module for data and user migration;

CloudM Module(s) : any or all of CloudM Archive, CloudM Automate, CloudM Email Signature and CloudM Migrate, as the context requires;

CloudM Professional Support: the support package included with your licence of or subscription to any of the CloudM Modules, 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 Modules 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 the CloudM Modules;

Domain(s): the Microsoft 365 or Google Workspace domain(s) in relation to which the End User intends to migrate or manage data using the CloudM Modules;

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 Subscription Agreement;

End User Data: the data inputted by the End User, Authorised Users, or CloudM on the End User's behalf for the purpose of using the CloudM Modules or facilitating the End User's use of the CloudM Modules;

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the

End User or an Authorised User (but not CloudM) relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time;

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

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 Modules specifications set out at https://support.cloudm.io/hc/en-us/categories/360002753820-Prerequisites-and-Installation;

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, managed and/or archived using one or more CloudM Modules;

Virus: any thing or device (including any software, code, file or programme) which may (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (iii) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities will be interpreted accordingly.

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. How this Subscription Agreement works

2.1 Your Order Form will set out which CloudM Modules you are subscribing to, along with any additional CloudM services or products.

2.2 In this Subscription Agreement, any reference to "the CloudM Modules" is to the modules indicated in your Order Form. This Subscription Agreement applies generally to all CloudM Modules, save for the provisions of clause 6 ("Module-specific terms").

3. Provision of the CloudM Modules

3.1 In consideration of your compliance with the terms of this Subscription Agreement, we grant you a non-exclusive right and licence, without the right to grant sub-licence, to use, and permit the Authorised Users to use, the CloudM Modules and Documentation for the duration of the term indicated in your Order Form.

3.2 We will use commercially reasonable endeavours to make the CloudM Modules available to you 24 hours a day, 7 days a week.

4. Our Obligations

4.1 We undertake that the CloudM Modules will perform substantially in accordance with their respective Specifications, and will be delivered with reasonable skill and care.

4.2 Our undertaking at clause 4.1 above does not apply to the extent that any non-conformance is caused by your use of the CloudM Modules contrary to our instructions, or due to any alteration or modification of the CloudM Modules by anyone other than CloudM or our authorised contractors or agents. If the CloudM Modules do not conform with the undertaking at clause 4.1, we will, at our expenses, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with alternative means of accomplishing the desired performance. Such correction or substitution constitute your sole and exclusive remedy for breach of the undertaking at clause 4.1.

4.3 We do not warrant that:

    (a) Your use of the CloudM Modules will be uninterrupted or error-free;

    (b) The CloudM Modules, Documentation and/or any information you obtain through the CloudM Modules will meet your requirements;

(c)   The CloudM Modules will be free from Vulnerabilities or Viruses; or

(d)   The CloudM Modules or Documentation will comply with the Heightened Cybersecurity Requirements.

4.4   We will not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the CloudM Modules and the Documentation may be subject to limitations, delays, and other problems inherent to the use of such communication facilities.

4.5   This Subscription Agreement does not prevent CloudM from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Subscription Agreement.

4.6   We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Subscription Agreement.

5.   Your obligations

5.1   You will provide us with:

(a)   all necessary co-operation in relation to this Subscription Agreement; and

(b)   all necessary access to such information as we may reasonably require;

in order to provide the CloudM Modules, including but not limited to End User Data, security access information and configuration services, as well as granting us administration access in the CloudM Modules.

5.2   Without affecting your other obligations under this Subscription Agreement, you will:

(a)   comply with all applicable laws and regulations with respect to your activities under this Subscription Agreement;

(b)   ensure that the Authorised Users use the CloudM Modules and the Documentation in accordance with this Subscription Agreement, and you will be responsible for any Authorised User's breach of this Subscription Agreement as if it was your own breach;

(c)   obtain and maintain all necessary licences, consents, and permissions necessary for CloudM, its contractors and agents to perform their obligations under this Subscription Agreement;

(d)   ensure that your network and systems comply with the relevant Specifications; and

(e)   be, to the extent permitted by law and except as otherwise expressly provided in this Subscription Agreement, solely responsible for procuring, maintaining and securing your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or

damage arising from or relating to the your network connections or telecommunications links or caused by the internet.
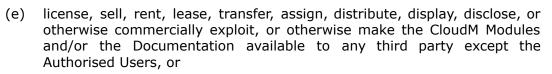
5.3   You own all right, title and interest in and to all of the End User Data that is not personal data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such End User Data.

5.4   In relation to the Authorised Users, you undertake that:

(a)   You will maintain a written, up to date list of current Authorised Users and provide us with such list within 5 Business Days of our written request to do so;

(b)   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 Subscription Agreement, including but not limited to Usage Levels.

5.5   In the event that the inspection or audit described at clause 5.4(b) uncovers actual usage levels above the usage levels indicated in the Order Form, then without prejudice to our termination rights under this Subscription Agreement, you shall promptly enter into an Order Form, with CloudM for Direct Customers, or the Partner for Indirect Customers, for the additional usage.

5.6   You will not access, store, distribute or transmit any Viruses, or any material during the course of your use of the CloudM Modules that:

(a)   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b)   facilitates illegal activity;

(c)   depicts sexually explicit images;

(d)   promotes unlawful violence;

(e)   is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f)   is otherwise illegal or causes damage or injury to any person or property.

5.7   You will not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between us, and except to the extent expressly permitted under this Subscription Agreement:

(a)   attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the CloudM Modules and/or Documentation (as applicable) in any form or media or by any means; or

(b)   attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the CloudM Modules; or

(c)   access all or any part of the CloudM Modules and the Documentation in order to build a product or service which competes with the CloudM Modules and/or the Documentation; or

(d)   use the CloudM Modules and/or Documentation to provide services to third parties; or

(e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the CloudM Modules and/or the Documentation available to any third party except the Authorised Users, or

(f) attempt to obtain, or assist third parties in obtaining, access to the CloudM Modules and/or the Documentation, other than as provided under this clause 5; or

(g) introduce or permit the introduction of any Virus or Vulnerability into our network and information systems.

5.8 You will use all reasonable endeavours to prevent any unauthorised access to, or use of, the CloudM Modules and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify us.

6. Module-specific Terms

CloudM Migrate

6.1 CloudM Migrate will automatically expire at the earliest of (i) completion of a one off use of CloudM Migrate or (ii) within 12 months of CloudM providing a licence key to the Customer in accordance with the Order Form.

6.2 You are responsible for obtaining and maintaining any rights necessary for your use of the Domain(s) you intent to migrate data to and from using CloudM Migrate.

CloudM Automate

6.3 You must subscribe to CloudM Automate for every live user within your Google or Microsoft domain.

CloudM Email Signature

6.4 To use CloudM Email Signature, you must:

(a) subscribe to CloudM Automate; and

(b) allow and enable mail forwarding rules within your email domain.

CloudM Archive

6.5 You must subscribe to CloudM Automate to be able to use CloudM Archive.

6.6 No data relating to a single user shall be archived through CloudM Archive more than 5 times.

6.7 You acknowledge and agree that CloudM Archive is designed to assist you with your storage and archiving. We accept no responsibility for your actual storage and archiving. You assume sole responsibility and entire risk as to the suitability and results obtained from the use of CloudM Archive and any decisions made or actions taken based on the information contained in or generated by CloudM Archive.

6.8 You further understand and agree that:

(a) any statement made by CloudM and recommendations on storage and archiving (together "**Projections**") are made in good faith on the basis of information available to us at the time. Projections are not a representation, undertaking or warranty as to outcome or achievable results or compliance; and

(b) CloudM may make statements about or recommendations of third-party software, equipment or services which may assist you in storing and archiving your data. No warranty shall be attributable to CloudM with respect to such software, equipment or services and you shall look solely to the warranties and remedies provided by any such third party with whom you may contract.

7. Support

7.1 Your subscription to the CloudM Modules 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 are not legally binding on CloudM.

7.2 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.

7.3 In order to provide you with the best possible CloudM Professional Support experience, CloudM may require access to your instance of the CloudM Modules 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.

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

8. Intellectual Property Rights

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

8.2 You acknowledge and agree that you have no right to have access to the CloudM Modules in source code form.

9. Limitation of liability

9.1 You acknowledge that the CloudM Modules 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 the CloudM Modules as described in the Specifications meet your requirements.

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

9.3   We will 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 Subscription Agreement 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 6.3(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 Subscription Agreement whether in contract, tort (including negligence) or otherwise, will 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 Subscription Agreement limits or excludes 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 Subscription Agreement sets out the full extent of our obligations and liabilities in respect of the supply of the CloudM Modules, Documentation and associated services. Except as expressly stated in this Subscription Agreement, 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 Modules, Documentation and associated services which might otherwise be implied into, or incorporated in, this Subscription Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

10.   Termination

10.1 This Subscription Agreement will remain in full force and effect as long as you continue accessing the CloudM Modules, and may be terminated in accordance with any additional terms incorporated in, or applying to, such Order Form.

10.2 In addition, if we become aware of an End User's or Authorised User's violation or breach of this Subscription Agreement, we may, at our sole discretion:

(a) suspend your access to the CloudM Modules. 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 Subscription Agreement immediately by written notice to you if you commit a material or persistent breach of this Subscription Agreement which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

10.3 On termination for any reason:

(a) all rights granted to you under this Subscription Agreement will cease;

(b) you must immediately cease all activities authorised by this Subscription Agreement; and

(c) you must immediately and permanently delete or remove the CloudM Modules from all computer equipment in your possession, and immediately destroy or return to us (at our option) all copies of the CloudM Modules 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 Subscription Agreement at any time on notice to you in accordance with this clause 11. Your continued use of the CloudM Modules following the deemed receipt and service of the notice under clause 11.4 will constitute your acceptance of the terms of this Subscription Agreement as varied. If you do not wish to accept the terms of the Subscription Agreement (as varied) you must immediately stop using and accessing the CloudM Modules 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/360016534139-Latest-Release-Notes-for-CloudM-Manage (for CloudM Automate and Email Signature) or https://support.cloudm.io/hc/en-us/articles/360020913619-Latest-Release-Notes-for-CloudM-Archive (for CloudM Archive) and you are responsible for regularly monitoring such webpages 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 Subscription Agreement and for a period of 2 years after termination of the Subscription Agreement, save that, should you object to such use of your name and logo, you can opt-out of this clause 9.1 by giving us notice by email to marketing@cloudm.io no later than 30 days following you first accessing a CloudM Module.

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 the CloudM Modules, 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 Subscription Agreement by reference and shall apply to the processing of personal data under this Subscription Agreement.

14. General

14.1 **Force majeure -** Neither party will be in breach of this Subscription 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 will be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the

party not affected may terminate this Subscription Agreement 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 Subscription Agreement, save that we will only assign or novate this Subscription Agreement 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 Subscription Agreement.

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

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-saas-subscription-agreement.

14.5 **Waiver -** A waiver of any right or remedy is only effective if given in writing and will 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 will not waive that or any other right or remedy, nor will 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 Subscription Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this Subscription Agreement. If any provision or part-provision of this Subscription Agreement is deemed deleted under this clause 14.6, the parties will 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 Subscription Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Subscription Agreement. The rights of the parties to rescind or vary this Subscription Agreement are not subject to the consent of any other person.

14.8 **Governing law** - This Subscription 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 will 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 have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Subscription Agreement or its subject matter or formation.