CloudCover

End User Service Agreement

SUBSCRIPTION AGREEMENT

This agreement (the "Agreement") is a legal agreement between you the Customer and Virtual Data Centre Services Ltd. A company registered in England and Wales with company number 07238621 whose registered office is The Waterscape, 42 Leeds and Bradford Road, Leeds LS5 3EG ("virtualDCS").

virtualDCS provide a range of CloudCover Services and Documentation (defined below) to enable the Customer to backup and replicate business information and servers, securely, and to secure cloud facilities.

virtualDCS permits use of these Services and Documentation by the Customer on the terms of this Agreement. By clicking "Accept" or completing the signup form, you are confirming acceptance of this Agreement and the Privacy Policy (defined below) which constitutes part of this Agreement, and you agree to be bound by the terms of this Agreement and the Privacy Policy. Additionally, CloudCover Services are powered by Veeam, and by clicking "Accept" or completing the signup form you confirm acceptance of Veeam's End User Licence Agreement detailed at www.veeam.com/eula.html.

AGREED TERMS

virtualDCS and the Customer now agree as follows:

1   Definitions

1.1   In this Agreement, the following terms will have the meanings assigned to them below:

"Acceptable Use Policy" means virtualDCS's policy relating to the acceptable use of the Services set out in this Agreement particular clauses 2 and 7   and made available at www.virtualdcs.co.uk or such other web address notified by virtualDCS to the Customer from time to time;

"Account" is an instance of the CloudCover Services made exclusively available to the Customer;

"CloudCover Services" or "Services" means the services provided by virtualDCS to the Customer under this Agreement using the Software, as more particularly described in the Documentation;

"**Customer Data**" means any and all data, information and content which are uploaded, stored or installed by the Customer onto the CloudCover Services;

"**Documentation**" means the documents made available to the Customer by virtualDCS online at www.virtualdcs.co.uk or such other web address notified by virtualDCS to the Customer from time to time which sets out a description of CloudCover Services, or instructions for the use of the Services;

"**Effective Date**" means the date on which the Customer checks the box confirming its acceptance of the terms of this Agreement or the date on which the Customer otherwise agrees to the terms of this Agreement whether orally or otherwise;

"**Fair Usage**" means that the customer is not abusing the spirit of the commercial service provision, and accepts that the Services must still be commercially viable to deliver;

"**Fees**" means the fees payable by the Customer for the CloudCover Services and the Documentation;

"**Group**" means in relation to a company, that company, any Subsidiary or Holding Company from time to time of that company, and any Subsidiary from time to time of a Holding Company at that company. The terms 'Subsidiary' and 'Holding Company' shall be defined in section 1159 of the Companies Act 2006 as modified and re-enacted from time to time;

"**Information**" means any and all documentation, materials, software, code and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, pricing, transactions, software, suppliers or methods of one Party and disclosed to or otherwise obtained by the other Party in connection with this Agreement;

"**Intellectual Property**" means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto, the right to apply for registration of and/or register such rights and all extensions and renewals thereof;

"**Parties**" means the Customer and virtualDCS and "**Party**" shall be construed accordingly;

"Privacy Policy" means virtualDCS's data privacy and compliance policy available from the login screen or virtualDCS's website;

"**Software**" means virtualDCS's software provided as part of CloudCover Services, including any updates and modifications made available from time to time by virtualDCS;

"**Term**" means the term of this Agreement as detailed in clause 10.1;

"**Users**" means an employee, sub-contractor or agent of the Customer who is authorised to use the CloudCover Services;

"**Veeam**" means Veeam Software Group GmbH

"**Working Day**" means any day falling on or between Monday to Friday, excluding all public and bank holidays in England and Wales; and

"Malware" means any thing or device (including any software, code, file or programme) which may: 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; 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 adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2   Clause headings shall not affect the interpretation of this Agreement.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5   A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date. A reference to a statute or statutory provision shall include all subordinate legislation made as at the Effective Date under that statute or statutory provision.

1.6   Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders.

1.7   The words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context and reference to the whole includes reference to part.

2   Licence to use CloudCover Services

2.1   In consideration for the payment of the Fees by the Customer, and subject to the restrictions and Customer obligations set out in this Agreement, virtualDCS hereby grants to the Customer a non-exclusive, non-transferable licence to permit Users use of CloudCover Services and the Documentation commencing on the Effective Date during the Term solely for the Customer's normal internal business operations in accordance with the terms of this Agreement.

2.2   virtualDCS also considers that the service will be deemed in use if a backup creates at least one restore point during a calendar month.

2.3   Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, the Customer shall not nor permit others to, and shall procure the Users shall not:

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

   (b)   rent, lease, sublicense, sell, assign, pledge, transfer or otherwise dispose of the Software, on a temporary or permanent basis;

   (c)   translate, reverse engineer, decompile, disassemble, unbundle, modify or create derivative works based on the Software, except as expressly permitted by law;

   (d)   vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software; or

   (e)   access all or any part of CloudCover Services and Documentation in order to build a product or service which competes with CloudCover Services.

2.4   The Customer undertakes to prevent any unauthorised access to, or use of, the CloudCover Services and, in the event of any such unauthorised access or use, promptly notify virtualDCS.

2.5   The Customer shall not, and shall procure the Users shall not, access, store, distribute or transmit any malware, or any material during the course of its use of CloudCover Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts illegal sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property, and virtualDCS reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material or User Account that breaches the provisions of this clause.

2.6   The Customer shall comply, and shall procure the Users comply, with the Acceptable Use Policy in force from time to time in line with Fair Usage.

2.7   If virtualDCS has reasonable evidence of i) possible serious risks to the Software or CloudCover Services provoked by the Customer Data, or ii) fraudulent or illegal activities of the Customer, virtualDCS is entitled to immediately suspend or terminate this Agreement.

2.8   The integrity of the Software is protected by technical protection measures so that the Intellectual Property rights in the Software are not misappropriated. The Customer must not attempt in any way to remove or circumvent such technical protection measures, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in its possession for private or commercial purposes, any means whose sole purpose is to facilitate the unauthorised removal or circumvention of such technical protection measures.

3   Provision of CloudCover Services and Scheduled Downtime

3.1   virtualDCS shall use its reasonable endeavours to make CloudCover Services available 24 hours a day, seven days a week, except for maintenance that may be required as set out in our platform status page status.virtualdcs.co.uk which provides live system metrics and details of future planned maintenance, updates, and incidents where CloudCover Services

may not be provided. This information is also emailed, with the exception of emergency maintenance, within a minimum of 24 hours prior to the event.

3.2   virtualDCS shall be entitled at any time to improve or update the CloudCover Services in case of: i) improvements or updates necessary to fix defects, bugs, malfunctioning or errors of the CloudCover Services or to provide new features; and/or ii) to cure security vulnerabilities of the CloudCover Services; and/or ii) the application of any new laws, regulations acts or orders of the authorities.

3.3   virtualDCS shall not be liable for any failure to provide CloudCover Services in accordance with this Agreement to the extent that such failure is caused directly or indirectly by the Customer's negligence or breach of any term of this Agreement.

3.4   virtualDCS is not responsible for monitoring Customer's individual backups unless explicitly agreed, but will send notification emails to the Customers nominated email address regarding backup job status. virtualDCS will use reasonable endeavours to assist the Customer in receiving a comprehensive backup service.

4   User Data

4.1   The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4.2   virtualDCS shall, in providing the CloudCover Services, comply with its Privacy Policy available from the login screen or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by virtualDCS in its sole discretion. In the event of any serious loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for virtualDCS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by virtualDCS. virtualDCS shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by virtualDCS to perform services related to Customer Data maintenance and back-up).

5   Warranties

5.1   virtualDCS undertakes that the CloudCover Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

5.2   The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of CloudCover Services contrary to virtualDCS's instructions, or modification or alteration of CloudCover Services by any party other than virtualDCS or virtualDCS's duly authorised contractors or agents. If the CloudCover Services do not conform with the foregoing undertaking, virtualDCS will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, virtualDCS:

(a)   does not warrant that the Customer's use of CloudCover Services will be uninterrupted or error-free; or that the CloudCover Services, the Documentation and/or the information obtained by the Customer through the CloudCover Services will meet the Customer's requirements; and

(b)   is not 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 the Customer acknowledges that the CloudCover Services and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3   virtualDCS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

6   Customer Obligations

6.1   The Customer shall:

(a)   only use the CloudCover Services in accordance with the terms of the Agreement for its own internal purposes;

(b)   use the CloudCover Services in accordance with virtualDCS's reasonable instructions and any laws, regulations and licenses which may apply to the Customer's use of the CloudCover Services from time to time;

(c)   carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, virtualDCS may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d)   ensure that the Users use the CloudCover Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement;

(e)   obtain and shall maintain all necessary licences, consents, and permissions necessary for virtualDCS, its contractors and agents to perform their obligations under this Agreement;

(f)   be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to virtualDCS's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and

(g)   provide virtualDCS with up-to-date information, co-operation and support as virtualDCS shall reasonably require pursuant to this Agreement.

7   Intellectual Property

7.1   All Information of virtualDCS and all Intellectual Property in the Software and in or arising from the CloudCover Services and/or any other services provided under or in connection with this Agreement shall be and shall remain at all times the exclusive property of virtualDCS or relevant third party and the Customer shall acquire no right, title or interest in or to the same and shall use such items solely as permitted by the terms of this Agreement.

8   Confidentiality

8.1   Subject to the remainder of this clause 8, neither the Customer nor virtualDCS shall, without the other Party's prior written consent, disclose to any third-party Information (other than the

business name of the other Party) which comes to that Party's attention pursuant to this Agreement. Each Party shall only use the Information of the other Party to exercise its rights and/or perform its obligations under this Agreement.

8.2   The Customer agrees that virtualDCS may disclose the Information of the Customer to any relevant third party to the extent reasonably required by such third party in order to allow provision of the CloudCover Services and/or any other services provided under or in connection with this Agreement.

8.3   The provisions of clause 8.1 shall not apply to information which:

(a)   is in or comes into the public domain otherwise than by breach of this Agreement, except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as confidential Information;

(b)   is in the other Party's possession prior to the commencement of negotiations for this Agreement as shown by written evidence that predates the date of such negotiations;

(c)   is or was lawfully received from a third party not under an obligation of confidentiality in respect of the same as shown by written evidence that predates the date of this Agreement;

(d)   was developed independently of and without reference to the other Party's Information; or

(e)   is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required), in which case each Party shall promptly notify the other Party of any such disclosure requirement.

8.4   virtualDCS shall be entitled to publicise that the Customer has licensed the Software and purchased the CloudCover Services from virtualDCS in its advertising or promotional materials (including as case studies), press releases, tenders, proposal, speeches, articles and other similar materials.

8.5   Each Party shall be entitled to divulge the other Party's Information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this Agreement provided that the receiving

Party shall ensure that such persons are aware of and, shall procure that such persons comply with, these confidentiality obligations.

8.6   The restrictions contained in this clause 8 shall continue to apply after termination or expiry of this Agreement without limit in time.

9   Liability

9.1   This clause 9 sets out the entire financial liability of virtualDCS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

(a)   arising under or in connection with this Agreement;

(b)   in respect of any use made by the Customer of the CloudCover Services, the Documentation and/or any other services provided under or in connection with this Agreement or any part of them; and

(c)   in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2   Except as expressly and specifically provided in this Agreement:

(a)   the Customer assumes sole responsibility for results obtained from the use of the CloudCover Services and the Documentation by the Customer, and for conclusions drawn from such use. virtualDCS shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to virtualDCS by the Customer in connection with the CloudCover Services, or any actions taken by virtualDCS at the Customer's direction;

(b)   all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

(c)   the CloudCover Services and the Documentation are provided to the Customer on an "as is" basis.

9.3   Nothing in this Agreement shall exclude or limit virtualDCS's liability for:

(a) death or personal injury caused by its (or its employees', agents' or contractors') negligence; and

(b) fraud or fraudulent misrepresentation; and

(c) any other liability the exclusion or limitation of which is not permitted by English law.

9.4 Subject to clause 9.2 and clause 9.3:

(a) virtualDCS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: loss of profits; loss of business; depletion of goodwill and/or similar losses; or loss or corruption of data or information; or pure economic loss; or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

(b) virtualDCS total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited, where the liability relates to:

(i) the CloudCover Services, to the greater of (i) 80% of the total Fees paid or payable by the Customer for the Services during the twelve (12) month period prior to the date the liability first arose and (ii) one hundred pounds sterling.

10 Term

10.1 This Agreement shall, unless otherwise agreed, commence on the Effective Date.

10.2 The term shall continue until terminated in accordance with clause 11.

11 Termination

11.1 A Party shall have the right to terminate this Agreement at any time on immediate notice to the other Party in the event that the other Party:

(a) fails to pay any amount due in relation to the Services on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;

(b)   commits an irremediable material breach of this Agreement, persistently repeats a remediable material breach or commits any remediable material breach and fails to remedy it within thirty (30) days of receipt of the notice of the breach requiring remedy of the same; or

(c)   the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(d)   the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(e)   the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

11.2   virtualDCS may terminate this Agreement (or any part of it) and/or the CloudCover Services (or any part of them):

(a)   by serving written notice on the Customer with immediate effect, if termination is required for legal or regulatory reasons;

(b)   on serving thirty (30) days prior written notice to the Customer if virtualDCS or its third party suppliers no longer operates or provides any or all of the products or services used in relation to the CloudCover Services or intends to cease operating or providing any or all of such products or services in the immediate future.

11.3   The termination of this Agreement shall be without prejudice to the accrued rights and liabilities of either Party subsisting under this Agreement prior to termination.

11.4   virtualDCS may at its sole discretion suspend immediately the provision of the CloudCover Services and/or any other services provided under this Agreement (or any part of them) until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing if virtualDCS is entitled to terminate this Agreement. Any suspension of the

CloudCover Services shall not exclude virtualDCS's right subsequently to terminate this Agreement.

12   Consequences of Termination

12.1   Upon termination of this Agreement for any reason, the Customer shall:

(a)   immediately cease to make use of the CloudCover Services;

(b)   immediately pay any outstanding sums due in relation to the CloudCover Services; and

(c)   either return or destroy all of virtualDCS's Information or any document containing part thereof, together with all copies of such Information (including, to the extent reasonably possible, all electronic copies) and shall on reasonable request provide written confirmation that such steps have been taken; and

(d)   virtualDCS may destroy or otherwise dispose of any of the Customer Data in its possession.

12.2   Any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12.3   Any terms and conditions forming part of this Agreement which are agreed by the Parties to survive termination or which by their nature are to survive termination, shall survive and continue in full force and effect.

13   Force Majeure

13.1   virtualDCS shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of virtualDCS or any other party), failure of a utility service or transport or telecommunications network, adverse economic impacts, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers or sub-contractors.

14   Notices

14.1   Notices sent in respect of any matter arising in respect of this Agreement shall be in writing and must be sent either by:

(a)   pre-paid first class post; or

(b)   delivered by hand; or

(c)   email.

14.2   A notice shall be sent or delivered to the address specified in this Agreement (as updated by notice in accordance with this section) or email notified by each party to the other from time to time.

14.3   Notice is deemed given:

(a)   in the case of hand delivery – at the time the delivery is made;

(b)   in the case of posting– two (2) Working Days after the notice is posted; and

(c)   in the case of email – one (1) Working Day after the date the sender receives a successful delivery confirmation.

15   General

15.1   The Customer shall not assign, purport to assign or otherwise transfer this Agreement and/or any of its obligations thereunder, in whole or in part, without virtualDCS's prior written consent.

15.2   Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.3   Unless otherwise stated herein, this Agreement can only be modified by the written and signed agreement of the Parties.

15.4   No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5   virtualDCS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

15.6   If any part of this Agreement is held unlawful, invalid or unenforceable, that part shall be considered struck out and the remainder of this Agreement shall remain in full force and effect. virtualDCS and the Customer shall work together in good faith to agree an enforceable replacement provision capturing the spirit of the original.

15.7   This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

15.8   The Parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it unless specifically provided for this Agreement.

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

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

Agreement Version: 5.0 | Last Updated: May 2023