



CloudCover services

Partner agreement

PRIVATE

Virtual Data Centre Services Limited

And

[PARTNER NAME]

PRIVATE

DATED

Parties

(1) **Virtual Data Centre Services Limited** ("virtualDCS"), a company registered in England under company number 07238621 whose registered office is at The 3rd Floor, 6 Wellington Place, Leeds, LS1 4AP.

(2) **[PARTNER NAME]** ("Partner"), a company registered in [England] under company number [number] whose registered office is at [address].

Background

(A) virtualDCS provides a range of CloudCover services to enable customers to backup and replicate business information and servers, securely, and to UK based IS27001 standard data centre locations.

(B) virtualDCS wishes to appoint the Partner as its non-exclusive authorised partner to distribute the Services with the Partner Products.

(C) The Partner agrees to resell the Services with its own Products and to distribute the Combined Products subject to the terms and conditions of this Agreement.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Additional Contract Terms:	means the additional contract terms applying to each Service that are published at virtualdcsltd.co.uk/downloads and are identified in the contract terms section on the Order Form.
Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Business Hours:	the period from 9.00 am to 5.00 pm on any Business Day.
Combined Products:	the Services and the Partner Products which are marketed and licensed by the Partner to its End Customers pursuant to this Agreement.
Control:	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be interpreted accordingly.
End Customer:	a customer of the Partner who is the end user of the Services.
Effective Date:	the date of this agreement.
EULA:	the end user licence agreement available at www.veeam.com/eula.html .
Fees:	the fees payable to virtualDCS by the Partner for the provision of the Services, as described in the Order Form.

PRIVATE

Intellectual Property Rights:	patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and rights in 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.
Minimum Term:	the applicable minimum term for any particular Service, as set out in the Order Form.
Platform:	the platform, network and connectivity through which the Services are to be provided.
Services:	The services made available by virtual DCS for resale by the Partner which include but are not limited to 1) Veeam Cloud Connect, remote backup and replication of on-premise servers; 2) CloudCover 365, Remote backup of Microsoft 365; and 3) associated professional services, together with any other products which virtualDCS may permit the Partner, by express notice in writing, to market pursuant to this Agreement.
Legislation:	any statute, statutory provision or subordinate legislation or any mandatory rules issued by any regulatory body having jurisdiction over the applicable party.
Order Form:	the virtualDCS standard order form that is headed with either 'Quote' or 'Proposal'.
[Company] Products:	[Company] products owned by the Partner that may be combined with the Services to form the Combined Products.
Service Availability Date:	means in relation to each Order Form, the date when the Service is first made available for use by the End Customer, which may be on or before the Service Term Start Date.
Service Term Start Date:	means in relation to each Order Form, the date when the Minimum Term and payment obligations commence.
VAT:	value added tax and any similar additional tax.

1.2 This Partner Agreement (along with the terms of the Order Form signed by the Partner and virtualDCS, and the Additional Contract Terms applicable to the Services the Partner has been appointed to resell) applies to and governs all orders placed by the Partner under this Agreement, to the exclusion of all other terms and conditions that the Partner may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.

1.3 The following order of priority shall apply in the event of any conflict: (i) the Order Form (and including any special terms which may be included in or annexed to the Order Form, including a statement of work), (ii) the Additional Contract Terms and (iii) this Partner Agreement.

PRIVATE

- 1.4 This Partner Agreement is a legally binding agreement between the parties that sets out the overarching terms under which the Partner may be authorised to resell and integrate virtualDCS Services. A binding contract for the provision of specific Services shall come into effect only when an Order Form has been executed by both parties. Each such contract shall incorporate the General Terms and Conditions, the applicable Additional Contract Terms for the Services, and the terms of the signed Order Form, all of which shall together form the binding Agreement between the parties in respect of those Services.
- 1.5 Clause and schedule headings shall not affect the interpretation of this Agreement.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.7 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 The schedules and background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. References to this Agreement include the schedules and background, which may be amended from time to time by agreement between the parties.
- 1.11 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.12 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. Scope

- 2.1 This Agreement covers the supply by virtualDCS of Services to Partner for resale to End Customers, and any associated matters.
- 2.2 The parties shall follow the procedures for ordering the Services from virtualDCS as set out in the Order Form. For the avoidance of doubt, virtualDCS shall have no obligation to make any Services available pursuant to this Agreement unless and until an Order Form, has been agreed and executed by the Partner and virtualDCS, and only to the extent identified in any such Order Form.
- 2.3 virtualDCS shall provide each of the Services in accordance with the terms of the Order Form and the applicable Additional Contract Terms.
- 2.4 virtualDCS' obligation to perform each of the Services shall commence on the Service Term Start Date, but virtualDCS reserves the right to make the Services available to the Partner prior to such date. Where the Service Availability Date precedes the Service Term Start Date, the Partner may use the Services on an "as-is" and "as-available" basis with effect from the Service Availability Date and all warranties and service levels will take effect from the Service Term Start Date.
- 2.5 The Partner shall be entitled to describe itself as an "Authorised Partner" of the Services but shall not represent itself as an agent of virtualDCS for any purpose, nor pledge the credit of virtualDCS or give any condition or warranty or make any representation on behalf of virtualDCS or commit virtualDCS to any contracts.
- 2.6 The Partner is authorised to use the Services as part of its own managed service offering to End Customers. The Partner may access and administer the Services on behalf of its End Customers, provided it does so solely for the purpose of delivering such managed services and in accordance with this Agreement and applicable law. The Partner shall remain fully responsible for the acts and omissions of its Customers in connection with the Services.
- 2.7 The Partner's appointment under this Agreement only grants to the Partner a licence to make the Services available either alone or as part of the Combined Products, and does not transfer any right, title or interest to any such Services to the Partner or End Customers.

3. virtualDCS's Obligations

PRIVATE

3.1 virtualDCS shall:

- 3.1.1 appoint the Partner as its non-exclusive distributor to combine the Services with the [Company] Products and distribute the Combined Products on the terms of this agreement;
- 3.1.2 provide the Services to the Partner and the End Customers in a timely manner and with reasonable care and skill;
- 3.1.3 ensure that the Services comply with the minimum technical and performance requirements set out in the Order Form and any additional agreed specifications;
- 3.1.4 have the right to make any changes to the Services which are necessary to comply with any Legislation or safety requirement, or which do not materially affect the nature or quality of the Services (including, by way of example, by changing any third party software provider it may use) and virtualDCS shall notify the Partner in any event;
- 3.1.5 ensure that the Services are provided in accordance with the Order Form; however the Partner acknowledges and shall procure that the End Customer acknowledges that virtualDCS does not guarantee that the Services will be continuously available or fault free;
- 3.1.6 provide its reasonable co-operation with the Partner in all matters reasonably relating to the Services;
- 3.1.7 provide, in a timely manner, such materials and other information as the Partner may reasonably require regarding the Services and to enable Partner to properly and efficiently to discharge its duties under this agreement, and virtualDCS shall ensure that they are accurate in all material respects; and
- 3.1.8 obtain and maintain, and shall procure that the End Customer obtain and maintain, all necessary or prudent licences and consents and comply with all relevant Legislation in relation to the Services throughout the term of this Agreement.
- 3.1.9 at its discretion, provide technical support directly to the End Customer, including via online or AI-assisted channels, provided such support does not interfere with the Partner's managed service responsibilities.

3.2 The provisions of clause 3.1 are limited by the following factors:

- 3.2.1 The functionality and/or failure of performance of third party software upon which the Services rely and which is outside of the control of virtualDCS;
- 3.2.2 Platform security and safety;

3.3 virtualDCS shall comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Breach of this clause 3 shall be deemed a material breach of this Agreement entitling the Partner to terminate it immediately.

3.4 virtualDCS shall not without the Partner's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the [Company] Products or Combined Products which are inconsistent with those contained in the promotional material supplied by the Partner or otherwise incur any liability on behalf of the Partner howsoever arising.

4. Partner's obligations

4.1 The Partner shall:

- 4.1.1 use its reasonable endeavours to promote the distribution and sale of the Combined Products and to expand the sale of the Combined Products by all reasonable and proper means;
- 4.1.2 provide its reasonable co-operation with virtualDCS by any employee or contractor of the Partner and/or any other supplier of the Partner in all matters reasonably relating to the Services and as requested by virtualDCS;
- 4.1.3 provide, in a timely manner, such materials and other information as virtualDCS may reasonably require regarding the [Company] Products and the Combined Products (including regarding sales of the latter), and ensure that they are accurate in all material respects;

PRIVATE

- 4.1.4 provide virtualDCS with any information, code, software, data, resources, equipment, services and access to personnel, systems, data, files and materials reasonably required by virtualDCS;
- 4.1.5 obtain and maintain, and shall procure that End Customers obtain and maintain, all necessary or prudent licences and consents and comply with all relevant legislation in relation to the [Company] Products throughout the term of this Agreement;
- 4.1.6 follow, and shall procure that the End Customers follow, virtualDCS's reasonable directions, about the use of the Services which virtualDCS reasonably believes are in the interests of End Customers generally;
- 4.1.7 procure that the End Customers are contractually obliged to only use the Services for lawful purposes, in accordance with all applicable laws and without being a nuisance to anyone;
- 4.1.8 ensure that End Customers of the Combined Products are aware of and accept the terms and conditions of the EULA before using the Combined Products
- 4.1.9 provide virtualDCS such information about the End Customers of the Combined Products as is reasonably required by virtualDCS for the purposes of managing and enforcing the terms of the EULA with such End Customers;
- 4.1.10 never interfere with the reasonable use of the Platform by any other user;
- 4.1.11 not implement deceptive, misleading or unethical practices that are, or might be, detrimental to virtualDCS.

4.2 The Partner hereby covenants, warrants and represents that, and shall procure that:

- 4.2.1 the Partner computer hardware and software used by it (of whatever nature whether proprietary, licensed to it or developed by it and including any hardware and/or software connecting elements of the same between themselves or any element of the same with the outside world ("**the Partner Systems**") is:
 - (a) run and administered in accordance with generally accepted standards of professional competence and in such a way as to enable it to fulfil its intended functionality;
 - (b) fully licensed and authorised for use by the Partner in all respects (including but not limited to there being adequate licences in place for the use of any and all software used howsoever by the Partner);
 - (c) operated in accordance with any and all legal obligations incumbent upon the Partner (including but not limited to UK GDPR);
 - (d) not used for any illegal, immoral or improper purpose or in such a way as to give rise to any claim or liability (civil, criminal, or otherwise and of any nature) against the Partner and/or any member of the Partner's staff and/or any contractor of the Partner or virtualDCS; and
 - (e) the performance of the Services by virtualDCS in accordance with the relevant Agreement terms will not place the Partner in breach or duty of whatever nature binding upon it in relation to the Partner System or otherwise (including but not limited to any warranty or maintenance agreement),

and for the avoidance of doubt the Partner shall procure the End Customer covenants, warrants and represents the following provisions in respect of the equivalent End Customer Systems.

4.3 the Partner shall be liable to indemnify and keep indemnified virtualDCS for any loss, costs, damages, expenses or prejudice, direct or indirect, of any nature, incurred by virtualDCS in any way out or as a result of any element of misrepresentation in or the Partner's failure to comply with clauses 4.1 and/or 4.2.

4.4 the Partner shall carry out its obligations in this Agreement in a timely and efficient manner. If it does not do so or in the event that the Partner or any third party, not being a sub-contractor of virtualDCS, shall omit or commit anything which prevents or delays virtualDCS from undertaking or complying with any of its obligations under an Agreement, then without prejudice to any right to virtualDCS to terminate the Agreement and/or to claim for damages virtualDCS shall notify the Partner as soon as possible:

PRIVATE

4.4.1 virtualDCS shall have no liability in respect of any delay to the completion of any Services; and

4.4.2 if applicable, the timetable for the Services will be modified accordingly by the extension of the next deadline by which the virtualDCS is to supply any Services by the period of such delay.

4.5 The Partner shall not without virtualDCS's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Services which are inconsistent with those contained in the promotional material supplied by virtualDCS (including, without limitation, the EULA) or otherwise incur any liability on behalf of virtualDCS howsoever arising.

5. **Fees**

5.1 In consideration of the provision of the Services by virtualDCS, the Partner shall pay the agreed Fees in those amounts and at those times set out in the relevant Order Form and this clause 5. All charges are exclusive of VAT, which shall be added to the invoice(s) at the appropriate rate.

5.2 The Partner agrees with virtualDCS that elements of the Fees are calculated by reference to the cost to virtualDCS of certain facilities or commodities including but not limited to software, electricity and the supply of bandwidth, (**Third Party Costs**). In the event that Third Party Costs increase during the term of this Agreement, the Fees payable may be subject to variation to reflect the increase in the Third Party Costs and virtualDCS will notify the Partner of such increases without undue delay and the increase will take effect from the later of (a) the date on which the Third Party Costs increase and (b) the date of the next invoice.

5.3 Without prejudice to clause 5.2, virtualDCS reserves the right to increase the Fees by an amount up to 7% (seven per cent) per year, provided that such Fees cannot be increased more than once in any 12-month period during the term of the Agreement (unless such increase is pursuant to clause 5.2). virtualDCS will give the Partner written notice of any such increase 2 months before the proposed date of the increase.

5.4 The Partner shall reimburse virtualDCS for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by virtualDCS in performance of the Services where agreed in advance.

5.5 Where the Partner requires a purchase order number to be issued, the purchase order number shall be provided to virtualDCS prior to the Service Term Start Date, if no purchase order number is provided by this date the Partner is deemed not to require a purchase order number.

5.6 Unless otherwise stated in the Order Form, all Fees shall be invoiced in advance, with the first invoice being issued on the Service Term Start Date and subsequent invoices being issued in accordance with the billing period set out in the Order Form. Fees shall be payable by the Partner in pounds sterling. Partner agrees to pay in full, all invoices within the timescales for payment set out in the Order Form. All invoices will be forwarded to the Partner by email. The method of payment for the Fees is by direct debit to the virtualDCS nominate bank account. Where payment is required in advance, Services will not commence until payment has been received. Unless agreed otherwise in writing, any payments not settled electronically may be subject to an administration fee of £25.00.

5.7 Without prejudice to any other right or remedy that it may have, if the Partner fails to pay virtualDCS any Fees due under any Order Form within 30 days the due date for payment, virtualDCS may suspend any Services, and remove the Partner's data from its systems. virtualDCS is not required to back up such data or return the same to the Partner prior to any such removal or following termination of the Agreement. In the event virtualDCS removes data it will notify the Partner in writing within 7 days.

5.8 virtualDCS may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Partner, whether under this Agreement or otherwise, against any amounts payable by it to the Partner, whether under this Agreement or otherwise.

5.9 Where Partner disputes any invoice, it must notify virtualDCS within five Business Days in writing. virtualDCS shall provide all such evidence as may be reasonably necessary to verify the disputed invoice, and the parties shall negotiate in good faith to attempt to resolve the dispute promptly. virtualDCS reserves the right not to supply any Products or Services to the Partner while such a dispute is ongoing. Where only part of an invoice is disputed, the Partner shall pay the undisputed amount on the due date for payment. If the parties have not resolved the dispute within 30 days of the Partner's notice of dispute, virtualDCS reserve the right to terminate the Agreement, whereupon all Fees payable under the Agreement shall become immediately due and payable.

PRIVATE

6. Data

6.1 Each party agrees that, in the performance of its respective obligations under the Agreement, it will comply with the provisions of the UK GDPR, together with the Data Protection Act 2018 and any other law applicable to the protection of personal data in effect from time to time (together, **Data Protection Legislation**), in each case to the extent it applies to each of them. Where used in this clause 6, the expressions **data subject, personal data, personal data breach** and **process** bear their respective meanings given in Data Protection Legislation.

6.2 The Partner acknowledges that all Customer Data processed via the Services remains the property of the relevant End Customer. The Partner shall not access, use, or disclose any such data except to the extent necessary to perform its managed services for that End Customer. The Partner shall ensure that its agreements with End Customers reflect this data ownership and permit virtualDCS to act as a sub-processor where applicable.

6.3 Where the End Customer is the data controller, the Partner acts as the data processor, and virtualDCS shall act as a sub-processor. The Partner shall ensure that appropriate data processing terms are in place with its End Customers to permit such sub-processing by virtualDCS.

6.4 virtualDCS is expected to process personal data on End Customer's behalf for the purposes of performing the Services and otherwise fulfilling its obligations under the Agreement. virtualDCS may process any type of personal data relating to any category of data subject depending on End Customer's use of the Services.

6.5 Where virtualDCS processes personal data on End Customer's behalf under or in connection with the Agreement, it will do so only in accordance with the terms of the Agreement and End Customer's documented instructions, as communicated to virtualDCS by Partner (unless otherwise required by law in which case virtualDCS will, where permitted, inform Partner of that legal requirement before processing).

6.6 Partner warrants that:

- 6.6.1 it will only provide (or ensure the provision of) personal data to virtualDCS where that personal data has been lawfully obtained and where Partner is lawfully entitled to provide (or ensure the provision of) that personal data to virtualDCS for the intended purpose and means of processing; and
- 6.6.2 any instructions given to virtualDCS in accordance with clause 6.5 will be compliant with applicable Data Protection Legislation, be within the scope of virtualDCS's obligations under the Agreement and will not (if properly performed) place either virtualDCS, Partner or End Customer in breach of their respective obligations under Data Protection Legislation,

and Partner will indemnify, keep indemnified and hold virtualDCS harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against virtualDCS arising from or in connection with any breach by Partner of this clause 6.6.

6.7 Where virtualDCS processes any personal data on End Customer's behalf under or in connection with the Agreement it will:

- 6.7.1 other than as permitted by Chapter V of the UK GDPR, not transfer or allow the transfer of that personal data outside the United Kingdom without Partner's written consent;
- 6.7.2 ensure that any persons authorised to process the personal data are subject to a duty of confidence in respect of that processing;
- 6.7.3 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in compliance with the obligations imposed on virtualDCS by article 32 of the UK GDPR, including an information security management system that is independently certified by a third party to comply with ISO/IEC 27001;
- 6.7.4 notify Partner without undue delay on becoming aware of a personal data breach and cooperate with Partner to resolve that issue; and
- 6.7.5 at Partner's expense, provide the assistance that Partner or End Customer may reasonably require to assist it to comply with its obligations to keep that personal data secure, allow it to inform a supervisory authority or data subject of a personal

PRIVATE

data breach, conduct a data protection impact assessment, consult with the Information Commissioner regarding the relevant processing activities and/or respond to requests made by data subjects pursuant to Data Protection Legislation.

- 6.8 Partner authorises virtualDCS to engage sub-processors from time to time provided that virtualDCS will notify Partner of any intended changes concerning the addition or replacement of sub-processors and will impose upon any sub-processor (and ensure any sub-processor's compliance with) the terms of this clause 6 as if the processing being carried out by the sub-processor was being carried out by virtualDCS (and virtualDCS will be liable for the acts and omissions of its sub-processors as if they were virtualDCS's own acts and omissions).
- 6.9 From time to time during the term of this Agreement virtualDCS will (upon written request from Partner):
 - 6.9.1 provide details in writing of its data processing activities carried out on End Customer's behalf; and
 - 6.9.2 on reasonable notice allow Partner or End Customer (or an appointed auditor) to audit its compliance with these terms, subject to any reasonable requirements or restrictions that virtualDCS may impose to safeguard the personal data it holds on behalf of other End Customers and/or avoid unreasonable disruption to virtualDCS's business.
- 6.10 virtualDCS will process personal data on End Customer's behalf only during the term of this Agreement (and following termination to the extent required to perform any post termination obligations). On the termination or expiry of any part of the Services or the Agreement as a whole, virtualDCS will either delete or return all personal data processed on a End Customer's behalf in connection with the applicable Services, and delete any copies (except to the extent retention is required by law or for record-keeping purposes).
- 6.11 For the avoidance of doubt, nothing in this clause 6 or otherwise in the Agreement relieves either party of its own direct responsibilities and liabilities under Data Protection Legislation.

7. Confidentiality

- 7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
 - 7.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or
 - 7.1.2 was in the other party's lawful possession before the disclosure; or
 - 7.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 7.1.4 is independently developed by the receiving party, which development can be shown by written evidence; or
 - 7.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2 Each party shall keep the other's Confidential Information in strict confidence, and unless required by law, shall 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 each Agreement..
- 7.3 Each party shall ensure that their employees, officers, representatives, advisers, agents or subcontractors to whom they disclose such information comply with this clause 7.
- 7.4 The provisions of this clause 7 shall remain in force following termination of this Agreement, howsoever caused.

8. Indemnity

- 8.1 The Partner shall defend, indemnify and hold harmless virtualDCS against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Partner's use of the Services provided that:
 - 8.1.1 the Partner is given prompt notice of any such claim;

PRIVATE

- 8.1.2 virtualDCS provides reasonable cooperation to the Partner in the defence and settlement of such claim, at the Partner's expense; and
- 8.1.3 the Partner is given sole authority to defend or settle the claim;
- 8.2 virtualDCS shall defend the Partner, its officers, directors and employees against any claim that any software forming part of the Service infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Partner for any amounts awarded against the Partner in judgment or settlement of such claims, provided that:
 - 8.2.1 virtualDCS is given prompt notice of any such claim;
 - 8.2.2 the Partner provides reasonable cooperation to virtualDCS in the defence and settlement of such claim, at virtualDCS's expense; and
 - 8.2.3 virtualDCS is given sole authority to defend or settle the claim.
- 8.3 In the defence or settlement of the claim, virtualDCS may obtain for the Partner the right to continue using the software referred to in clause 8.2, replace or modify it so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Partner. virtualDCS shall have no liability if the alleged infringement is based on:
 - 8.3.1 modification of such software by anyone other than virtualDCS and its contracted third parties; or
 - 8.3.2 the Partner's use of such software in a manner contrary to the instructions given to the Partner by virtualDCS; or
 - 8.3.3 the Partner's or End Customer's use of such software after notice of the alleged or actual infringement from virtualDCS or any appropriate authority.
- 8.4 The foregoing states the Partner's sole and exclusive rights and remedies, and virtualDCS's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement. virtualDCS shall not be liable to the Partner in relation to illegal or immoral material held by the Partner or material that breaches any third party's Intellectual Property Rights and the Partner hereby indemnifies virtualDCS against any action costs claims or demands in relation thereto.

9. Limitation of 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 Partner under or in connection with this Agreement, including without limitation in respect of:
 - 9.1.1 any breach of this Agreement;
 - 9.1.2 any use of any kind made by the Partner or End Customer of any part of any other service provided by virtualDCS pursuant to this Agreement; and
 - 9.1.3 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:
 - 9.2.1 the Partner assumes sole responsibility for results obtained from the use of the Services by the Partner, and for conclusions drawn from such use; and
 - 9.2.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.3 Nothing in this Agreement excludes the liability of virtualDCS:
 - 9.3.1 for death or personal injury caused by virtualDCS's negligence; or
 - 9.3.2 for fraud or fraudulent misrepresentation.
- 9.4 Subject to clause 9.6:
 - 9.4.1 virtualDCS shall not be liable for:
 - (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill or similar losses; or

PRIVATE

- (d) loss of anticipated savings; or
- (e) loss of goods; or
- (f) loss of contract; or
- (g) loss of use; or
- (h) loss or corruption of data or information; or
- (i) any special, indirect, or consequential loss.

9.5 virtualDCS's liability in respect of any claim shall be limited to:

- 9.5.1 in respect of ongoing Services, the Fees paid for the Services during the 12 (twelve) months preceding the date on which the cause of action giving rise to the claim arose (or the fees paid in the last 12 months prior to termination of that Service, if the cause of action arose after termination); or
- 9.5.2 in the case of Services incurring a one-off fee, the Fee paid for the Services.

provided that in each case that (a) where multiple claims arise under the Agreement, the cap shall be reduced by the value of any amounts already paid in respect of previous claims and (b) virtualDCS's total aggregate liability under this Agreement shall in no event exceed £1 million.

9.6 virtualDCS shall not be liable for any failure to provide, or to adequately provide, the Services where such failure was as a result of a failure of either a reseller or any other non-contracted third-party service provider to virtualDCS to adequately perform any work upon which either the provision of Services is reliant, or which otherwise affects the ability of virtualDCS to provide the Services.

10. Term and Termination

10.1 This Agreement shall commence on the Effective Date.

10.2 This Agreement shall continue unless and until terminated by one party giving the other not less than six months' written notice of termination, provided that no termination may take place under this clause 10.1 whilst any order remains in effect.

10.3 virtualDCS shall provide the Services to the Partner as set out in each Order Form from the Service Term Commencement Date identified in that Order Form and:

- 10.3.1 in respect of ongoing Services shall renew in accordance with the provisions of the Order Form unless and until terminated in accordance with the Order Form or this clause 10; and
- 10.3.2 in respect of one-off Services shall run until that Service is completed, unless terminated earlier in accordance with this clause 10.

10.4 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving written notice to the other if:

- 10.4.1 the other party commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 15 days of that party being notified in writing of the breach; or
- 10.4.2 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 10.4.3 the other 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, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
- 10.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or

PRIVATE

- 10.4.5 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- 10.4.6 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
- 10.4.7 a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
- 10.4.8 a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days; or
- 10.4.9 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

10.5 Where a party has a right to terminate in accordance with clause 10.4, it may as an alternative elect only to terminate one or more orders placed under this Agreement (provided, in the case of clause 10.4.1, that it may only elect to terminate orders affected by the breach).

10.6 Any termination of this Agreement will also automatically terminate all orders placed under it, but termination of an individual order will not affect the continuation of this Agreement or other orders.

10.7 On termination of this Agreement or an order for any reason:

- 10.7.1 all licences granted under this Agreement or the applicable order shall immediately terminate;
- 10.7.2 the Partner shall, immediately pay to virtualDCS all of virtualDCS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted virtualDCS may submit an invoice, which shall be payable immediately on receipt;
- 10.7.3 the Partner shall immediately return all of virtualDCS's equipment and documentation (or that of virtualDCS's licensors) in their possession or under their control (except that where other orders remain in effect, it may retain equipment and documentation required for those orders);
- 10.7.4 each party shall immediately cease all use of the other party's Intellectual Property Rights, and that of the other party's licensors (except that where other orders remain in effect, the parties may continue using Intellectual Property Rights belonging to other orders);
- 10.7.5 virtualDCS will destroy or otherwise dispose of any of the Partner's data, storage media, software, equipment or other items in its possession (except that where other orders remain in effect, it will retain such items required for those orders) unless virtualDCS receives, no later than ten days after the effective date of the termination of this Agreement or the applicable order, a written request for their delivery to the Partner. virtualDCS will use reasonable commercial efforts to deliver the same to the Partner within 30 (thirty) days of its receipt of such a written request, provided that the Partner has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Partner shall pay all reasonable expenses incurred by virtualDCS in returning or disposing of them;
- 10.7.6 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and
- 10.7.7 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. Force majeure

11.1 virtualDCS shall have no liability to the Partner 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 network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation

PRIVATE

or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (whether those of the Partner, End Customer or virtualDCS), provided that the Partner is notified of such an event and its expected duration.

11.2 The Partner shall use reasonable endeavours to mitigate the impact of any Force Majeure Event and notify virtualDCS promptly upon becoming aware of such an event.

12. **Waiver**

12.1 A waiver of any right or remedy under this Agreement is only effective if is given in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

12.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

13. **Severance**

13.1 If any provision of this Agreement (or part of any provision) is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall the other provisions of this Agreement shall remain in force.

13.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14. **Assignment**

14.1 The Partner shall not, without the prior written consent of virtualDCS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.2 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. **No partnership or agency**

15.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and no party shall have authority to act in the name or on behalf of or otherwise to bind another in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16. **Rights of third parties**

16.1 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

17. **Proprietary Rights**

17.1 The Partner acknowledges and agrees that virtualDCS and/or its licensors own all Intellectual Property Rights in the Services and/or in any element of the same or facility supplied as part of the same. Except as expressly stated herein, this Agreement does not grant the Partner or any End Customer any rights to, or in, any Intellectual Property Rights, or any other rights or licences in respect of the Services or any related documentation.

18. **Notices**

18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or sent by email to the email address set out below or such other address as may have been notified by that party for such purposes.

Notices to virtualDCS: notices@virtualdcs.co.uk

Notices to Partner: [.....]

18.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post

PRIVATE

19. **Variation**

19.1 virtualDCS may vary the terms of this Agreement from time to time on not less than 30 days' written notice to the Partner.

20. **Counterparts**

20.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21. **Governing law and jurisdiction**

21.1 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.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

PRIVATE

This agreement has been entered into on the date stated at the beginning of this Agreement.

Signed by

for and on behalf of **virtualDCS Ltd.**

..... Date

Signed by

for and on behalf of **[PARTNER NAME]**

..... Date