

# CLoudCOVER® END-USER LICENSE AGREEMENT

This Commercial End-User Software License Agreement and Support Services (“Agreement”) is between the end-user (“Customer” and/or “You”), \_\_\_\_\_ (“Name”) \_\_\_\_\_ (“Address”) and CLOUDCOVER® USA, Inc. with its principal place of business at 740 Southcross Drive W, Suite 105, Saint Paul, MN 55306-7916, USA (“CLOUDCOVER” and/or “CLOUDCOVER USA”). This Agreement governs the Customer’s use of the CLOUDCOVER software (the “Software”) as well as any Services and the documentation made available for use with such CLOUDCOVER software. “You” and “Customer” means the “Ordering Entity,” defined herein. In consideration of the mutual promises and upon the terms and conditions set forth below CLOUDCOVER and Customer agree as follows:

## I. GRANT OF LICENSE

**I.1 Grant.** Subject to the terms and conditions of this Agreement, including, without limitation, the restrictions in Article II, CLOUDCOVER hereby grants to Customer a nonexclusive, non-sub-licensable and nontransferable and limited license during the License Term to (a) use the Software for its own internal information processing services and network computing needs, and (b) use the Documentation in connection with the licensed use of the Software. Customer acknowledges that CLOUDCOVER will retain full and complete title to the Software, Documentation and all security event knowledge acquired and/or gained during the license term. CLOUDCOVER, hereby reserves all rights in and to the Software, Documentation and all security event knowledge acquired and/or any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein. Customer acknowledges that they/it will obtain no title, ownership or use rights beyond what is described in this agreement to the proprietary software, security event knowledge, copyrights, and marks of CLOUDCOVER.

**I.2 Delivery.** CLOUDCOVER shall issue to Customer one machine-readable copy of the Software along with one copy of the appropriate Documentation. CLOUDCOVER shall provide Customer with additional copies of the Documentation at the Customer’s request at the then current price. Customer acknowledges that no copy of the source code of the Software will be provided to Customer. CLOUDCOVER shall have no obligation to and will not deliver any source code to customer or any representative of customer hereunder.

**I.3 Copies.** Customer may not copy the Software, for any reason.

## II. LICENSE RESTRICTIONS

**II.1 Restrictions on Use.** You must use the software in strict compliance with the terms of this license agreement and the CLOUDCOVER Order Form. Neither you nor anyone on your behalf shall at any time (a) decompile, disassemble, reverse engineer, attempt to derive the source code of and/or decrypt the software, (b) make any modification, adaptation, enhancement, change or derivative work from the software, (c) violate any applicable laws, rules or regulations in connection with your use of the software, remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of CLOUDCOVER or its affiliates, (e) install, use or permit the Software to be used or accessed outside Customer’s protected network, (f) use the Software to create a product, service or related software that is in any manner competitive with the Software provided herewith (i.e. a risk rating, threat detection, blocking and mitigation software program), (g) use the Software to send automated queries to any website, or send unsolicited commercial emails, (h) use any proprietary information and/or any part of this Software in the design, development, manufacture or distribution of any product or accessory for use with this software, or (l) use this Software to phish, hack any website, URL or IP, or send any data or program/s intended to disrupt any other network or device.

**II.2 Additional Restrictions.** Customer shall abide by any other restriction indicated on the CLOUDCOVER Order Form (CCOF) and shall not itself, or through any parent, subsidiary, affiliate, agent or other third-party: (a) sell, lease, license or sublicense the Software or the Documentation; (b) allow access to the Software by any person, affiliate or entity that is not a User authorized by You; (c) use the Software on a “managed service provider” or security-as-a-service basis; or (d) provide, disclose, divulge or make available to or permit use of the Software by any third-party without CLOUDCOVER prior written consent.

**II.3 Audit.** Upon the prior written notice by CLOUDCOVER, Customer shall make available to CLOUDCOVER, and CLOUDCOVER or independent third-party auditors mutually agreed upon by the parties shall have the right on reasonable notice and no more often than once a year to inspect and audit the Customer’s relevant books, records, premises, and equipment to determine whether Customer is compliant with its obligations hereunder. Any such audit is contingent upon adherence to any security measures Customer deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. If Customer’s security requirements are not met upon CLOUDCOVER’s request, Customer will run a self-assessment with tools provided at the direction of CLOUDCOVER (“Self-Assessment”) to verify Customer’s compliance with the terms and conditions of this Agreement.

### **III. SERVICES**

**III.1 Maintenance Duties.** CLOUDCOVER shall provide Maintenance Support as specified in this Section IV and in accordance with The Maintenance & Support Service Guide, as may be updated by CLOUDCOVER from time to time (“Support Site”).

**(a) Term and Termination.** CLOUDCOVER’s Maintenance and Support obligations will commence on the Effective Date and will continue for the period specified in the CLOUDCOVER Order Form unless this Agreement is terminated prior thereto.

**(b) Renewal Fees.** The Maintenance and Support Services fee shall be, for the Initial Term, the Maintenance and Support fees specified in the CLOUDCOVER Order Form. If Customer elects not to renew Maintenance and Support, Customer may re-enroll only upon payment of the annual Maintenance Fee for the coming year and all Maintenance Fees that would have been paid had Customer not terminated Maintenance and Support.

**(c) Maintenance and Support Services.** Maintenance and Support means that CLOUDCOVER will provide updates if any, including appropriate Documentation including:

- (i) Clarification of functions and features of the Software;
- (ii) Clarification of Documentation pertaining to the Software;
- (iii) Guidance in the operation of the Software; and
- (iv) Error verification, analysis, and correction to the extent possible by telephone. CLOUDCOVER’s standard hours of service are set forth in the Support Site.

**(d) Eligibility of Software.** Maintenance and Support will not include services requested as a result of, or with respect to the following and any services requested as a result thereof will be billed to the Customer at CLOUDCOVER’s then-current rate:

- (i) Accident; unusual physical, electrical, or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by CLOUDCOVER; operation of the Software with other media not meeting or not maintained in accordance with the manufacturer’s specifications; or causes other than ordinary use;

- (ii) Improper installation by Customer or use of the Software that deviates from any operating procedures established by CLOUDCOVER in the applicable Documentation;
- (iii) Modification, alteration or addition or attempted modification, alteration or addition of the Software undertaken by persons other than CLOUDCOVER or CLOUDCOVER's authorized representatives; or
- (iv) Software or technology of any party other than CLOUDCOVER.

**(e) Responsibilities of Customer.** In addition to payment obligations set forth in Article IV below, Customer's obligations include the following:

- (i) At CLOUDCOVER's reasonable request and subject to applicable operational and security restrictions, Customer shall provide CLOUDCOVER or an authorized value-add reseller ("VAR") access to Customer's personnel and equipment during normal business hours.
- (ii) Customer shall document and promptly report all errors or malfunctions of the Software to CLOUDCOVER. Customer shall take all steps necessary to carry out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from CLOUDCOVER.
- (iii) Customer shall maintain a current backup copy of all programs and data.
- (iv) Customer shall properly train its personnel in the use and application of the Software and the equipment on which it is used.
- (v) Customer shall promptly allow CLOUDCOVER and/or its affiliates to install any and all updates and upgrades provided by CLOUDCOVER, and CLOUDCOVER shall have no obligation to provide support under this Agreement in the event that the Customer has not allowed installation of the updates and upgrades of the Software.

**III.2 Training Services.** In the event that any Training Services are purchased, subject to the payment of the applicable fees, CLOUDCOVER shall provide training described in the CLOUDCOVER Order Form.

**III.3 Professional Services.** In the event that any Professional Services are purchased, subject to the payment of the applicable fees, CLOUDCOVER shall provide the Professional Services described in the CLOUDCOVER Order Form or accompanying Statement of Work.

## **IV. PAYMENT**

### **IV.1 Payment by Customer; Late fee.**

Unless the Terms and Conditions of any applicable ("CCOF") provide for prepayment to Provider by Customer with respect to any applicable Software and/or Service(s), Customer will pay for all Software and Service(s) not later than the date thirty (30) calendar days immediately after the invoice date reflected on Provider's invoice ("**Due Date**"). If any Customer payment is not received by any applicable Due Date, Provider may impose a late payment charge of the lesser of (i) 1.5% per month, or (ii) the highest legally permissible rate, and apply such charge to the amount past due. It will not be a defense to nonpayment that all or any portion of charges for Software and Service(s) were incurred by unauthorized users. Customer will reimburse Provider for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments. Restrictive endorsements or other statements on checks accepted by Provider will not apply.

## **IV.2 Customer's Responsibility for Taxes.**

All applicable federal, state or local taxes and all use, sales, commercial, gross receipts, privilege, surcharges, or other similar taxes, license fees, miscellaneous fees, and surcharges, whether charged to or against Provider for sales of services or software license to Customer, will be payable by Customer, including, without limitation, any cost recovery fee which will represent an accurate and non-inflated recovery of Provider's, or any underlying provider's, miscellaneous tax, surcharge, and fee payments to federal, state or local governmental authorities associated with the provision of Software and/or Service(s) by Provider to Customer pursuant to this Agreement. Provider retains the right to invoice Customer for costs incurred by Provider from time to time related to Provider's compliance with court orders and other actions of governmental agencies or entities, including, without limitation, subpoenas duces tecum (and similar subpoenas), related to telephone numbers and other information related to or associated with Customer or Customer's customers and/or End Users.

## **IV.3 Tax Exempt Status.**

Notwithstanding the foregoing provisions of Section 3(b) above, if Customer provides Provider written documentation of Customer's tax-exempt status in a form reasonably acceptable to Provider, Provider will not charge Customer any taxes exempted due to Customer's request and supporting documentation. Such documentation of Customer's tax-exempt status will include a valid and properly executed tax exemption certificate(s) and/or statement(s) of indemnification for any taxes from which Customer seeks exemption. Customer will pay any and all remaining non-exempt charges. For clarity, the establishment of exemption from any taxes is the sole responsibility of Customer and Provider is not obligated to consider any retroactive request for tax exemption.

## **IV.4 Credit Assurance.**

Provider may require that Customer provide Provider with credit information as requested by Provider. Provider may require Customer to make a security deposit as a condition of Provider's acceptance of any CCOF. Provider may, in any combination and at any time: (i) require a security deposit, in an amount determined by Provider, to continue utilization of the Software and Service(s) if Provider determines that (x) Customer's level of credit, as approved by Provider from time to time, is insufficient, (y) the level of expected and/or actual Customer Usage warrants a security deposit, or (z) Customer has failed to timely pay in full for the Service(s); (ii) demand immediate payment by wire in accordance with Provider's instructions (or other prompt means approved by Provider) and/or discontinue use of the Software and Service(s) if Customer's level of credit, as approved by Provider, is insufficient; (iii) if Customer fails to make payment pursuant to this Article or clause (ii) above at any time, Provider may, in addition to any other rights or remedies Provider may have pursuant to this Agreement, suspend or terminate Service(s), any applicable CCOF(s) (or any portion thereof) and/or this Agreement upon written notice; and/or (iv) if Customer has a pre-payment arrangement and Customer's pre-paid balance is depleted or such balance is insufficient to cover Customer's expected and/or actual usage during the time required for Customer to replenish its pre-paid balance, Provider may immediately suspend or terminate Service(s) and/or this Agreement upon written notice.

## **V. MANUFACTURER'S LIMITED SOFTWARE WARRANTY and LIMITATION of LIABILITY**

**V.1 Manufacturer's Limited Software Warranty.** CLOUDCOVER warrants that the Software is free from defects in materials and workmanship under normal use for a period of thirty (30) days after the Effective Date. If during this time period the Software does have defects or demonstrates defects in materials or workmanship, CLOUDCOVER shall, at its option, correct the Software or replace such Software free of charge. In addition, CLOUDCOVER warrants that the hardware if applicable on which the Software is distributed will be free from defects in materials and workmanship under normal use for a period of 90 days from the Effective Date. CLOUDCOVER shall replace any defective hardware returned to

CLOUDCOVER within the 90-day period. The foregoing are Customer's sole and exclusive remedies for breach of Manufacturer's Limited Software Warranty. The Manufacturer's Limited Software Warranty set forth above is made to and for the benefit of Customer only. The Manufacturer's Limited Software Warranty will apply only if:

- (a) The Software has been properly installed and used at all times and in accordance with the instructions for use; and
- (b) No modification, alteration or addition has been made to the Software by persons other than CLOUDCOVER or CLOUDCOVER's authorized representative; and
- (c) Customer has met its payment obligations in full set forth in Article IV.

**V.2 Disclaimer.** Except as set forth above, and the CLOUDCOVER Ransomware Warranty, if applicable, CLOUDCOVER makes no warranties, whether express, implied, or statutory regarding or relating to the Software or the Documentation, or any materials or Services furnished or provided to Customer under this Agreement, including Maintenance and Support. CLOUDCOVER HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND OTHER MATERIALS AND SERVICES PROVIDED HEREUNDER, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

**V.3 Limitation of Liability.** IN NO EVENT WILL CLOUDCOVER BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SOFTWARE, DOCUMENTATION AND OTHER MATERIALS AND SERVICES PROVIDED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF CLOUDCOVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LIABILITY UNDER THIS AGREEMENT FOR DAMAGES EXCEED THE FEES PAID BY CUSTOMER TO CLOUDCOVER UNDER THIS AGREEMENT. The provisions of this Article V allocate risks under this Agreement between Customer and CLOUDCOVER. CLOUDCOVER's pricing of the Software and Documentation reflects this allocation of risk and limitation of liability. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31. U.S.C. §§ 3729-3733.

## **VI. NO IMPLIED WARRANTIES; INDEMNIFICATION.**

**VI.1 Force Majeure.** Provider will not be liable for (i) delays in the installation, commencement or restoration of any Software and/or Service(s); (ii) any temporary or permanent cessation of any use of the Software or Service(s); (iii) errors, malfunctions, delays or defects in the Software or any Service(s); (iv) loss or damage occasioned by any Force Majeure Event; and (v) to the fullest extent permitted by applicable law, for injury to or death of any person and/or damage to or loss of any property arising out of or attributable to the Software use of the Software or Service(s) and/or performance pursuant to this Agreement.

**VI.2** EXCEPT DUE TO (I) DAMAGES CAUSED BY A PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, (II) A PARTY'S BREACH OF ITS OBLIGATIONS; (III) WITH RESPECT TO ANY INDEMNIFICATION, AND/OR (IV) CUSTOMER'S VIOLATION OR INFRINGEMENT OF CLOUDCOVER'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ANY LOST

PROFITS, LOST REVENUES, LOST SAVINGS OR HARM TO BUSINESS AND WHETHER LIABILITY IS ASSERTED IN, AMONG OTHER THINGS, CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT PRODUCT LIABILITY) AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES AND AGENTS FROM ANY SUCH CLAIM TO THE EXTENT EXCLUDED BY THE FOREGOING EXCLUSION OF NON-DIRECT DAMAGES. WITH RESPECT TO ANY INDEMNIFICATION, THE INDEMNIFYING PARTY ONLY WILL BE LIABLE TO THE OTHER PARTY FOR THE LOSSES INCURRED BY THE INDEMNIFIED PARTY AND SUBJECT TO INDEMNIFICATION. THE PARTIES WAIVE ANY CLAIM THAT THE EXCLUSIONS OR LIMITATIONS OF THIS SECTION 8 DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE.

**VI.3** PROVIDER MAKES NO IMPLIED WARRANTIES, FOR THE SOFTWARE OR SERVICE(S) (INCLUDING EQUIPMENT) PROVIDED PURSUANT TO THIS AGREEMENT OR ANY CCOF AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE, OR THAT THE SOFTWARE OR SERVICE(S) WILL MEET CUSTOMER'S REQUIREMENTS. PROVIDER EXERCISES NO CONTROL OVER, AND HEREBY DISCLAIMS ANY RESPONSIBILITY FOR, THE ACCURACY AND QUALITY OF ANY INFORMATION TRANSMITTED WITH THE USE OF THE SOFTWARE OR SERVICE(S). PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OF THIRD-PARTY TELECOMMUNICATIONS SERVICE PROVIDERS.

**VI.4** Customer will at all times defend, indemnify and hold Provider, its subsidiaries and affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from all claims arising out of or due to the utilization by Customer or any other person or entity to which Customer provides any services in connection with or utilizing any Software or Service provided to Customer pursuant to this Agreement (including, without limitation, any of Customer's customers and/or End Users), including, without limitation, due to (i) the failure of Customer or any of Customer's customers to comply with any applicable laws; (ii) claims for libel, slander, and/or invasion of privacy; (iii) claims for infringement of copyright and/or trademark; (iv) claims for infringement of patents arising from combining or using services, software or equipment furnished by Provider with services and/or equipment furnished by any other person or entity; and (v) claims arising from any failure, breakdown, interruption or deterioration of software provided by Provider to Customer. Customer will at all times defend, indemnify and hold Provider, its subsidiaries and affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from all actual or alleged losses, costs, claims, liability of any kind, damages, or expenses or fees (including, without limitation, reasonable attorneys' fees) on the part of or which may be incurred by Customer, Provider or any third-party relating to or arising from (i) use or operation of the Customer Software; (ii) unauthorized access to or use or operation of the Software by any third-party through or in connection with the Customer Software, whether or not such unauthorized access is accidental, intentional, unintentional, or fraudulent, and regardless of whether Customer had or should have had knowledge of such unauthorized access.

**VI.5 Customer's Infringement.** In the event the Customer violates the "Use" rights granted herein or in any other manner violates CLOUDCOVER's copyright, trademark or patent rights protected by Federal and/or State law, nothing in this agreement restricts or limits CLOUDCOVER's right to assert the full panoply of claims against Customer.

## **VII. CONFIDENTIAL INFORMATION**

**VII.1 Non-Use and Non-Disclosure.** This Agreement and its terms, together with any attachments, including, without limitation, any Exhibits, CCOF terms and conditions, but excluding only such information

that may be available to the public on Provider's website from time to time, as well as all software provided to Customer is designated as proprietary and confidential information of the Parties. The Parties agree that such information will not be disclosed by either Party, either directly or indirectly, by any means, to any third person(s) without the express written permission of the other Party, provided that Provider may disclose the information to perform its obligations under this Agreement. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third-parties or to such party's employees, except to those employees of the receiving party with a need to know. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Notwithstanding the foregoing, a receiving party may disclose such Confidential Information to the extent it is required by law to be disclosed by the receiving party, including in accordance with the Freedom of Information Act, 5 USC § 552 et seq., provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure. Confidential Information of CLOUDCOVER will include without limitation the Documentation and Software.

**VII.2 Copies.** Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

**VII.3 Return of Materials.** Upon the termination of this Agreement, each party shall deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control.

## **VIII. TERM and TERMINATION**

**VIII.1 Term.** This Agreement will take effect on the Effective Date and will remain in force until terminated in accordance with this Agreement or on the date set forth in the C.C.O.F.

**VIII.2 Termination by CloudCover.** In the event CloudCover in good faith believes that Customer will not pay for services or software as provided herein or believes Customer is violating other provisions of this Agreement CloudCover may send written notification of Termination of this Agreement effective 10 days following placement of the Notice of Termination in U.S. mail. Regardless of the Termination date both parties shall be obligated to comply with all terms herein prior to termination or expiration.

**VIII.3 Survival upon Termination.** Termination will become effective upon the end of the Customer's subscription agreement and/or the date set forth in the written Notice of Termination. Termination of this Agreement will not affect the provisions regarding Customer's treatment of Confidential Information, Customer's violation of intellectual property laws, Customer's limitations on the use of the software, Customer's obligation to return the software, etc., provisions relating to the payment of amounts due, provisions limiting or disclaiming CLOUDCOVER's liability, or CLOUDCOVER'S LIMITATION OF WARRANTIES which provisions will survive termination of this Agreement.

**VIII.4 Software Return; Data Destruction.** No later than thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return the Software and all copies, in whole or in part, all Documentation relating thereto, and any other Confidential Information in its possession that is in tangible form. Customer shall furnish CLOUDCOVER with a certificate signed by an authorized representative of Customer verifying that the same has been done and that the Software has been deleted, removed from the network, and electronically "forgotten".

## **IX. MISCELLANEOUS**

**IX.1 Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) sent by first class registered mail, or air mail, as appropriate, or (b) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the CCOF. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given three (3) business days after deposit in the mail as set forth above, or one day after delivery to an overnight courier service such as FedEx or UPS.

**IX.2 Entire Agreement.** This Agreement, together with any attachments, including, without limitation, any Exhibits, CCOFs and/or Terms and Conditions, incorporated herein by reference, constitute the entire understanding between the Parties with respect to Software and/or Service(s) provided herein and supersedes any prior agreements or understandings. Customer will receive the Software and any Service(s) detailed in an executed CCOF(s) and Terms and Conditions pursuant to this Agreement only and Customer is not relying on any affirmation of fact, promise or description from any person or entity, nor any other oral or written representation other than what is contained in this Agreement and any incorporated documents. Handwritten alterations or additions by Customer to this Agreement or any applicable CCOF(s) or Terms and Conditions will not be considered binding; such modifications must be provided by Customer in a separate written document and executed by both Parties. This Agreement will be binding on the parties hereto. Agreement headings are provided for reference purposes only. This Agreement may be executed in counterparts, each, and all of which constitute the full executed Agreement, and the Parties agree that a digitized (electronic) or facsimile copy of the executed Agreement will be the same as an original. The failure of Provider to give notification of Default and/or to enforce compliance with any of the terms or conditions of this Agreement will not be considered the waiver of such Default and/or any further Default and/or enforcement or other term or condition of this Agreement. No waiver of Provider will be effective unless in writing and signed by an authorized representative of Provider. No amendment to this Agreement will be effective or binding unless it is made in writing and executed by authorized representatives of both Parties.

**IX.3 Ransomware Warranty not part of this Agreement.** If Customer has subscribed to use and license this Software in the absence of cyber insurance through CLOUDCOVER or a valid CLOUDCOVER affiliate, then Customer may be entitled to and may receive the CLOUDCOVER Ransomware Warranty which shall be defined in addition to the Manufacturer's Limited Software Warranties set forth in Section V herein. The CloudCover Ransomware Warranty is a separate legal instrument, is not part of this Agreement and shall only be defined according to the terms therein.

**IX.4 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, such invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

**IX.5 Amendment without Notice.** CloudCover may, without notice, amend this Agreement in order to comply with Federal and State laws, Administrative regulations, and court orders. No such amendment without notice shall materially alter Customer's obligations and/or duties here within this Agreement.

(c) Customer may not export or re-export the Software without the prior written consent of CLOUDCOVER and without the appropriate United States and foreign government licenses.

## **X. ASSIGNMENT**

**X.1 No Assignment Except in Writing or Acquisitions.** A Party may not assign this Agreement or any obligations or rights therein, in whole or part, without the prior written consent of the other Party. Notwithstanding the foregoing, a Party may assign this Agreement, without consent, to an affiliate, or an

entity which acquires all or substantially all of the stock or assets of the assigning Party, or to a successor in a merger, acquisition or restructuring of the assigning Party; provided, however, (a) the assigning Party will give notice of any such assignment to the other Party not less than thirty (30) days prior to such assignment; and (b) in the event of any such assignment by Customer, (i) Provider may require the assignee to be additionally and separately bound in writing to all the terms and conditions of this Agreement, including any additional provisions incorporated into this Agreement by reference, and immediately cure all defaults and/or outstanding obligations of Customer pursuant to this Agreement; and (ii) Provider reserves the right to review and consider the assignee according to Provider's practices and procedures, including, without limitation, a credit profile evaluation; Provider may, in Provider's discretion, impose additional contractual requirements as a condition to Provider's consent to any such assignment, including, without limitation, modification of payment terms, the imposition of a security deposit on the assignee, and/or the discontinuation of Service(s) without notice if any assignee fails to respond in a timely manner or otherwise cooperate with Provider during Provider's review or requirements.

#### **XI. THIRD PARTY BENEFICIARIES.**

The Parties do not intend by the execution, delivery, or performance of this Agreement to confer any benefit, incur any obligation or duty under law or otherwise, direct, or incidental, upon any third-party, person or entity not a party to this Agreement, including, without limitation, Customer's customers and/or End Users.

#### **XII. NON-EXCLUSIVE AGREEMENT.**

This Agreement is not exclusive. Except as may be expressly provided in any applicable CCOF(s) and/or Terms and Conditions from time to time with respect to Customer only, nothing in this Agreement will prevent CloudCover from entering into similar arrangements with, or otherwise providing Software and/or services to, any other person or entity.

#### **XIII. DEFINITIONS**

**XIII.1 "Confidential Information"** means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, the Software, and Documentation), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties.

**XIII.2 "CCOF"** means CloudCover Order Form.

**XIII.3 "Documentation"** means any user instructions, manuals and/or on-line help files regarding the use of the Software that are generally provided by CLOUDCOVER in connection with the Software.

**XIII.4 "Effective Date"** means the date a CLOUDCOVER Order Form, and this Agreement are executed in full by an authorized person on behalf of Customer.

**XIII.5 "License Fee"** means the price paid for the Software License specified in the Order.

**XIII.6 "License Term"** means the term of the license as described in the CLOUDCOVER Order Form as amended unless terminated as set forth herein.

**XIII.7 "Maintenance and Support"** means the services described in The Maintenance & Support Service Guide provided to the Customer.

- XIII.8 “Maintenance Fees”** are applicable fees for Maintenance and Support set out in the CLOUDCOVER Order Form.
- XIII.9 “Professional Services”** means the professional services set out in CLOUDCOVER’s Order Form.
- XIII.10 “Service Fees”** means the fees, including the Maintenance Fees set out in the CLOUDCOVER Order Form as amended. in respect of the provision of any of the Services.
- XIII.11 “Services”** means the Maintenance and Support, Training Services, and Professional Services.
- XIII.12 “Software”** means the computer software programs specified in the CLOUDCOVER Order Form as amended.
- XIII.13 “Statement of Work”** means the statement of work in respect of Professional Services, described in the CLOUDCOVER Order Form as amended.
- XIII.14 “Training Services”** are training services specified in the CLOUDCOVER Order Form as amended.
- XIII.15 “Update”** means a release or version of the B1 Software containing functional enhancements, extensions, error corrections or fixes that may at the sole discretion of CLOUDCOVER be made available to Customers that have contracted for Maintenance and Support.
- XIII.16 “Users”** means those employees or contractors of Customer, as may be further defined, or restricted in the CLOUDCOVER Order Form as amended.

**XIV. REPRESENTATION OF PARTIES; INDEPENDENT CONTRACTORS; COMPLIANCE LAWS.**

Provider represents to Customer that Provider has the right to provide the Software and Service(s) specified herein, is duly organized, and validly exists in good standing under the laws of its state of incorporation, with the ability to enter into and perform its obligations under this Agreement in accordance with its terms and conditions, including any documents incorporated by reference into this Agreement. Customer represents to Provider that Customer is duly organized and validly exists in good standing under the laws of its state of incorporation, with the ability to enter into and perform its obligations under this Agreement including any documents incorporated by reference into this Agreement. Each Party agrees that it will perform its obligations hereunder as an independent contractor and not as the agent, employee, or servant of the other Party and that no joint venture or partnership is or has been expressed or implied. Customer will comply with all laws and regulations applicable to Customer and/or Customer’s utilization of the Software and any Services; Customer will be directly responsible for compliance with applicable laws and regulations as such laws and regulations relate to Customer and Customer’s utilization of the Software.

CUSTOMER

PROVIDER

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Representative of CloudCover

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date