



Our proposal for:

National Institute for Health and Care Excellence



Prepared by:

virtualDCS (UK)



Thursday, 19 June, 2025

National Institute for Health and Care Excellence

[Redacted]

Dear [Redacted]

Firstly, thank you for offering us this opportunity to demonstrate how we can help National Institute for Health and Care Excellence reach its IT objectives.

Some information about virtualDCS:

virtualDCS is an innovative, award-winning Cloud Service Provider that's changing the game in IT managed services.

We offer a range of robust, resilient services including Public and Private Cloud, Cyber Security and Business Continuity, leveraging industry-leading technologies through partnerships with Microsoft, AWS, VMware and Veeam. Our mission? To help clients succeed with smarter IT, so they can focus on what really matters to them.



We have created this proposal from the information provided, and included an overview of each service that we are offering as part of the solution.

For further information, please don't hesitate to contact me on [Redacted] or via email at [Redacted]

[Redacted]
Business Development Manager
virtualDCS (UK)

CloudCover™ Business Continuity is a unique Disaster Recovery portfolio that utilises Cloud technology to protect your organisation from the threat of data loss.

Combining many years of experience with virtualisation and data replication technologies, virtualDCS has created this comprehensive business protection suite to address the shortcomings in traditional Disaster Recovery solutions.

CloudCover™ works by duplicating an organisation's computer systems or data to secure off-site data centres. This means that in the event of an incident, the CloudCover™ suite can quickly restore business data, ensuring your organisation is consistently protected and can be up and running within minutes.

Unlike less reliable methods, such as tape-based back-up, which carry inherent risks in disaster scenarios, the use of Cloud-based Disaster Recovery is much more robust and provides greater peace of mind.

As part your Disaster Recovery solution it is important that you assess each of your IT services, to establish the following two metrics:

- Recovery Point Objective (RPO) - This is the amount of data you could afford to lose if a system had a failure, fault or corruption. For example, if you back up your server once a night your RPO could be 24 Hours, if you replicate your server in real time your RPO could be seconds.
- Recovery Time Objective (RTO) - This is the time that it could take to get your systems/data back up and running after a failure. For example, how long can you afford not to have a system available?

We pride ourselves in taking the time to get to know your business, so we can help you to develop the right strategy with a minimal amount of effort on your part.



CloudCover 365

CloudCover 365 is the only Veeam powered Microsoft 365 backup portal to offer end-user restore capabilities, saving your IT department time and money. The entirely browser-based solution can be accessed anywhere and provides feature-rich Backup for Microsoft Office 365 using the world's leading data protection software, Veeam.

- Create custom retention plans, with unlimited storage options.
- If you want to protect your data for 30 years, you can, with different retention options available for different backup jobs.
- Create and schedule custom backup jobs in minutes.
- Select what you want to protect – from specific items and individuals to an entire organisation.
- Pick specific backup time slots to suit your organisation or select random backup.
- View full a backup job history, including what happened and when.
- Manage your organisation's Microsoft Office 365 Backup jobs online, 24 x 7, without calling a support team.



CloudCover 365

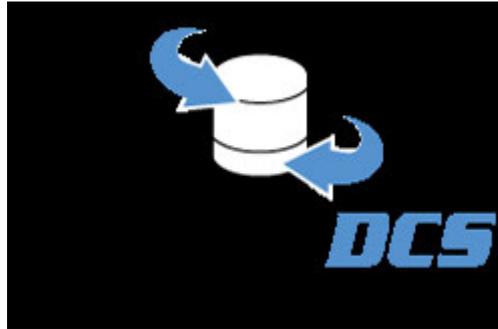
Product Details	Qty	Per	RRP	Discount	Recurring Amount	Billing Value
CloudCover 365 - Plus Per User <ul style="list-style-type: none"> • Inclusive Storage* • Exchange, Sharepoint, OneDrive, Teams • Entra ID • Off-Azure Backup for Compliance and Resilience • Multiple Backups a Day : █ • Max Retention : █ Year(s) • Primary Copy Immutability : █ Days • UK Based Support 	█	User	█	█	█	█

Monthly Subtotal: █

Additional Contract Terms

Products selected on this quote are subject to the additional contract terms and conditions:

[CloudCover Subscriber Agreement](#)



If you are not viewing these links to additional contract terms electronically, then please visit <https://www.virtualdcs.co.uk/downloads> to view them.

CloudCover 365 Renewal 2025

Prepared by:

virtualDCS (UK)

[Redacted]

Prepared for:

National Institute for Health and Care Excellence

[Redacted]

Quote Information:

[Redacted]

Version: 1

Delivery Date: [Redacted]

Expiration Date: [Redacted]

Service Term Start Date:

01/08/2025

Recurring Summary

Description	Amount
CloudCover 365	[Redacted]
Monthly Total:	
	[Redacted]

Payment Options

Description	Payments	Interval	Amount
Term Options			
1 Year (excl VAT)	12	Monthly 1 Year	[Redacted]

Summary of Selected Payment Options

Description	Amount
Term Options: 1 Year (excl VAT)	
Selected Recurring Payment	[Redacted]
Total of Recurring Payments	£32,250.00

Commercial Terms:

Term – The Minimum Term is stated on this Order Form. On the expiry of the Minimum Term, each recurring service in this Order Form shall renew annually for periods of twelve (12) months each in duration (each a Secondary Term), unless either Party issues a Notice to terminate not less than ninety (90) days prior to the expiry of the Minimum Term or any Secondary Term.

Recurring Fees – shall be invoiced to the Customer monthly in advance from the Service Term Start Date, whether Services are made available in part or in full, including where the Service is made available for Customer controlled phases of implementation, such as, but not limited to, application testing or data migration.

Non-Recurring Fees – shall be invoiced in full on both parties authorised representatives signing this Order Form.

Consumption Based Fees – Consumption Based charges shall be invoiced to the Customer monthly in arrears.

Any Service not specifically stated as included in this Order Form is explicitly excluded and is the Customer’s responsibility. A legally binding agreement is formed between the Customer and virtualDCS on both authorised representatives signing this Order Form.

This Order Form (including any special terms included below or annexed to this Order Form in the Additional Contract Terms

section) is subject to the virtualDCS General Terms and Conditions. Inclusive storage is provided in line with our Acceptable Usage Policy and charged at £0.02/GB thereafter.

A copy of the virtualDCS General Terms and Conditions and Additional Contract Terms is available at www.virtualdcs.co.uk/downloads.

To the extent of any conflict between the provisions of this Order Form and the virtualDCS General Terms and Conditions arises, the provisions of this Order Form shall take precedence.

We reserve the right to cancel orders arising from errors, inaccuracies, or omissions.

Notices sent to virtualDCS should be sent to notices@virtualdcs.co.uk.

Notices sent to the Customer should be sent to sbs.apinvoicing@nhs.net

On acceptance of this Order the following agreements shall be superseded: [REDACTED]

Invoice payment terms - Net 30 days.

virtualDCS (UK)

National Institute for Health and Care Excellence

Signature: [REDACTED]
Name: [REDACTED]
Title: Business Development Manager
Date: 27 Jun 2025

Signature: [REDACTED]
Name: [REDACTED]
Title: Lead Infrastructure Engineer
Date: 30 Jun 2025

Signature: [REDACTED]
Name: [REDACTED]
Title: Chief Information Officer
Date: 30 Jun 2025

Signature: [REDACTED]
Name: Bar [REDACTED]
Title: Associate Director, Procurement
Date: 01 Jul 2025

General Terms and Conditions

1. General

1.1. These are Virtual Data Centre Services Limited's (virtualDCS) General Terms.

1.2. These General Terms, along with the terms of the Order Form signed by the Customer, and the Additional Contract Terms applicable to the services to be provided which are listed in clause 1.6, apply to, and govern all contracts between virtualDCS and the Customer ("Agreements"), to the exclusion of all other terms and conditions that the Customer 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 (including any special terms which may be included in the Order Form or in a Statement of Work that may be annexed to it or separately required to be produced by it), (ii) the Additional Contract Terms, (iii) these General Terms.

1.4. Any Order Form issued by virtualDCS shall not constitute an offer that is capable of acceptance. A binding contract between virtualDCS and the Customer shall only come into existence when an Order Form has been signed by a duly authorised representative of both the Customer and virtualDCS.

1.5. virtualDCS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and virtualDCS shall notify the Customer in any such event.

1.6. The below Additional Contract Terms published at <https://www.virtualdcs.co.uk/downloads> shall also apply in the order stated in clause 1.3:

- 1.6.1. Data Centre Services Terms and Conditions
- 1.6.2. Professional Services Terms and Conditions
- 1.6.3. Support Services Terms and Conditions
- 1.6.4. CloudCover Backup Terms and Conditions
- 1.6.5. CloudCover Replication Terms and Conditions
- 1.6.6. Local Appliance Terms and Conditions
- 1.6.7. CloudCover Subscriber Agreement

2. Interpretation

2.1. 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 identified in the contract terms section on the Order Form;
Confidential Information	means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information;
Customer	means the customer identified on the relevant Order Form;
Fees	means the fees payable to virtualDCS by the Customer for the provision of the Services, as described on the Order Form;

General Terms	means these virtualDCS general terms and conditions;
Intellectual Property Rights	means all patents, registered and unregistered designs, copyright, database rights, rights in respect of goodwill, trade marks (whether registered or unregistered), semiconductor rights, know-how, rights in respect of data and/or confidential information and all other forms of intellectual property wherever in the world together with any right to apply for registration of any such rights (and/or any rights of action in relation to any of the same);
Minimum Term	means the applicable minimum term for any particular Service, as set out on the Order Form;
Order Form	means the attached form that is headed with either 'Quote' or 'Proposal' that has been signed by the Customer and virtualDCS;
Service	means a service (including services governed by the Additional Contract Terms) to be provided by virtualDCS to the Customer that is referred to on the Order Form (and "Services" means all of them together);
Service Availability Date	means in relation to each Order Form, the date when the Service is first made available for use by the Customer, which may be on or before the Service Term Start Date; and
Service Term Start Date	means in relation to each Order Form, the date when the Minimum Term and payment obligations commence.

- 2.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 2.3. Person includes a corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 2.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5. Words in the singular shall include the plural and vice versa.
- 2.6. A reference to one gender shall include a reference to the other genders.
- 2.7. 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.

2.8. References to clauses in these General Terms are the clauses of these General Terms. References to clauses or schedules in any Additional Contract Terms, are to the clauses or schedules of the relevant Additional Contract Terms (unless otherwise expressly stated).

2.9. A reference to writing or written includes email.

3. Services

3.1. virtualDCS shall provide each of the Services in accordance with the terms of the Order Form and the applicable Additional Contract Terms.

3.2 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 Customer prior to such date. Where the Service Availability Date precedes the Service Term Start Date, the Customer 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.

4. Charges and payment

4.1. In consideration of the relevant Services, the Customer shall pay the Fees in those amounts and at those times set out on the Order Form and this clause 4.

4.2. The Customer 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 Customer 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.

4.3. Without prejudice to clause 4.2, 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 4.2). virtualDCS will give the Customer written notice of any such increase 2 months before the proposed date of the increase..

4.4. The Customer 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.

4.5. All Fees are exclusive of value added tax, which shall be added to virtualDCS's invoice(s) at the appropriate rate.

4.6. Where the Customer 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 Customer is deemed to not require a purchase order number.

4.7. 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 paid by the Customer in pounds sterling. The Customer 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 Customer via email. The method of payment for monthly Fees is by direct debit to the virtualDCS nominated 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 (twenty-five pounds).

4.8. virtualDCS may make a search in relation to the Customer with a credit reference agency (and make other credit enquiries from time to time), keep a record of that search and those enquiries, and share that information, or late payment of invoices with third parties. virtualDCS may also make enquiries about the principal directors or proprietors of the Customer with a credit reference agency and the Customer shall procure and/or supply any consents or authorisations required for the same to take place.

4.9. Without prejudice to any other of its rights and remedies, virtualDCS will be entitled to suspend any Services, and to remove the Customer's data from its systems, if any amount due under any Agreement is not paid within 30 (thirty) days of its due date for payment. virtualDCS is not required to back up such data or return the same to the Customer prior to any such removal or following termination of the Agreement. In the event virtualDCS removes data it will notify the Customer in writing within 7 days.

4.10. Where Customer 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 Customer while such a dispute is ongoing. Where only part of an invoice is disputed, Customer shall pay the undisputed amount on the due date for payment. If the parties have not resolved the dispute within 30 days of Customer's notice of dispute, virtualDCS reserve the right to terminate the Agreement, whereupon all Charges payable under the Agreement shall become immediately due and payable.

5. Data

5.1 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 5, the expressions **data subject**, **personal data**, **personal data breach** and **process** bear their respective meanings given in Data Protection Legislation.

5.2. virtualDCS is expected to process personal data on 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 Customer's use of the Services.

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

5.4. Customer warrants that:

5.4.1. it will only provide (or ensure the provision of) personal data to virtualDCS where that personal data has been lawfully obtained and where Customer is lawfully entitled to provide (or ensure the provision of) that personal data to virtualDCS for the intended purpose and means of processing; and

5.4.2. any instructions given to virtualDCS in accordance with clause 5.3 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 or Customer in breach of their respective obligations under Data Protection Legislation, and Customer 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 Customer of this clause 5.4.

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

5.5.1. 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 Customer's written consent;

5.5.2. ensure that any persons authorised to process the personal data are subject to a duty of confidence in respect of that processing;

5.5.3. 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;

5.5.4. notify Customer without undue delay on becoming aware of a personal data breach and cooperate with Customer to resolve that issue; and

5.5.5. at Customer's expense, provide the assistance that 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 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.

5.6. Customer authorises virtualDCS to engage sub-processors from time to time provided that virtualDCS will notify Customer 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 5 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).

5.7. From time to time during the term of this agreement virtualDCS will (upon written request from Customer):

5.7.1. provide details in writing of its data processing activities carried out on Customer's behalf; and

5.7.2. on reasonable notice allow Customer (or its 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 customers and/or avoid unreasonable disruption to virtualDCS's business.

5.8. virtualDCS will process personal data on Customer's behalf only during the term of the Agreement (and following termination to the extent required to perform any post termination obligations). On the termination or expiry of any part of the virtualDCS or the Agreement as a whole, virtualDCS will either delete or return all personal data processed on 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).

5.9. For the avoidance of doubt, nothing in this clause 5 or otherwise in the Agreement relieves either party of its own direct responsibilities and liabilities under Data Protection Legislation.

6. Customer's Obligations

6.1. To enable virtualDCS to perform its obligations under any Agreement the Customer shall:

- 6.1.1. cooperate to the fullest extent with virtualDCS and procure cooperation with virtualDCS by any employee or contractor of the Customer and/or any other supplier of the Customer in each case as requested by virtualDCS;
- 6.1.2. provide virtualDCS with any information, code, software, data, resources, equipment, services and access to personnel, systems, data, files and materials reasonably required by virtualDCS;
- 6.1.3. obtain all necessary permissions and consents which may be required in order to enable virtualDCS to provide the Services (including but not limited to any and all consents required for any computer software used by it and/or the permission or consent of any person, firm or company engaged by the Customer to perform maintenance of any software, hardware or combination of the same for virtualDCS to perform the Services) before the commencement of the Services; and
- 6.1.4. comply with such other requirements as may be set out in the Order Form or otherwise agreed between the parties and comply with all applicable laws and regulations in respect of each Agreement.

6.2. The Customer hereby covenants, warrants and represents that:

- 6.2.1. the Customer 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 "Customer System")) is:
 - 6.2.1.1. 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; and
 - 6.2.1.2. fully licensed and authorised for use by the Customer 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 Customer); and
 - 6.2.1.3. operated in accordance with any and all legal obligations incumbent upon the Customer (including but not limited to the UK GDPR); and
 - 6.2.1.4. 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 Customer and/or any member of the Customer's staff and/or any contractor of the Customer or virtualDCS; and
- 6.2.2. the performance of the Services by virtualDCS in accordance with the relevant Agreement terms will not place the Customer in breach of any agreement or duty of whatever nature binding upon it in relation to the Customer System or otherwise (including but not limited to any warranty or maintenance agreement).

6.3. The Customer shall be liable to indemnify and keep indemnified virtualDCS for any loss, costs, damage, expenses or prejudice, direct or indirect and of any nature, incurred by virtualDCS in any

way out of or as a result of any element of misrepresentation in or the Customer's failure to comply with Clause 6.1 and/or 6.2.

6.4. The Customer 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 Customer 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 of virtualDCS to terminate the Agreement and/or to claim for damages virtualDCS shall notify the Customer as soon as possible and:

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

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

7. Proprietary rights

7.1. The Customer 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 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.

8. Confidentiality

8.1. 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:

8.1.1. is or becomes publicly known other than through any act or omission of the receiving party; or

8.1.2. was in the other party's lawful possession before the disclosure; or

8.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

8.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or

8.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

8.2. Each party shall hold the other's Confidential Information in 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.

8.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of this clause 8.

8.4. Subject to clause 8.3, neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5. This clause 8 shall survive termination of this Agreement, however arising.

9. Indemnity

9.1. The Customer 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 Customer's use of the Services provided that:

- 9.1.1. the Customer is given prompt notice of any such claim;
- 9.1.2. virtualDCS provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 9.1.3. the Customer is given sole authority to defend or settle the claim.

9.2. virtualDCS shall defend the Customer, 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 Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- 9.2.1. virtualDCS is given prompt notice of any such claim;
- 9.2.2. the Customer provides reasonable cooperation to virtualDCS in the defence and settlement of such claim, at virtualDCS's expense; and
- 9.2.3. virtualDCS is given sole authority to defend or settle the claim.

9.3. In the defence or settlement of the claim, virtualDCS may obtain for the Customer the right to continue using the software referred to in clause 9.2, 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 Customer. virtualDCS shall have no liability if the alleged infringement is based on:

- 9.3.1. modification of such software by anyone other than virtualDCS and its contracted third parties; or
- 9.3.2. the Customer's use of such software in a manner contrary to the instructions given to the Customer by virtualDCS; or
- 9.3.3. the Customer's use of such software after notice of the alleged or actual infringement from virtualDCS or any appropriate authority.

9.4. The foregoing states the Customer'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 Customer in relation to illegal or immoral material held by the Customer or material that breaches any third party's Intellectual Property Rights and the Customer hereby indemnifies virtualDCS against any action costs claims or demands in relation thereto.

10. Limitation of liability

10.1. This clause 10 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 under or in connection with this Agreement, including without limitation in respect of:

- 10.1.1. any breach of this Agreement;
- 10.1.2. any use of any kind made by the Customer of any part of any other service provided by virtualDCS pursuant to this Agreement; and
- 10.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2. Except as expressly and specifically provided in this Agreement:

- 10.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use; and
 - 10.2.2. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.3. 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.
- 10.4. Subject to clause 10.3:
- 10.4.1. virtualDCS shall not be liable for:
 - 10.4.1.1. loss of profits; or
 - 10.4.1.2. loss of business; or
 - 10.4.1.3. depletion of goodwill or similar losses; or
 - 10.4.1.4. loss of anticipated savings; or
 - 10.4.1.5. loss of goods; or
 - 10.4.1.6. loss of contract; or
 - 10.4.1.7. loss of use; or
 - 10.4.1.8. loss or corruption of data or information; or
 - 10.4.1.9. any special, indirect or consequential loss.
 - 10.4.2. virtualDCS's liability in respect of any claim shall be limited to:
 - 10.4.2.1 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
 - 10.4.2.2. 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 shall in no event exceed a combined £1 million across any and all Agreements entered into between virtualDCS and the Customer.
 - 10.4.3. 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.

11. Term and Termination

- 11.1. The term of a Service will commence on the applicable Service Term Commencement Date and:
- 11.1.1. 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 11; and
 - 11.1.2 in respect of one-off Services shall run until that Service is completed, unless terminated earlier in accordance with this clause 11.
- 11.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
- 11.2.1. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 15 (fifteen) days of that party being notified in writing of the breach; or
 - 11.2.2. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

- 11.2.3. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) ; or
 - 11.2.4. a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - 11.2.4.1. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
 - 11.2.5. the other party ceases, or threatens to cease, to trade; or
 - 11.2.6. the other party takes or suffers any similar action in any jurisdiction in consequence of debt.
- 11.3. On termination of this Agreement for any reason:
- 11.3.1. all licences granted under this Agreement shall immediately terminate;
 - 11.3.2. each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
 - 11.3.3. virtualDCS will destroy or otherwise dispose of any of the Customer's data, storage media, software, equipment or other items in its possession unless virtualDCS receives, no later than ten days after the effective date of the termination or expiry of this Agreement, a written request for their delivery to the Customer. virtualDCS will use reasonable commercial efforts to deliver the same to the Customer within 30 (thirty) days of its receipt of such a written request, provided that the Customer 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 Customer shall pay all reasonable expenses incurred by virtualDCS in returning or disposing of them; and
 - 11.3.4. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

12. Force majeure

12.1. 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 network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (whether those of the Customer or virtualDCS), provided that the Customer is notified of such an event and its expected duration.

13. Waiver

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

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

14. Severance

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

14.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15. Entire agreement

15.1. 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.

15.2. 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.

16. Assignment

16.1. The Customer 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.

16.2. 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.

17. No partnership or agency

17.1. 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).

18. Third party rights

18.1. 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.

19. Notices

19.1. 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 Customer: The email address set out in the Order Form.

19.2. 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.

20. Variation

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

21. Governing law and jurisdiction

21.1. This Agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

21.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.



CloudCover

Subscriber Agreement

SUBSCRIPTION AGREEMENT

This agreement (the "Agreement") is a legal agreement between the Customer (as defined below) and Virtual Data Centre Services Ltd (virtualDCS). (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 provides a range of CloudCover services that enable the Customer to back up and replicate business information and servers, securely, and to UK-based IS27001 data centre locations.

virtualDCS permits the use of these Services and Documentation by the Customer based on this Agreement. By completing the signup form you are confirming acceptance of this Agreement, the Customer agrees to be bound by the terms of this Agreement.

AGREED TERMS

virtualDCS and the Customer now agree as follows:

1 Definitions

1.1 In this agreement (the "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 made available to the Customer by virtualDCS;

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

"**CloudCover Services**" means the services provided by virtual 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 while using 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 virtual 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;

"**Fee Effective Date**" means the date on which the Customer's free trial expires;

"**Fees**" means the subscription fees payable by the Customer for the Subscriptions, and any additional Subscriptions purchased under clause 9.;

"**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;

"**Service Desk Hours**" means the hours the service Desk operates, which is Monday – Friday 9:00 to 17:30 excluding bank holidays. Unless otherwise detailed on the order form.

"**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;

"**Normal Business Hours**" means 9:00 am to 5:30 pm, GMT on any Working Day;

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

"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 13.1;

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

"Subscriptions" means the subscriptions purchased by the Customer which entitle Users to access and use CloudCover Services and the Documentation in accordance with this Agreement;

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

"Virus" means any thing or device (including any software, code, file or program) 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 Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as of 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 of 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 right 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 CloudCover 365 is licensed per user account in all organizations. Each user account is defined as follows:
- (a) Microsoft Exchange Online, Such a mailbox can be a personal mailbox, an Online Archive mailbox or both — you will only need one license per user.
 - (b) Microsoft OneDrive for Business, OneDrive for Business licenses are associated with email accounts. This means you cannot use the same license to back up one user's email and another user's OneDrive for Business account. (Consider that OneDrive (without for Business) is an independent storage service and is not supported by CloudCover 365).
 - (c) Microsoft SharePoint Online: each SharePoint user in your Office 365 subscription that has been granted access to the SharePoint sites needs to be licensed to back up your SharePoint environment.
 - (d) A license is not required for:
 - (i) Shared, resource and group mailboxes
 - (ii) Group SharePoint sites
 - (iii) External SharePoint users

- 2.3 CloudCover Guardian for Azure is licensed for all user accounts in an organization. A user account is defined as any user with a Microsoft 365 licence.
- 2.4 virtualDCS also considers managed mailboxes that have at least one restore point that was created within the last 31 days. If you do not archive a mailbox for 31 days, its license will be revoked and can be applied to another mailbox
- 2.5 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 and/or the Documentation.
- 2.6 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.
- 2.7 The Customer shall not, and shall procure the Users shall not, access, store, distribute or transmit any Viruses, 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.

- 2.8 The Customer shall comply and shall ensure that their Users comply, with the Acceptable Use Policy in force.
- 2.9 If any User breaches any of the terms and conditions of this clause 2 virtualDCS shall have the right to suspend the Users' (as applicable) access to the CloudCover Services and to ask the User and/or the Customer to remedy the breach within such timeframe determined by virtualDCS. virtualDCS shall inform the Customer of the above Users' breach as soon as practicable. If the Users or the Customer fail to remedy said breach within the applicable timeframe, virtualDCS shall have the right to (immediately terminate the User's access to the CloudCover Services.
- 2.10 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 the accesses of the Users involved.
- 2.11 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.
- 2.12 All rights that are not expressly or specifically granted in this Agreement to the Customer are reserved to virtualDCS.

3 Subscriptions

- 3.1 Subscription packages will change from time to time and can be found on our website, Users costs will be billed in line with the licence agreement as detailed in clause 2.
- 3.2 Pay as you go (PAYG) Subscriptions

- (a) Storage of customer data on the platform is dynamic. Customer pays for the storage they use.
- (b) Storage usage costs are calculated on a daily basis, and are calculated as fractions of the monthly cost per whole GB.

3.3 Per-user Unlimited Subscriptions

- (a) Customers have unlimited storage space on the platform (Subject to Fair Usage).
- (b) Customers must backup 99% all users in their tenancy, that hold a Microsoft Licence.
- (c) virtualDCS reserves the right to restrict retention periods in line with the selected package.

4 **Provision of CloudCover Services**

- 4.1 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 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.
- 4.2 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.
- 4.3 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.
- 4.4 virtualDCS is not responsible for monitoring customer's individual backups, but will send notification emails to the customer's nominated email address regarding the backup job status. virtualDCS will use reasonable endeavours to assist the customer in receiving a comprehensive backup service.

- 6.2 virtualDCS shall, in providing the CloudCover Services, comply with its Data Privacy and Compliance 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 backup 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).
- 6.3 If virtualDCS processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and virtualDCS shall be a data processor and in any such case:
- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to virtualDCS so that virtualDCS may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
 - (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and
 - (c) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

7 Warranties

- 7.1 virtualDCS undertakes that the CloudCover Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 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 7.1. 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.

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

8 Customer Obligations

8.1 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 and/or Guest'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.

9 Fees and Payment

- 9.1 virtualDCS shall invoice and the Customer shall pay the Fees in accordance with this clause 9 unless otherwise agreed between the parties in the Schedule or otherwise in writing.
- 9.2 All amounts and Fees stated in this Agreement:
 - (a) are exclusive of Value Added Tax and any other applicable taxes, duties and assessments which shall be payable by the Customer in the manner prescribed by law;
 - (b) shall, unless otherwise agreed between the parties, be payable in pounds sterling; and
 - (c) are non-cancellable and non-refundable.
- 9.3 Fees shall unless otherwise agreed between the parties be payable monthly in arrears by direct debit.
- 9.4 The Fee shall be for the whole month that the Effective Date falls in, and shall be charged at the current rate advertised on <https://www.office365backup.co.uk/pricing/>.
- 9.5 The Customer shall on the Effective Date provide to virtualDCS (or its payment agent) valid, up-to-date and complete bank account details and any other relevant valid, up-to-date and

complete contact and billing details virtualDCS may require and, the Customer hereby authorises virtualDCS to charge such bank account via direct debit for the Fees monthly in arrears, unless otherwise agreed between the parties.

9.6 If the Customer fails to make any payment due to virtualDCS by the due date for payment then, without prejudice to virtualDCS's other rights and remedies, virtualDCS may:

(a) charge the Customer interest on the overdue amount at four percent (4%) above the official interest rate of the Bank of England. Such interest shall accrue on a daily basis from the due date of payment until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by virtualDCS; and/or

(b) without liability to the Customer, suspend access to the Account and access to all or part of the CloudCover Services and/or any other services provided under on in connection with this Agreement (or any part of them) while the amounts remain unpaid.

9.7 virtualDCS reserves the right to increase the Fees provided that such Fees cannot be increased more than once in any 12 month period during the term of the Agreement. virtualDCS will give the Customer written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify virtualDCS in writing within 4 weeks of the date of virtualDCS' notice and virtualDCS shall have the right without limiting its other rights or remedies to terminate the Agreement by giving 2 weeks written notice to the Customer.

9.8 The Fees and other sums payable under this Agreement shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Customer shall pay to virtualDCS such sum as will, after the deduction or withholding has been made, leave virtualDCS with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

10 **Intellectual Property**

10.1 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.

11 Confidentiality

11.1 Subject to the remainder of this clause 11, 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.

11.2 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.

11.3 The provisions of clause 11.1 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 publically 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.

- 11.4 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 case studies, press releases, tenders, proposals, speeches, articles and other similar materials.
- 11.5 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.
- 11.6 The restrictions contained in this clause 11 shall continue to apply after termination or expiry of this Agreement without limit in time.

12 Liability

- 12.1 This clause 12 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.
- 12.2 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.

12.3 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.

12.4 Subject to clause 12.2 and clause 12.3:

- (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) the total Fees paid or payable by the Customer under this Agreement during the twelve (12) month period prior to the date the liability first arose and (ii) one hundred pounds sterling.

13 **Term**

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

13.2 The term of a subscription unless otherwise agreed in writing, will be as defined as

- (a) Pay as you go (PAYG) subscriptions: Monthly, with a 30-day notice period.
- (b) All other subscriptions: Annual, with a 90-day notice period.

14 Termination

14.1 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 under this Agreement 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.

14.2 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.
- 14.3 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.
- 14.4 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.

15 Consequences of Termination

- 15.1 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 under this Agreement; 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.
- 15.2 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.
- 15.3 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.

16 **Force Majeure**

16.1 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.

17 **Notices**

17.1 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.

17.2 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.

17.3 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.

18 **General**

- 18.1 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.
- 18.2 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).
- 18.3 Unless otherwise stated herein, this Agreement can only be modified by the written and signed agreement of the Parties.
- 18.4 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.
- 18.5 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.
- 18.6 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.
- 18.7 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.

- 18.8 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.
- 18.9 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.
- 18.10 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: 3.1 | Last Updated: 02 May 2024

Service Level Agreement

1.0 DEFINITIONS

Scheduled Downtime	<i>scheduled maintenance of equipment or software (including operating systems patches and updates) where no less than two (2) days notice has been given to the Customer.</i>
Emergency Maintenance	<i>Emergency maintenance i.e. unscheduled maintenance necessitated by unforeseen circumstances (including (without limitation) software failure).</i>
Service Hours	<i>Means 24hours per day, seven days per week including all UK and Statutory Bank Holidays.</i>
Normal Working Hours	<i>Means Monday to Friday 9:00 to 5:30 Excluding Bank Holidays.</i>

2. SERVICE LEVEL DEFINITION

- 2.1 virtualDCS shall ensure that the CloudCover Services will be available during the Service Hours in accordance with this Agreement.
- 2.2 The Service Desk shall be available for logging calls during the Service Hours,
- 2.3 With the exception of Severity 1 calls which will be dealt with during the Service Hours, other calls will be dealt with during Normal Working Hours,
- 2.4 Measurement of service levels will be based on the ability of the Service to be accessed by the customer during the Service Hours subject to any Scheduled Downtime or Service Level Exclusions as detailed below.

3. SCHEDULED DOWNTIME

- 3.1 virtualDCS shall notify the customer in advance, usually no less than one week and in any event no less than 48 hours, by email of any additional Scheduled Downtime. By default, our customer-facing Cloud Connect servers are updated and possibly restarted monthly on the 1st Thursday of each month. There may be ad hoc updates to front-end software that will have no impact on the backup jobs.

4. SERVICE AVAILABILITY

- 4.1 The following equation will be used to calculate Service Availability. References to hours are to the number of hours (rounded to the nearest hour) in the applicable Monthly Review Period Based on a 30-day Month: $((\text{Total hours} - \text{Total hours Unavailable}) / \text{Total hours}) \times 100$, subject to any Scheduled Downtime or Service Level Exclusions.
- 4.2 Service Availability is the customer ability to use the CloudCover Backup Service, The Service is "available" when the external monitors connected via the Internet show that Veeam Service Portal is available and that one or more customers are current conducting backups.

Service Availability during Monthly Review Period	Service Credits as % of Monthly Rental Charge
<99.9%-99.8%	
99.79%-99.5%	
99.49%-99.0%	
98.9%-98.0%	
<98%	

5 CALCULATION OF SERVICE CREDITS

- 5.1 Where a Monthly Review Period incorporates part of a month, any service credit will apply to a pro-rated monthly Rental Charge.
- 5.2 Service credits will be calculated monthly, aggregated and credited to the Customer on a quarterly basis.
- 5.3 If a Service is cancelled during a Monthly Review Period, no service credit will be payable in respect of that service for that Monthly Review Period.
- 5.4 The Customer must claim any service credit due to a failure to meet the Service Levels, in writing, within twenty one (21) Business Days of the date at which the Customer could reasonably be expected to become aware of such failure, otherwise no service credits shall be payable. The Customer shall not be entitled to any service credits in respect of a claim unless and until virtualDCS has received notice of the claim in writing in accordance with the above. Should virtualDCS require additional information from the Customer, the Customer shall assist, and shall not be entitled to any service credits until virtualDCS has received all the information it has reasonably requested.
- 5.5 Service credits relate to the part of the service that has failed not the whole service.
- 5.6 Reports above those available through the service can be made available on request with 48 hours notice.

6 SERVICE LEVEL EXCLUSIONS

- 6.1 The Service shall not be deemed unavailable in the event of any failure caused by the following:
- (i) communication links and network infrastructure of the customer (including Internet connections);
 - (ii) failure by customer to meet any of its obligations under the Agreement;
 - (iii) Scheduled Maintenance where no less than two (2) days notice has been given to the Customer; and
 - (iv) emergency maintenance i.e. unscheduled maintenance necessitated by unforeseen circumstances (including (without limitation) software failure) provided that such Emergency Maintenance continues for a period of less than 2 hours.

[REDACTED]

[REDACTED]