

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 Quote signed by the Customer, and the Additional Contract Terms applicable to the services to be provided which are listed in section 1.61, 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 Signed Quote (and any 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 proposal or quotation 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 a Quote has been signed by a duly authorised representative of the Customer, and an Order Acceptance notification has been issued to the Customer by 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. Cloud Connect Backup Terms and Conditions
 - 1.6.5. Cloud Connect Replication Terms and Conditions
 - 1.6.6. Local Appliance Terms and Conditions
 - 1.6.7. CloudCover End User Service Agreement
 - 1.6.8. CloudCover365 Subscriber Agreement
 - 1.6.9. Data Processing 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; when the service became available;
Commencement Date	means in relation to each Order Form, the date when the service is available for use, which will be reflected by the first invoice;
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, 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;
Payment Terms	means the terms in relation to the amounts and dates of payment of the Fees as set out on the Order Form;
Monthly	means in respect of payment of Fees the total sum of Fees in respect of any period being payable in equal monthly instalments, the first payable on the Commencement Date, and subsequently every calendar month on that date;
Order Form	means the attached form that has been signed by the Customer. The term Quote and Order form are used interchangeably;

Order Acceptance	means an email from virtualDCS to the Customer confirming our acceptance of the order;
Quote	means the attached form that has been signed by the Customer. The term Quote and Order form are used interchangeably
Service	means a service to be provided by virtualDCS to the Customer that is referred to on the Order Form (and “Services” means all of them together) ;

- 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 faxes and email.

3. Charges and payment

- 3.1. 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, Commercial Terms Section and in accordance with clause 3.5 below.
- 3.2. The Customer agrees with virtualDCS that elements of the Fees are calculated by reference to the cost to virtualDCS of certain facilities or commodities (such as electricity and the supply of bandwidth). In the event that the cost of these elements increases to virtualDCS the Fees payable may be subject to variation on not less than 30 days’ notice.
- 3.3. Without prejudice to clause 3.2, 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 (unless such increase is pursuant to clause 3.2). 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, whilst providing the service at the existing rate, and upto the date paid through the monthly fees.

- 3.4. 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.
- 3.5. All Fees are exclusive of value added tax, which shall be added to virtualDCS's invoice(s) at the appropriate rate.
- 3.6. 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.
- 3.7. If any sum due from the Customer has not been paid within the payment terms set out in the Order Form, then (without prejudice to its other rights and remedies) virtualDCS shall be entitled to charge to the Customer interest on all unpaid sums, at the Government Statutory Interest rate of 8 (eight) per cent per annum above the Bank of England Base annual lending rate from the due date until the date of payment.
- 3.8. 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 principle 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.
- 3.9. 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.
- 3.10. Fees shall be paid by electronic transfer. Unless agreed otherwise in writing, any payments not settled electronically may be subject to an administration fee of £25.00 (twenty-five pounds).

4. Data

- 4.1. It is the parties' intention that the Customer shall, in using the Services and in relation to any personal data, operate as both data controller and data processor and that virtualDCS shall not be acting as data controller or data processor in relation to any such data. The Customer shall be responsible for ensuring that the processing of the personal data complies with the Data Protection Act 2018.

4.2. If, however, whether in the course of the Services, virtualDCS for whatever reason is processing personal data on the Customer's behalf, 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:

- 4.2.1. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to virtualDCS so that virtualDCS may lawfully process the personal data in accordance with this Agreement on the Customer's behalf;
- 4.2.2. virtualDCS shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time.
- 4.2.3. 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.

5. Customer's Obligations

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

- 5.1.1. 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;
- 5.1.2. provide virtualDCS with any information, code, software, data, resources, equipment, services and access to personnel, systems, data, files and materials reasonably required by virtualDCS;
- 5.1.3. 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;
- 5.1.4. and 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. and

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

- 5.2.1. 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:
 - 5.2.1.1. 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

- 5.2.1.2. fully licensed and authorised for use by the Customer in all respects (including but not limited to there being adequate license in place for the use of any and all software used howsoever by the Customer) ; and
 - 5.2.1.3. operated in accordance with any and all legal obligations incumbent upon the Customer (including but not limited to the Data Protection Act 2018) ; and
 - 5.2.1.4. 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;
- 5.2.2. 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).
- 5.3. 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 5.1 and/or 5.2.
- 5.4. 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:
- 5.4.1. virtualDCS shall have no liability in respect of any delay to the completion of any Services;
 - 5.4.2. 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.

6. Proprietary rights

- 6.1. 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 licenses in respect of the Services or any related documentation.

7. Confidentiality

- 7.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 7.1.1. is or becomes publicly known other than through any act or omission of the receiving party; or

- 7.1.2. was in the other party's lawful possession before the disclosure; or
 - 7.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 7.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 7.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2. Each party shall 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.
- 7.3. 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 7.
- 7.4. Subject to clause 7.3, neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 7.5. This clause 7 shall survive termination of this Agreement, however arising.

8. Indemnity

- 8.1. 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:
- 8.1.1. the Customer is given prompt notice of any such claim;
 - 8.1.2. virtualDCS provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 8.1.3. the Customer is given sole authority to defend or settle the claim;
- 8.2. 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:
- 8.2.1. virtualDCS is given prompt notice of any such claim;
 - 8.2.2. the Customer provides reasonable cooperation to virtualDCS in the defence and settlement of such claim, at virtualDCS's expense; and
 - 8.2.3. virtualDCS is given sole authority to defend or settle the claim.
- 8.3. In the defence or settlement of the claim, virtualDCS may obtain for the Customer the right to continue using the software referred to in clause 8.2, replace or modify it so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this

Agreement without liability to the Customer. virtualDCS shall have no liability if the alleged infringement is based on:

- 8.3.1. modification of such software by anyone other than virtualDCS and its contracted third parties; or
 - 8.3.2. the Customer's use of such software in a manner contrary to the instructions given to the Customer by virtualDCS; or
 - 8.3.3. the Customer's use of such software after notice of the alleged or actual infringement from virtualDCS or any appropriate authority.
- 8.4. The foregoing states the 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.

9. Limitation of liability

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

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

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

- 9.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use; and
- 9.2.2. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

9.3. Nothing in this Agreement excludes the liability of virtualDCS:

- 9.3.1. for death or personal injury caused by virtualDCS's negligence; or
- 9.3.2. for fraud or fraudulent misrepresentation.

9.4. Subject to clause 9.3:

- 9.4.1. virtualDCS shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - 9.4.1.1. loss of profits; or
 - 9.4.1.2. loss of business; or
 - 9.4.1.3. depletion of goodwill or similar losses; or

- 9.4.1.4. loss of anticipated savings; or
 - 9.4.1.5. loss of goods; or
 - 9.4.1.6. loss of contract; or
 - 9.4.1.7. loss of use; or
 - 9.4.1.8. loss or corruption of data or information; or
 - 9.4.1.9. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.4.2. virtualDCS's 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 to the price paid for the Services during the 12 (twelve) months preceding the date on which the claim arose. or
- 9.4.2.1. in the case of services incurring a one-off fee, the claim shall be limited to the value of that fee.
- 9.4.3. 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.

10. Term and Termination

- 10.1. Subject to the parties' rights to terminate an Agreement as set out at clause 10.2, any Agreement shall commence upon the Commencement Date and continue in force until conclusion of the Services.
- 10.2. 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:
- 10.2.1. 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
 - 10.2.2. 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
 - 10.2.3. 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
 - 10.2.4. 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

10.2.4.1. 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

10.2.5. the other party ceases, or threatens to cease, to trade; or

10.2.6. there is a change of control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or

10.2.7. the other party takes or suffers any similar action in any jurisdiction in consequence of debt.

10.3. On termination of this Agreement for any reason:

10.3.1. all licenses granted under this Agreement shall immediately terminate;

10.3.2. 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;

10.3.3. 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

10.3.4. 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.

11. Force majeure

11.1. 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.

12. Waiver

- 12.1. 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.
- 12.2. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

13. Severance

- 13.1. If any provision (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.
- 13.2. 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.

14. Entire agreement

- 14.1. 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.
- 14.2. 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.

15. Assignment

- 15.1. 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.
- 15.2. 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. virtualDCS will communicate such changes to the Customer, and the Customer shall be entitled at any time within 15 (fifteen) days after the date of virtualDCS's notice to elect to terminate this Agreement with immediate effect, any such termination being within 60 days or mutually agreeable timeframe.

16. No partnership or agency

- 16.1. 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).

17. Third party rights

- 17.1. 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.

18. Notices

- 18.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.
- 18.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender) or if sent outside business hours, at 9.00am on the first business day following delivery.

19. Governing law and jurisdiction

- 19.1. 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.
- 19.2. 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.