

CloudCover 365 Terms and Conditions

1 General

These Terms and Conditions apply to the provision and use of the CloudCover 365 service and form part of the Agreement between virtualDCS Limited ("virtualDCS") and the Customer, as defined in the virtualDCS General Terms and Conditions (the "General Terms"). These Terms and Conditions are Additional Contract Terms under clause 1.6 of the General Terms and prevail over the General Terms in the event of conflict, but only in relation to the CloudCover 365 service.

In the event of any conflict or inconsistency between these CloudCover 365 Terms and the General Terms and Conditions, these CloudCover 365 Terms shall prevail to the extent of such conflict, but only in relation to the CloudCover 365 Services.

1.1 Definitions

In this agreement (the "Agreement"), the following terms will have the meanings assigned to them below:

"CloudCover Services"	means the hosted data protection and replication services provided by virtualDCS to the Customer under this Agreement, including but not limited to CloudCover 365 and any associated features or tools as described in the Documentation;
"Customer"	means the person, company, or other legal entity that completes the signup process and enters into this Agreement with virtualDCS, as identified in the relevant signup form, or order form;
"Customer Data"	means any and all data, information, and content that is uploaded, stored, transmitted, or otherwise processed on or through the CloudCover Services by the Customer, or by any End Customer on whose behalf the Customer is acting, while using the CloudCover Services;
"Documentation"	means the documents made available to the Customer by virtualDCS online at 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's Subscription to the CloudCover Services commences, being the earlier of (a) the date the Subscription is entered into, or (b) the date on which the relevant Order is placed by the Customer.
"End Customer"	means any individual or entity that is the ultimate recipient and user of the CloudCover Services, whether accessing such Services directly under this Agreement or indirectly via an authorised Partner acting on its behalf, but who is not a party to the Agreement unless expressly stated otherwise;
"Partner"	means a Customer that has been expressly authorised by virtualDCS, either in writing or via a separate partner agreement, to resell or provide access to the CloudCover Services to its own end customers as part of a managed, hosted, or bundled service; and
"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. Each Subscription corresponds to a specific product plan, with fair usage limits as described in these CloudCover 365 Terms.

2 Licence to Use

- 2.1 virtualDCS grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the CloudCover Services and associated Documentation for the duration of the applicable Subscription(s) Term solely for the Customer's internal business purposes, or where the Customer is an authorised Partner, solely for the purpose of delivering managed or hosted services to its own End Customers.
- 2.2 Where the Customer is acting as a Partner, it may provide access to the CloudCover Services to its own End Customers strictly as part of a bundled, managed, or value-added service offering. The Partner shall not grant or purport to grant any sub-licence, resale right, or other direct right of access to the CloudCover Services unless expressly permitted in writing by virtualDCS.

- 2.3 End Customers receiving access to the CloudCover Services via a Partner shall have no contractual relationship with virtualDCS and shall not acquire any rights or remedies under the Agreement unless virtualDCS expressly agrees in writing to contract with them directly. The Partner shall remain responsible for the acts and omissions of any End Customer to whom it provides access.
- 2.4 The Customer shall not, and shall ensure that its Users and (where applicable) End Customers do not:
- (a) copy, modify, decompile, disassemble, reverse engineer, or create derivative works from any part of the Services, Software, or Documentation, except where expressly permitted by applicable law;
 - (b) circumvent, disable, or interfere with any technical restrictions, usage controls, security mechanisms, or proprietary notices;
 - (c) rent, lease, sub-license, transfer, resell, or otherwise distribute the Services or Software to any third party, except as expressly permitted under these Terms or a Partner Agreement;
 - (d) use the Services to build or offer a competing product or service;
 - (e) use the Services in violation of any applicable law or regulation, or in breach of virtualDCS's Acceptable Use Policy.
- 2.5 CloudCover 365 licensing is on a per-user basis. For clarity:
- (a) Each licensed user may include a Microsoft Exchange Online mailbox (including personal and Online Archive mailboxes).
 - (b) OneDrive for Business licenses are associated with specific user accounts and cannot be shared across users.
 - (c) SharePoint Online requires a licence for each user granted access to SharePoint sites.
 - (d) Licences are not required for:
 - i. Shared, resource, or group mailboxes,
 - ii. Group SharePoint sites,
 - iii. External SharePoint users.
- 2.6 Licences may be reallocated to other mailboxes if a managed mailbox has no restore point created within a consecutive 31-day period.

- 2.7 The Customer shall use reasonable efforts to prevent unauthorised access to the Services under the Customer's active Subscription(s) and shall promptly notify virtualDCS of any known or suspected unauthorised access or use.
- 2.8 The Customer shall not, and shall ensure that Users do not, upload or transmit any material through the Services that:
- (a) Contains any viruses or malicious code; or
 - (b) Is unlawful, defamatory, discriminatory, obscene, or otherwise offensive or harmful.
- 2.9 virtualDCS reserves the right to suspend or remove any content or User account that breaches this clause, without liability.
- 2.10 The Customer and its Users shall comply at all times with the Acceptable Use Policy as amended from time to time.
- 2.11 If any User breaches this Section 2, virtualDCS may:
- (a) Immediately suspend the relevant User's access to the Services under the Customer's active Subscription(s); and
 - (b) Request the Customer to remedy the breach within a specified timeframe. If the breach is not remedied, virtualDCS may permanently revoke access.
- 2.12 If virtualDCS has reasonable grounds to believe that:
- (a) the Customer Data presents a security risk or degrades service performance; or
 - (b) the Customer has engaged in fraudulent or unlawful activity,
- virtualDCS may immediately suspend access by the relevant Users, with or without prior notice.
- 2.13 The Software is protected by technical protection measures. The Customer shall not circumvent or attempt to circumvent such measures or assist any third party in doing so.
- 2.14 All rights not expressly granted under this Agreement are reserved by virtualDCS.

3 Subscriptions

- 3.1 virtualDCS offers multiple subscription packages, details of which are published at virtualdcs.co.uk and may be updated from time to time. Customer billing is based on the selected package and in accordance with the license and usage rules set out in clause 2.
- 3.2 Pay as you go (PAYG) Subscriptions

- (a) Under PAYG subscriptions, Customers are charged based on the volume of storage used. Storage usage is dynamic and may vary daily.
- (b) Storage costs are calculated daily as a pro-rata fraction of the applicable monthly rate per GB and are invoiced monthly in arrears.

3.3 Per-user Subscriptions with fair usage Storage Allowance

- (a) Each subscription purchased by the Customer includes a fair usage storage allowance, as specified below.

Subscription	Per-User Storage Allowance
Essentials	50GB
Plus	100GB
Advanced	150GB

- (b) Storage allowances for individual subscriptions within a single Microsoft 365 tenant shall be aggregated to form a total storage allowance for that tenant.
- (c) If the Customer's cumulative storage usage across the Microsoft 365 tenant exceeds the aggregated allowance, the excess usage ("Overage") will be billed at the prevailing overage rates published by virtualDCS at the time of billing.
- (d) It is the Customer's responsibility to monitor usage against their aggregated fair usage storage allowance. virtualDCS may provide usage notifications as a courtesy, but such notifications are not guaranteed.
- (e) Storage usage is calculated based on stored backup data and may include data retained in accordance with the retention settings defined in the Customer's selected plan.

4 Provision of CloudCover Services

- 4.1 virtualDCS shall use reasonable commercial efforts to make the CloudCover Services available 24 hours per day, 7 days per week, subject to:

- (a) Scheduled maintenance, as notified in accordance with Clause 4.4; and
- (b) Emergency maintenance, or events beyond virtualDCS's reasonable control.

- 4.2 virtualDCS may from time to time implement updates, upgrades, patches or improvements to the CloudCover Services, including to enhance functionality, fix defects, or comply with legal or regulatory requirements.

- 4.3 The CloudCover Services are subject to the service levels set out in the Service Level Agreement (“SLA”), which forms part of and is incorporated by reference into this Agreement. In the event of a conflict between the SLA and this Agreement, the terms of this Agreement shall prevail, except where the SLA expressly states otherwise.
- 4.4 virtualDCS shall provide the Customer with at least 48 hours' prior written notice of any Scheduled Maintenance that may materially affect the availability of the CloudCover Services. Notices will be sent via email and/or posted on the platform status page at <https://status.virtualdcs.co.uk>.
- 4.5 virtualDCS shall not be liable for any failure to provide the CloudCover Services where such failure results from:
- (a) the Customer’s breach of this Agreement;
 - (b) misuse or unauthorised use of the Services; or
 - (c) events outside virtualDCS’s reasonable control.
- 4.6 virtualDCS is not responsible for monitoring the success or failure of individual Customer backup jobs. However, notification emails regarding backup status will be sent to the Customer’s nominated email address. These notifications are provided as a convenience only and do not form part of the contracted service obligations.

5 Support Services

- 5.1 virtualDCS shall provide technical support for the CloudCover Services during Service Desk Hours. Support is available via online chat (including AI-assisted support tools), telephone, email, and the virtualDCS ticketing system. The scope of support includes technical assistance, troubleshooting, and incident management relating to the CloudCover Services.
- 5.2 Where the Customer is a direct customer of virtualDCS, support shall be provided directly to the Customer.
- 5.3 Where the Services are provided via an authorised Partner, virtualDCS shall remain responsible for providing first-line support directly to End Customers through its online support channels, including live chat and automated (AI-assisted) chat tools, unless otherwise agreed. Partners may still submit support tickets to virtualDCS on behalf of their End Customers where applicable.

- 5.4 While virtualDCS is responsible for providing technical support directly to End Customers, the Partner shall remain responsible for all commercial aspects of the End Customer relationship, including invoicing, payment collection, and subscription management. The Partner shall also cooperate with virtualDCS where support requests involve account verification, access control, or other matters requiring Partner input.
- 5.5 virtualDCS shall log all incidents and determine the initial severity level at its reasonable discretion, based on the definitions below. Severity 1 (Critical) incidents must be logged by telephone.

Severity	Classification	Response	Description
Severity 1 – Critical	Full Service Outage	immediate (24/7/365)	The backup platform is fully unavailable for all customers. No backup or restore jobs can be scheduled or executed. Customer Data is at risk due to inability to protect or recover workloads. No workaround exists.
Severity 2 – High	Partial Service Disruption / Widespread Impact	Within 2 business hours	Significant portion of Customers are experiencing failed backup or restore jobs (e.g. across multiple tenants, or recurring critical job failures). Risk to data protection continuity. No immediate workaround available.
Severity 3 – Medium	Individual User Issue or Localised Interruption	Within 1 business day	A specific backup or restore job fails for a single Customer. Issue is not service-wide. Manual retries or alternate restores are typically available. No active data loss, but may cause operational impact.
Severity 4 – Low	Minor Functional Issue / Cosmetic Defect	Within 3 business days	Minor degradation (e.g. delays in reporting, job queuing), UI inconsistencies, or intermittent alerting errors that do not impact the ability to complete backups/restores. Workarounds exist.
Severity 5 – Planning / Request	Non-Urgent Change or Inquiry	Within 5 business days	General information requests, feature inquiries, configuration changes, account management, or usage reporting that do not affect current service operation. No fault present.

- 5.6 The Service Desk shall make reasonable efforts to provide first-line resolution guidance during the initial consultation, which may last up to 15 minutes. If the issue is not resolved, it shall be escalated in accordance with the virtualDCS standard escalation procedures.

- 5.7 virtualDCS shall monitor open incidents in line with its standard escalation procedures. Updates shall be provided to the Customer or, where appropriate, to the relevant End Customer at intervals appropriate to the assigned severity level, or as otherwise reasonably requested by the Customer.

6 User Data

- 6.1 The End Customer retains sole ownership of all right, title, and interest in and to the Customer Data. Where the Customer is acting as an authorised Partner, the Customer does not acquire any ownership or control rights in the Customer Data and shall not access, alter, interfere with, or use such data except as strictly necessary to deliver the Partner's managed services to the End Customer.
- 6.2 virtualDCS shall process Customer Data in accordance with its Information Security and Privacy Policy (the "Privacy Policy"), as published at <https://www.virtualdcs.co.uk/privacy>. virtualDCS may update the Privacy Policy from time to time to reflect changes in applicable law or its data handling practices. Where updates materially affect the Customer's rights, virtualDCS shall provide at least 30 days' advance notice.
- 6.3 If Customer Data is lost or damaged due to a fault attributable to virtualDCS, virtualDCS shall use commercially reasonable efforts to restore such data from the latest available copy. This shall be the Customer's sole and exclusive remedy, except where the loss or damage results from virtualDCS's negligence, wilful misconduct, or a breach of its obligations under this Agreement in respect of the Customer or, where applicable, an End Customer.
- 6.4 virtualDCS shall not be liable for any loss, destruction, alteration, or unauthorised disclosure of Customer Data caused by third parties, except to the extent such third parties are acting under the direction or control of virtualDCS in connection with the provision of the Services.
- 6.5 To the extent virtualDCS processes any personal data on behalf of the Customer in connection with the CloudCover Services, the parties agree that:
- (a) where the Customer is the data controller, virtualDCS shall act as its data processor; and
 - (b) where the Customer is acting as a Partner on behalf of an End Customer that is the data controller, virtualDCS shall act as a sub-processor on behalf of the End Customer.

virtualDCS shall:

- iv. process personal data only in relation to the provision of CloudCover Services;
- v. implement appropriate technical and organisational measures to safeguard the data;
- vi. ensure confidentiality obligations are in place for personnel who access personal data;
- vii. not engage sub-processors without appropriate safeguards and transparency;
- viii. assist the Customer in complying with its obligations in relation to data subject rights, data security, and data breach notification under applicable data protection laws, provided that virtualDCS reserves the right to charge the Customer on a time and materials basis for any assistance that is unusually onerous, repetitive, or exceeds what is reasonably required for compliance with such obligations; and
- ix. upon termination, delete or return all personal data unless otherwise required by law.

The parties may enter into a separate Data Processing Agreement setting out these obligations in more detail.

7 Warranties

- 7.1 virtualDCS warrants that the CloudCover Services will materially conform to the Documentation and will be provided with reasonable skill and care in accordance with generally accepted industry standards.
- 7.2 The warranty in clause 7.1 shall not apply to any non-conformance resulting from:
 - (a) use of the CloudCover Services contrary to virtualDCS's written instructions or the Documentation;
 - (b) unauthorised modification of the Services;
 - (c) issues caused by the Customer's own infrastructure, internet connectivity, software, or third-party platforms, other infrastructure outside virtualDCS's control; or
 - (d) use by End Customers not under a direct contractual relationship with virtualDCS.

- 7.3 If the CloudCover Services fail to conform to the warranty in clause 7.1, virtualDCS shall, at its own expense, use commercially reasonable efforts to correct the non-conformance within a reasonable time, or provide the Customer with an alternative means of achieving materially equivalent functionality. This shall be the Customer's sole and exclusive remedy for breach of the warranty.
- 7.4 Where the Customer receives the Services via a Partner, virtualDCS's warranties and any associated remedies shall be enforceable by the Partner only. virtualDCS shall have no direct liability to any End Customer unless virtualDCS has entered into a direct contractual agreement with that End Customer.
- 7.5 Except as expressly stated in this Agreement, virtualDCS disclaims all warranties, conditions, and representations, whether express, implied, statutory or otherwise, including any warranties of merchantability, fitness for a particular purpose, or non-infringement. Without limitation, virtualDCS does not warrant that: (a) the CloudCover Services will be uninterrupted, error-free or meet the Customer's specific requirements; or (b) the CloudCover Services will operate in combination with any other software or system not expressly supported in the Documentation.
- 7.6 virtualDCS warrants that it has and will maintain throughout the Term all necessary licences, consents, and permissions required to provide the CloudCover Services in accordance with this Agreement.

8 Customer Obligations

- 8.1 The Customer shall:
- (a) use the CloudCover Services solely for its internal business operations and strictly in accordance with the terms of this Agreement.
 - (b) use the CloudCover Services in compliance with: (a) all applicable laws and regulations relating to data protection, cybersecurity, and software use; and (b) virtualDCS's reasonable written instructions provided from time to time.
 - (c) cooperate with virtualDCS and perform its responsibilities under this Agreement in a timely and efficient manner. Where any delay by the Customer affects performance or delivery timelines, virtualDCS shall be entitled to a reasonable extension of time and may adjust the timetable accordingly.
 - (d) ensure that all authorised Users comply with the terms of this Agreement and the Documentation. The Customer shall be fully responsible for any breach of this Agreement by its Users or any person accessing the Services through its account credentials.

- (e) obtain and maintain all necessary licences, consents, and permissions required to allow virtualDCS and its authorised agents to perform their obligations under this Agreement, including access to Customer systems, software, or data where necessary.
- (f) be solely responsible for procuring, maintaining, and securing all network connections, internet access, and telecommunications links necessary to access the CloudCover Services. virtualDCS shall have no liability for performance issues caused by such third-party systems or the internet.

9 Fees and Payment

- 9.1 virtualDCS shall invoice, and the Customer shall pay, all Fees in accordance with this clause 9, unless otherwise expressly agreed in a written Schedule or Order Form signed by both parties.
- 9.2 All Fees are exclusive of VAT and any other applicable taxes, which shall be payable in addition. Unless otherwise agreed, all payments shall be made in pounds sterling. Except as expressly stated in this Agreement, Fees are non-refundable and are payable in full, without set-off, counterclaim, or deduction.
- 9.3 Fees shall, unless otherwise agreed in writing, be invoiced monthly in arrears and paid by direct debit within 30 days of the invoice date.
- 9.4 The Customer shall be charged the full monthly Fee for the calendar month in which the Effective Date falls. Fees shall be calculated in accordance with the pricing set out at <https://www.office365backup.co.uk/pricing>, unless otherwise agreed in writing.
- 9.5 The Customer shall, on or before the Effective Date, provide valid and up-to-date bank account and billing details and shall ensure that such information remains current throughout the Term. The Customer hereby authorises virtualDCS (or its designated payment processor) to collect payment of Fees by direct debit.
- 9.6 If the Customer fails to pay any Fees by the due date, virtualDCS may: (a) charge interest on overdue sums at 4% above the Bank of England base rate, accruing daily until paid in full; and/or (b) suspend access to the CloudCover Services (in whole or in part) until payment is made. Such suspension shall not relieve the Customer of its obligation to pay outstanding Fees.
- 9.7 Where the End Customer accesses the CloudCover Services via an authorised Partner, the Partner shall be solely responsible for all billing and payment obligations to virtualDCS in respect of such Services, unless otherwise agreed in writing by virtualDCS. virtualDCS shall have no obligation to invoice or collect payment directly from the End Customer, and the End Customer shall have no right to withhold payment from the Partner based on any dispute with virtualDCS.

- 9.8 virtualDCS may increase Fees no more than once in any rolling 12-month period by giving the Customer at least 60 days' prior written notice. Any such increase shall not exceed 7% of the then-current Fees, unless the increase is required to reflect increased costs imposed by third-party suppliers to virtualDCS in connection with the provision of the Services (including but not limited to licensing, infrastructure, or hosting charges).

The Customer may raise objections to the proposed increase within 30 days of notice, and virtualDCS shall give reasonable consideration to such objections, but the increase shall take effect at the end of the notice period unless virtualDCS notifies the Customer otherwise in writing.

- 9.9 All amounts payable under this Agreement shall be paid in full without set-off, counterclaim, deduction, or withholding, except as required by law. If any deduction is required by law, the Customer shall pay such additional amounts as are necessary to ensure that virtualDCS receives the full amount it would have received had no deduction or withholding been required.

10 Intellectual Property

- 10.1 All intellectual property rights in and to the CloudCover Services, the Software, the Documentation, and any related services or deliverables (excluding Customer Data), including all enhancements, modifications, and derivative works thereof, shall remain the sole and exclusive property of virtualDCS or its licensors.
- 10.2 Except as expressly provided in this Agreement, no rights, licences or interests are granted to the Customer under any intellectual property rights owned or controlled by virtualDCS or its licensors. All rights not expressly granted are reserved.
- 10.3 Subject to payment of applicable Fees and compliance with this Agreement, virtualDCS grants:
- (a) the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the CloudCover Services and the Documentation during the Term solely for its internal business operations; and
 - (b) where the Customer is an authorised Partner, a limited, non-exclusive, non-transferable right to provide access to the CloudCover Services to its own end customers as part of a managed, hosted, or bundled service offering, subject to the Partner's ongoing compliance with this Agreement and any applicable partner or reseller terms agreed in writing with virtualDCS.

- 10.4 The Customer and/or Partner shall ensure that all end customers accessing the CloudCover Services under its authorisation comply with the relevant usage terms and documentation, and shall be fully responsible for any act or omission by such end customers as if it were their own.
- 10.5 The Customer (or its end customer, as applicable) retains all intellectual property rights in and to the Customer Data. virtualDCS is granted a non-exclusive, royalty-free, worldwide licence to host, store, process and transmit Customer Data solely as necessary to provide the CloudCover Services and related support.
- 10.6 The Customer (or Partner) shall not, and shall ensure that its Users and end customers do not, remove, alter, or obscure any copyright, trademark, or other proprietary rights notices displayed in the CloudCover Services or the Documentation.
- 10.7 If the Customer or its end customer provides any feedback, suggestions, or recommendations regarding the CloudCover Services ("Feedback"), virtualDCS may use such Feedback freely and without obligation. The Customer hereby assigns (or shall procure the assignment of) all intellectual property rights in such Feedback to virtualDCS.

11 Confidentiality

- 11.1 Each party ("Receiving Party") agrees to keep confidential all Information disclosed by the other party ("Disclosing Party") in connection with this Agreement, whether before or after its Effective Date. The Receiving Party shall not use the Disclosing Party's Information except as necessary to perform its obligations under this Agreement and shall not disclose such Information to any third party without the Disclosing Party's prior written consent.
- 11.2 The Receiving Party may disclose the Disclosing Party's Information to its employees, contractors, affiliates, advisers, or service providers who have a legitimate need to know such Information for the purposes of this Agreement, provided that such persons are bound by confidentiality obligations no less protective than those in this clause.
- 11.3 The obligations in this clause shall not apply to Information that: (a) is or becomes public other than through breach of this Agreement; (b) was known to the Receiving Party prior to disclosure; (c) is lawfully received from a third party without restriction; (d) is independently developed without use of the Disclosing Party's Information; or (e) must be disclosed by law or regulatory order, provided that advance notice is given (where legally permitted) and the Disclosing Party is offered reasonable assistance in limiting disclosure.

- 11.4 virtualDCS may refer to the Customer, any authorised Partner, or any End Customer as a client in its marketing materials and client lists. Any public use of names, logos, quotes, or case studies relating to the Customer, a Partner, or an End Customer shall require the prior written approval of the relevant party, such approval not to be unreasonably withheld or delayed.
- 11.5 The obligations under this clause shall survive termination or expiry of this Agreement for a period of five (5) years, or indefinitely in the case of trade secrets.

12 Liability

- 12.1 This clause sets out the entire liability of virtualDCS to the Customer, including liability for the acts or omissions of its employees, agents, and subcontractors, arising under or in connection with this Agreement, including in respect of:
- (c) the use or inability to use the CloudCover Services or Documentation; and
 - (d) any representation, statement, or tortious act (including negligence) arising out of or in connection with this Agreement.
- 12.2 Except as expressly stated in this Agreement, the CloudCover Services and Documentation are provided “as is” and virtualDCS:
- (a) makes no representations, warranties or guarantees, whether express or implied, including warranties of merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement;
 - (b) does not warrant that the Services will be uninterrupted, error-free, or free from vulnerabilities; and
 - (c) shall have no liability for any damage caused by Customer misuse, errors in Customer-provided data or instructions, or failures in third-party infrastructure such as internet connections.
- 12.3 Nothing in this Agreement shall exclude or limit virtualDCS’s liability for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any liability which cannot lawfully be excluded or limited under applicable law.
- 12.4 Subject to clause 12.3, neither virtualDCS, the Customer, nor any authorised Partner shall be liable to the other for:
- (a) loss of profits, business, revenue, goodwill, anticipated savings or opportunity;
 - (b) loss or corruption of data (except where caused by a party’s breach of clause 6.3 or wilful default); or

- (c) any indirect, consequential or special loss or damage,
whether arising in contract, tort (including negligence), or otherwise, even if foreseeable.
- 12.5 Subject to clause 12.3 and clause 12.4, the total aggregate liability of:
 - (a) virtualDCS to the Customer and/or any Partner; and
 - (b) the Customer or Partner to virtualDCS,in connection with this Agreement (whether in contract, tort, misrepresentation or otherwise) shall not exceed, in any 12-month period, the lessor of:
 - i. the total Fees paid or payable under this Agreement by the Customer (or Partner on behalf of the Customer) during that 12-month period; or
 - ii. £1Million.
- 12.6 The parties acknowledge that the limitations of liability in this clause are fair and reasonable in light of the nature of the Services, the Fees payable, and the allocation of risk under this Agreement.
- 12.7 Service credits set out in the SLA are the Customer's sole and exclusive remedy for any failure to meet the service levels.

13 Term

- 13.1 This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with clause 14 (Termination), subject to the subscription term selected by the Customer.
- 13.2 The initial term of each subscription shall be as follows, unless indicated in the applicable Order Form, selected by the Customer during the signup process, or otherwise agreed in writing between the parties:
 - (a) For Pay-As-You-Go ("PAYG") subscriptions: monthly rolling, terminable by either party on not less than 30 days' written notice.
 - (b) For all other (fixed-term) subscriptions: a 12-month initial term, automatically renewing for successive 12-month periods unless either party provides not less than 90 days' written notice prior to the end of the then-current term.

14 Termination

- 14.1 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this Agreement within 7 days of receiving written notice requiring payment;
 - (b) the other party commits a material breach of this Agreement which is irremediable, or (if remediable) fails to remedy the breach within 30 days of receiving written notice requiring it to do so;
 - (c) the other party takes any step or action in connection with its insolvency, administration, liquidation (except for a solvent restructure), or is unable to pay its debts as they fall due; or
 - (d) the other party ceases or threatens to cease carrying on all or a substantial part of its business.
- 14.2 virtualDCS may terminate this Agreement (in whole or in part) by giving:
- (a) immediate written notice if required by applicable law or regulation; or
 - (b) not less than thirty (30) days' written notice if it or a key third-party supplier discontinues a product or service required to provide the CloudCover Services.
- 14.3 If virtualDCS has the right to terminate this Agreement under clause 14.1, it may instead suspend all or part of the CloudCover Services on written notice to the Customer. Any such suspension shall not affect virtualDCS's right to later terminate the Agreement, nor shall it relieve the Customer of any payment obligations during the suspension.
- 14.4 virtualDCS may terminate this Agreement or suspend access to the CloudCover Services (in whole or in part) with immediate effect upon written notice to the Customer or Partner if:
- (a) the Customer, Partner, or any End Customer materially breaches the Acceptable Use Policy; or
 - (b) a non-material breach of the Acceptable Use Policy is not remedied within seven (7) days of written notice requiring the breach to be remedied.
 - (c) virtualDCS shall not be liable for any loss, damage, or liability incurred by the Customer, Partner, or any End Customer as a result of any suspension or termination under this clause.
- 14.5 virtualDCS may terminate any individual Partner arrangement, or the provision of Services to an End Customer under such arrangement, by giving not less than thirty (30) days' written notice to the Partner, provided that such termination is limited to the affected relationship and does not affect the continuation of this Agreement or any other unaffected subscriptions or Customers.

Where termination relates to material breach by the Partner, virtualDCS may terminate the affected arrangement with immediate effect upon written notice. The Partner shall remain responsible for all Fees due in respect of the terminated relationship up to the effective date of termination.

virtualDCS shall not terminate End Customer access under this clause without first notifying the relevant Partner and providing a reasonable opportunity to remedy the cause of termination, unless immediate termination is required for legal or security reasons.

15 Consequences of Termination

15.1 Upon expiry or termination of this Agreement for any reason:

- (a) The Customer shall promptly cease all access to and use of the CloudCover Services;
- (b) The Customer shall pay all undisputed Fees and charges accrued up to the effective date of termination;
- (c) Each party shall, at the other's request, return or securely destroy all Confidential Information of the other party (including all copies), except where retention is required by law or regulation; and
- (d) virtualDCS may destroy or otherwise dispose of any of the Customer Data in its possession.

15.2 Termination or expiry of this Agreement shall not affect any rights, obligations, or liabilities of either party that have accrued before termination, including the right to claim damages for pre-termination breaches. The following clauses shall survive termination: confidentiality, data protection, intellectual property, Fees and payment, liability, and any others which by their nature are intended to survive.

16 Force Majeure

16.1 Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performing its obligations (except for payment obligations), if and to the extent that such failure or delay results from a Force Majeure Event.

- 16.2 A Force Majeure Event means an event or circumstance beyond a party's reasonable control, including but not limited to: acts of God, flood, fire, earthquake or other natural disaster; epidemic or pandemic (excluding seasonal flu); terrorist attack, civil war, riot or armed conflict; nuclear, chemical or biological contamination; compliance with any law or governmental order, rule or regulation; industrial disputes (excluding those involving the affected party's own workforce); or failure of utilities or telecommunications networks not under the party's control.
- 16.3 The affected party shall:
- (a) notify the other party as soon as reasonably practicable of the Force Majeure Event and its expected impact; and
 - (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event and resume performance as soon as reasonably possible.
 - (c) If a Force Majeure Event continues for more than thirty (30) consecutive days, either party may terminate the affected part of the Agreement on written notice to the other, without liability.

17 Notices

- 17.1 Any notice given under or in connection with this Agreement shall be in writing and shall be delivered by one of the following methods:
- (a) by hand or courier to the recipient's registered office or principal place of business;
 - (b) by pre-paid first-class post or other next-working-day delivery service to the address notified by the recipient; or
 - (c) by email to the designated email address of the receiving party, as notified from time to time.
- 17.2 A notice shall be deemed to have been received:
- (a) if delivered by hand or courier, on the day of delivery (or the next Working Day if delivered outside Normal Business Hours);
 - (b) if sent by pre-paid first-class post, on the second Working Day after posting; and
 - (c) if sent by email, at 9:00 am on the next Working Day after the date of successful transmission, provided the sender does not receive a bounce-back or error notification.
- 17.3 Each party shall ensure that its contact details for notices (including postal address and designated email address) remain current and shall promptly notify the other party of any change.

- 17.4 This clause shall not apply to the service of legal proceedings or other documents in any legal action.
- 17.5 Routine operational or support communications between the parties may be conducted by email or ticketing systems and shall not require formal notice under this clause unless expressly stated otherwise.

18 General

- 18.1 The Customer (whether acting directly or via an authorised Partner) may not assign, transfer, or sub-license its rights or obligations under this Agreement without the prior written consent of virtualDCS (not to be unreasonably withheld). The Customer shall not assign access or use of the Services to any third party other than as expressly permitted under this Agreement or a Partner agreement.
- 18.2 Nothing in this Agreement shall be deemed to establish any partnership, joint venture, fiduciary, or agency relationship between the parties. Where the Customer accesses the Services via a Partner, no such relationship shall be implied between virtualDCS and the end customer beyond the terms of this Agreement.
- 18.3 This Agreement may only be amended by a written agreement signed by both parties. Amendments applicable to a Partner or end customer shall not be binding on virtualDCS unless expressly confirmed in writing by virtualDCS.
- 18.4 No failure or delay by either party in exercising any right or remedy under this Agreement shall constitute a waiver of that or any other right or remedy.
- 18.5 virtualDCS may assign, transfer, or subcontract any of its rights or obligations under this Agreement without requiring the Customer's consent, provided that this does not materially reduce the level of service provided. virtualDCS shall remain responsible for the performance of its subcontractors.
- 18.6 If any provision of this Agreement is found to be invalid, illegal or unenforceable, that provision shall be deemed modified to the minimum extent necessary to make it enforceable. If such modification is not possible, the provision shall be deemed deleted. The remainder of the Agreement shall remain in full force and effect.
- 18.7 This Agreement (including any Order Forms and applicable Partner agreements) constitutes the entire agreement between virtualDCS and the Customer in relation to its subject matter and supersedes any prior agreements, understandings or representations, whether oral or written. The Customer acknowledges it has not relied on any representation not set out in this Agreement, except in the case of fraud.

- 18.8 Except as otherwise expressly provided, no person other than a party to this Agreement shall have any right to enforce any term under the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, no Partner or end customer shall have any rights against virtualDCS except as expressly provided in 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).
- 18.11 Authorised Partners of virtualDCS are subject to the terms of a separate Partner Agreement which governs their commercial terms, responsibilities, branding rights, and any applicable resale or service delivery obligations. Nothing in this Agreement shall override or modify the terms of such Partner Agreement.
- 18.12 Where the Customer receives the CloudCover Services via an authorised Partner of virtualDCS, the Customer acknowledges that this Agreement governs its use of the Services, and virtualDCS shall not be liable for any acts or omissions of the Partner unless explicitly agreed. The Partner shall remain solely responsible for its relationship with the Customer.
- 18.13 The Customer acknowledges and agrees that:
- (a) no Partner is authorised to make any representations, warranties, or commitments on behalf of virtualDCS;
 - (b) any statements or terms communicated by a Partner, including in marketing materials, proposals, or service descriptions, are the sole responsibility of that Partner and do not bind virtualDCS unless expressly confirmed in writing by virtualDCS; and
 - (c) in the event of any inconsistency or conflict between the terms of this Agreement and any Partner-provided documentation, offer, or representation, the terms of this Agreement shall prevail.

Service Level Agreement

1 DEFINITIONS

Scheduled Downtime	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.
Emergency Maintenance	Emergency maintenance i.e. unscheduled maintenance necessitated by unforeseen circumstances (including (without limitation) software failure).
Service Hours	Means 24 hours per day, seven days per week including all UK and Statutory Bank Holidays.
Normal Working Hours	Means Monday to Friday 09:00 to 17:30 Excluding Bank Holidays.

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 Service Availability shall be calculated for each Monthly Review Period using the following formula:

$$\text{Service Availability (\%)} = ((\text{Total Hours} - \text{Unavailable Hours}) / \text{Total Hours}) \times 100$$

For the purposes of this calculation:

- i. Total Hours refers to the actual number of hours in the applicable calendar month.
- ii. Unavailable Hours refers to full hours during which the Nimbox Service was subject to a service-wide outage, as defined in clause 4.2.

Scheduled Downtime and any periods covered by Service Level Exclusions shall not be included in the calculation of Unavailable Hours.

- 4.2 The CloudCover 365 Service shall be deemed “available” when:
- (a) external monitoring tools accessible via the public Internet confirm that the Veeam Service Portal is operational; and
 - (b) one or more customers are actively performing backup operations through the Service.

“Service Availability” refers to the Customer’s ability to access and use the CloudCover 365 Service for its intended backup and restore functionality. Availability is assessed at the platform level and does not include local issues affecting individual customers or environments.

Service Availability during Monthly Review Period	Service Credits as % of Monthly Rental Charge
<99.9%-99.8%	5%

99.79%-99.5%	10%
99.49%-99.0%	20%
98.9%-98.0%	30%
<98%	40%

5 CALCULATION OF SERVICE CREDITS

- 5.1 If a Monthly Review Period includes only part of a calendar month, any service credit due shall be calculated based on a pro-rated portion of the applicable monthly Subscription Fee.
- 5.2 Service credits shall be calculated monthly, aggregated, and applied to the Customer's account on a quarterly basis by way of invoice credit, unless otherwise agreed in writing.
- 5.3 No service credits will be payable for any part of a Monthly Review Period in which the relevant service was cancelled by the Customer.
- 5.4 To be eligible for service credits, the Customer must submit a written claim within twenty-one (21) Business Days of the date it became aware, or reasonably should have become aware, of the applicable Service Level failure.

virtualDCS may request additional supporting information from the Customer. Service credits will not be processed until all reasonably requested information has been provided.

- 5.5 Service credits apply only to the specific part of the CloudCover 365 service that failed to meet the applicable Service Levels. No credits shall apply to unaffected components of the service.
- 5.6 Additional service reports beyond those ordinarily available through the CloudCover 365 portal may be requested with at least 48 hours' advance notice. Provision of such reports may be subject to additional charges.

6 SERVICE LEVEL EXCLUSIONS

- 6.1 For the purposes of calculating Service Availability and applying service credits under this SLA, the Service shall not be deemed "Unavailable" due to any unavailability or service impact caused by the following Excluded Events:

- (a) failures, delays, or disruptions in the Customer's own network infrastructure, internet connectivity, firewalls, VPNs, or third-party communications links outside the control of virtualDCS;
- (b) the Customer's failure to meet its obligations under the Agreement, to the extent that such failure causes or contributes to the unavailability of the Service;
- (c) Scheduled Maintenance where the Customer has received no less than forty-eight (48) hours' advance notice;
- (d) Emergency Maintenance required to address urgent security vulnerabilities, service threats, or critical failures, provided such maintenance does not exceed two (2) consecutive hours.