

Terms & Conditions

(including Service Level Agreement and Acceptable Use Policy)

of

TiTAN Technology Solutions Limited trading as vCloud.ie

Registered Office: Unit W4D1, Belgrave Building, Ladytown Business Park, Newhall, Naas, County Kildare.

1. DEFINITIONS AND INTERPRETATIONS

In these Terms and Conditions:

Agreement means the Order Form, these Terms and Conditions, all Special Terms and Conditions (where applicable), the Acceptable Use Policy and the Service Level Agreement.

Client means the relevant Party entering into the Agreement with vCloud.ie

Confidential Information means non-public information that a Party designates as being confidential or which, under the circumstances surrounding its disclosure or acquisition ought to be treated as confidential and includes but is not limited to (i) information that relates to the technologies, business and operations of either Party, including business plans or strategies, financial models, market data, operating data, engineering data, engineering designs, scientific data, trade secrets and Client information; (ii) proprietary software, computer data and programs; and (iii) information which is synthesized, developed or derived from either Party as a result of its receipt or exposure to other Party's confidential information.

Order Form means the Order Form that sets out the Services that vCloud.ie has agreed to supply to the Client including, without limitation, any such paper or web-based order form or any form that vCloud.ie completes on behalf of the Client in the course of any telephoned order.

Party means either of v.Cloud.ie or the Client as the case may be, and **Parties** means both of them together.

Services means those services that vCloud has agreed to supply the Client as set out and described on the Order Form; and **Service** means any one of them.

Start Date means the date that vCloud.ie actually starts supplying the Services to the Client in accordance with the relevant Order Form.

Term means the duration of the Agreement, such period beginning on the effective date (as per Sub-clause 3.1 of these General Terms and Conditions) and ending on the date that this Agreement expires or terminates.

TiTAN means TiTAN Technology Solutions Limited of Unit W4D1, Belgrave Building, Ladytown Business Park, Newhall, Naas, County Kildare, registered company in Ireland no: 454900.

vCloud.ie is a trading name of TiTAN.

2. APPLICABILITY OF THESE TERMS AND CONDITIONS

2.1 These Terms and Conditions apply to all goods and Services that vCloud.ie supplies to the Client. This includes any and all past, present and future orders, unless otherwise agreed in writing by the Parties.

2.2 In respect of each individual Service that vCloud.ie agrees to supply to the Client as set out on the Order Form, a relevant set of Special Terms and Conditions may also apply, and in the applicable circumstances will be provided to the Client in writing prior to the execution of the Agreement.

2.3 To the extent that there is any inconsistency between an Order Form, any Special Terms and Conditions and these General Terms and Conditions the order of precedence as to their interpretation shall be:

2.3.1 the Order Form;

2.3.2 any relevant Special Terms and Conditions;

2.3.3 these General Terms and Conditions;

2.3.4 the Acceptable Use Policy; and

2.3.5 the Service Level Agreement.

3. TERM/DURATION

3.1 Effective Date

This Agreement shall take effect in respect of each Service from the date selected and inserted by the Client on the relevant Order Form for the Service(s). vCloud.ie will include an anticipated start date for the Service on the Order Form for the relevant Service, however this shall be indicative only and time shall not be of the essence in this regard.

3.2 Term

This Agreement shall continue for the duration ("Term") stipulated on the relevant Order Form, which Term is binding and legally enforceable, and shall remain in force until expiry of the Term unless terminated earlier in accordance with this Agreement.

3.3 Renewal

The Agreement shall be automatically renewed for additional Terms of 12 months, unless either Party provides notice in writing to the other Party at least 60 days prior to the expiry date, stating that it does not wish to renew this Agreement in respect of such Service(s).

4. FEES

4.1 Fees/Charges

The Fees payable by the Client for each of the Services shall be as selected by the Client from the pricing schedule and set out on the relevant Order Form. Invoices will be created quarterly in advance of services provisioned. Payment must be made in advance of services rendered. vCloud.ie will invoice the Client quarterly in arrears for any additional functionality, additional features or increased service provision above those detailed for the preceding quarter. Clients of vCloud.ie benefit from an online portal whereby the Client can add and alter the services provided by vCloud.ie. Any changes to the service provision as instructed by the Client will be chargeable in arrears. vCloud.ie reserve the right to bill the Client for services provided preliminary to the commencement of a service provision contract – Audits, whiteboard sessions, due diligence, investigation, design, advice and consultancy services.

4.2 Applicable Taxes

Fees quoted on the Order Form are subject to value added tax "VAT" at the current applicable standard rate. The Client will be responsible for and shall pay for all applicable government taxes whether in effect at the time of Agreement or enacted in the future, including but not limited to VAT.

4.3 Security Deposits

vCloud.ie shall not require a security deposit from Client.

4.4 Client Procedures

Please advise vCloud.ie of your procedure for authorisation and making changes to your infrastructure. These conditions must be attached to the Client's Order Form in order to be valid.

4.5 Amended Fees

vCloud.ie reserves the right to amend its Fees with effect from each anniversary of an Order. vCloud.ie will provide the Client with at least 60 days' notice in writing of any increase in Fees for the Service(s).

5. PAYMENT

5.1 Payment

Unless otherwise agreed between vCloud.ie and the Client, all applicable fees under the Agreement shall be due and payable with fourteen (14) days of invoice date.

Except as otherwise expressly permitted herein, all Fees owed pursuant to the Agreement may not be cancelled and are non-refundable for the Term.

If the Client wishes to dispute any item on any of vCloud.ie's invoices in good faith, the Client must notify vCloud.ie within 7 days of receipt of the relevant invoice and must continue to pay any undisputed amounts within the usual time permitted under Sub-clause 8.1. If the Client does not notify vCloud.ie within this time the Client must pay the full amount of the invoice within the time permitted under Sub-clause 8.1, but the Client may still query the invoice with vCloud.ie and in the event of a discrepancy being agreed by vCloud.ie, vCloud.ie will correct the error on the next invoice to the Client (or if the Agreement has expired or terminated in the interim, issue a credit note or closing invoice (depending on whether the error constituted an over-charge or an under-charge).

In some circumstances vCloud.ie may require payment in advance of providing the Services (for example, and without limitation, material hardware purchases and/or an unsatisfactory credit check rating for the Client). vCloud.ie will notify the Client if vCloud.ie has such a requirement.

Any payment not received from the Client by the due date may accrue interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.2 Additional Services

If requested by the Client, vCloud.ie shall provide the Client with additional support services at applicable rates as set forth in the Agreement.

5.3 Seed Media

Seed media is the responsibility of the Client. vCloud.ie will take no responsibility for shipping charges from the Client. The return of the Seed Media to the Client will take place once the seed is transferred to our data centres. It is the responsibility of the Client to have adequate insurance for their data and hardware due to damage or loss.

5.4 Backups

In addition to any sold Services for Infrastructure as a Service or backup, for vCloud.ie's own Disaster Recovery policy, vCloud.ie will retain a 14 Day Incremental Snapshot of a Client's VM. However to enable this functionality, we require the Client to provide a list of VM's that they wish to have included in this VM Snapshot schedule. It is the Client's responsibility to update vCloud.ie with a list of VM's, if no list is provided to vCloud.ie then the VM's will not be included in the schedule. There is a charge per VM for this feature to be enabled of €35.00 per month. If for any reason, the Client requests a restoration of a VM from our Snapshot, this will be chargeable at a rate of €150.00 per VM restored

6. CLIENT DUTIES

6.1 Safety Statement

The Client, its employees, agents and contractors must at all times act in accordance with the Safety Statement of the Company while visiting vCloud.ie data centre facilities.

6.2 Insurance

The Client must at all times maintain insurance on all Client owned equipment, software and data placed by the Client in vCloud.ie's data centres\infrastructure\cloud. The relevant data at all times remain the property of the Client, and as such the Client must have adequate insurance to cover the loss, restoration and replacement of the equipment, software and\or data.

6.3 Documentation

The Client must provide appropriate documentation and labels on all Client owned equipment placed by the Client in vCloud.ie data centres in order to facilitate any telephonic or email requests to action any equipment malfunctions.

6.4 Data Centre Access & Security

Generally, authorisation is not granted for Clients to access the vCloud.ie data centres where the equipment is maintained. If any access is required for any reason, a vCloud.ie authorised person must accompany the Client or their delegated representative on any visit to the vCloud.ie data centres. Users, so registered, wishing to

gain access to secure areas must present to reception with photo ID. vCloud.ie will charge the Client on a per day basis to accompany the Clients or their delegated representative to visit the vCloud.ie data centre(s).

6.5 Security – General Agreement

- vCloud.ie does not allow WareZ, illegal MP3 Sites, Pornographic Sites or IRC Bots.
- Client domain name remains at all times your property as the registrant and can be transferred away from vCloud.ie at any time at your sole discretion.
- Client server(s) (including FTP and Shell access) is for your personal use only. You must not divulge the password to any other person, and you should take reasonable precautions to ensure that it is not discovered by other persons.
- Data stored on vCloud.ie's servers is not guaranteed to be backed up unless a separate backup agreement is in place. It is recommended that you keep an independent backup of all data stored on your server(s). vCloud.ie accepts no responsibility for any loss of data, however incurred.
- vCloud.ie shall not be held liable for any loss or damages caused by the use or misuse, unavailability or removal of services by a third party.
- When Client accounts are closed, all files (including web pages, etc.) will be deleted.
- To protect your privacy we never distribute your name or e-mail address to any third parties unless we have received the consent of the Client.
- Users must not participate in any form of un-solicited bulk e-mailing or Spam. Failure to observe this condition will result in immediate disconnection of service.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Intellectual Property Rights

For the avoidance of doubt, nothing in this Agreement shall act so as to transfer the intellectual property rights ("IPR") or any other proprietary right from one Party to the other (subject to the limited licensing rights otherwise set out in this Agreement).

It is acknowledged by the Parties that all intellectual property rights ("IPR") in any documents and/or software created or produced by vCloud.ie, and all improvements or amendments to such documents and/or software, are owned by, belong to, vest in and shall continue to be owned by, belong to and vest in vCloud.ie.

The Client does not assert and will not in the future assert any claim to any documents and/or software created or produced by vCloud.ie, including any improvements, by virtue of this Agreement or any use of such documents and/or software, or for any other reason whatsoever.

7.2 Grant of Licence

Subject to this Agreement, vCloud.ie hereby grants the Client a non-exclusive, non-sub licensable, non-transferable license under vCloud.ie's IPR to install and use the Software, solely for the use by the Client in connection with the use of BCDR Services for internal disaster recovery and business continuity services. Except for the limited, specific licensing rights granted by vCloud.ie under this Agreement the Client acknowledges that it receives no license rights to the Software.

7.3 IPR Infringement

Unless otherwise authorised in writing by vCloud.ie or explicitly permitted in the Agreement, the Client undertakes not to (and not to allow third parties to) (1) sublicense, lease, rent, loan, or otherwise transfer the Software to any third party, except that the Client may install a subset of the Software, according to vCloud.ie's instructions, on the Client's environment, to enable the BCDR Service Provider to receive data from the Client in connection with the Services; (2) decompile, disassemble, decrypt, extract or otherwise reverse engineer or attempt to reconstruct or discover any source code of, or any underlying ideas in, the Software ("Reverse Engineering"), (3) modify, adapt, or prepare derivative works from the Software, (4) use the Software for the benefit of third parties other than for the benefits of the Clients in connection with the BCDR Services, (5) develop any other product containing any of the concepts and ideas contained in the Software, (6) remove, obscure, or alter vCloud.ie's or any third party's trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software, and (7) make copies of the Software (except as necessary for backup purposes).

If the Client becomes aware that a third party is making unauthorised use of the IPR under this Agreement, the Client shall promptly give vCloud.ie written notice of such unauthorised use, providing all available information with respect to the actions of such third party.

vCloud.ie shall in its sole discretion decide whether to take action to protect the IPR in the documents and/or software. In the event that vCloud.ie does take action, the Client shall co-operate with vCloud.ie and vCloud.ie shall bear any and all expenses incurred in connection with any such action, except where any or all such expenses are caused by, flow from or are the consequence of a breach of this Agreement by the Client.

7.4 Client Obligations

The Client agrees that:

7.4.1 it will notify vCloud.ie as soon as reasonably possible upon becoming aware of any claim by a third party in respect of the IPR;

7.4.2 it will use its reasonable commercial endeavours to mitigate any losses or damage which it incurs as a consequence of any claim by a third party in respect of the IPR;

7.4.3 it will provide such information and assistance as vCloud.ie may reasonably request in connection with the defence or settlement of any claim by a third party in respect of the IPR;

7.4.4 it will not make any admissions which may be prejudicial to the defence or settlement by vCloud.ie of any claim; and

7.4.5 vCloud.ie shall have sole conduct of the defence or settlement of an IPR claim provided that where there is a material impact on the Client, vCloud.ie shall consult on a reasonable basis with the Client in relation to such IPR claim.

7.5 Conduct

The Client shall use the Software in compliance with all applicable laws, ordinances, rules and regulations, shall not violate or attempt to violate vCloud.ie's system or network security, and shall not misuse the Software in any way. The Client shall be responsible for its conduct while using the Software.

7.6 Third Party Contractors

If third party contractors are appointed by the Client to maintain its IT infrastructure and to facilitate the use by the Client of its IT infrastructure generally and the Software, then access to the Software may be granted to such third party contractors, but only to the extent necessary for such purposes and in full compliance with the terms and conditions and the license granted to the Client hereunder. The Client shall be responsible for such third party contractors' adherence to the Terms & Conditions. No access to the Software may be granted to any third party consultants, analysts or advisors, without vCloud.ie's prior written consent.

7.7 Vendors

vCloud.ie is a reseller of licences on behalf third party vendors such as Zerto, Veeam, Microsoft, VMware. vCloud.ie are subject to the reseller licence agreements of the vendors.

7.8 Indemnity

The Client hereby indemnifies vCloud.ie against all liability, loss, damage and reasonable costs and expenses (including legal costs on a solicitor and own client basis) which may be incurred by vCloud.ie arising out of or in connection with any claim, action or proceedings by a person as a result of any breach of this Agreement by the Client, provided that vCloud.ie must use its reasonable commercial endeavours to mitigate any losses or damage which it incurs as a consequence of such claim, action or proceedings.

The indemnification obligations contained in this Sub-clause will survive the termination of this Agreement.

7.9 Use of the Client's Name and Trademark/Logo

The Client hereby expressly grants to vCloud.ie a limited right and licence (for good and valuable consideration) to use the Client's name and trademark/logo in marketing, sales, financial, and public relations materials and other communications solely to identify that party as being a Client of vCloud.ie. vCloud.ie hereby expressly grants to Clients a limited right and licence (for good and valuable consideration) to display the appropriate vCloud.ie or application trademark/logo solely to identify the Client as a user of the Services provided by vCloud.ie. Other than as expressly stated herein, neither party shall use the other party's marks, codes, drawings, or specifications without the prior written permission of the other party.

8. WARRANTIES

8.1 Warranties by vCloud.ie

vCloud.ie warrants to Client that: (i) vCloud.ie owns or has legal right and authority, and will continue to own or maintain the legal right and authority during the term of the Agreement, to provide the Services as contemplated by the Agreement; (ii) vCloud.ie is duly incorporated, validly existing and has the legal power and authority to enter into the Agreement and to perform its obligations hereunder; (iii) the person(s) signing the Agreement on behalf of vCloud.ie is duly authorised to do so, and upon its execution by such person(s), the Agreement is the valid and legally binding upon vCloud.ie; (iv) Services as supplied to Client in connection with the Agreement do not and will not during the term of the Agreement, violate any applicable law or regulation; (v) vCloud.ie will supply the Services in accordance with the Agreement; (vi) that the Services will work substantially in accordance with the documentation supplied by the Client; and (vii) vCloud.ie shall provide the Services exercising reasonable care and skill and shall ensure that the Services are carried out by vCloud.ie personnel possessing suitable skills and experience.

8.2 Warranties by Client

The Client represents and warrants to vCloud.ie that: (i) Client is duly incorporated, validly existing and has the legal power and authority to enter into the Agreement and to perform its obligations hereunder; (ii) the person(s) signing the Agreement on behalf of Client is duly authorised to do so, and upon its execution by such person(s), the Agreement is the valid and legally binding upon the Client; and (iii) the Client (including its services, products, materials, data, information and equipment) does not and will not during the term of the Agreement operate in any manner that would violate any applicable law or regulation.

8.3 No Other Warranty

Goods and services are provided on an "as is" basis, and save as expressly provided for in this Agreement, and except where goods and Services are sold to a Client dealing as a Consumer (within the meaning of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 as amended by the European Communities (Unfair Terms in Consumer Contracts) Amendment Regulations 2000), all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law, including but not limited to warranties as to merchantability or fitness for purpose.

9. INDEMNITY

The Client indemnifies and shall hold vCloud.ie and vCloud.ie's employees and directors (together the "Indemnified Persons") harmless against all loss, costs, expenses, damages and liabilities suffered as a result of a claim against the Indemnified Persons (or any of them) brought or threatened to be brought in a court or tribunal of competent jurisdiction that arises directly or indirectly from a breach by the Client of this Agreement.

10. EXCLUSIONS AND LIMITATIONS OF LIABILITIES

10.1 Exclusions

vCloud.ie's liability (and that of its affiliates, officers, directors, agents and employees) under this Agreement shall be limited solely to direct loss or damages caused directly by its gross negligence or wilful misconduct. In no circumstances shall vCloud.ie be deemed or held liable, in law, equity or otherwise, for any special, incidental, indirect or consequential loss or damages, including, without limitation, any loss or damages arising from lost Clients, lost orders, lost profits, lost revenues, cost of procurement of substitute goods, technology or services.

10.2 Maximum Liability

vCloud.ie's maximum liability to the Client in respect of all matters connected to this Agreement and under any head of law (including, without limitation, the tort of negligence, contract, equity) shall be limited to the aggregate of the Fees paid by the Client over the period of 12 months immediately preceding the relevant breach, for the relevant Service in respect of which the breach occurred.

Neither Party shall be liable, nor responsible to the other Party, for any third party technology, product, service, declaration, act or omission, or any other condition that is directly or indirectly caused by or referable to a third party. vCloud.ie shall not be liable to the Client for any reason, for any loss of data.

10.3 Delay

In no event may the Client bring any claim against vCloud.ie more than 12 months after the Client became aware of (or ought reasonably to have discovered) the event(s) giving rise to the potential liability.

10.4 Exceptions

Neither Party limits or excludes its liability hereunder for any death or personal injury to the other Party's officers, directors, agents and employees caused by its negligence or that of any of its agents or subcontractors.

11. CONFIDENTIALITY

11.1 Confidential Information

All Confidential Information provided by either Party to the other or otherwise obtained in accordance with the Agreement shall be treated by the other Party, its employees and subcontractors as confidential and shall not be used other than for the benefit of the disclosing Party or the furtherance of each Party's obligations under this Agreement. The foregoing applies notwithstanding that such Confidential Information may have been disclosed prior to the execution of the Agreement.

Each Party undertakes not to disclose, without the prior consent in writing of the other, Confidential Information belonging to or disclosed by the other Party in whole or in part to any third party save those of its employees, agents and contractors who are engaged in performing the provision or receipt of that Party's obligations hereunder and have a reasonable need to know such information, and save those of its board members, professional advisers and auditors who have a reasonable need to know such information, in order to advise the Company or otherwise carry out their duties.

11.2 Exceptions

The provisions of Clause 11.1 shall not apply to any information which:

11.2.1 is trivial or obvious (for the avoidance of doubt an element that is trivial or obvious in and of itself should not necessarily be taken as trivial or obvious in the context of the whole of the Confidential Information);

11.2.2 is or becomes public knowledge other than due to a breach of Clause 15;

11.2.3 is already in the possession of the receiving Party (without restriction in relation to disclosure) before the date of receipt from the disclosing Party;

11.2.4 is received from a third party who lawfully acquired or developed it and who is under no obligation restricting its disclosure;

11.2.5 is independently developed by a Party without use of or reliance on the other Party's Confidential Information; or

11.3 Obligatory Disclosure

It shall not be a breach of this Clause if the receiving Party is obliged to disclose the Confidential Information of the disclosing Party by law or order of a court of competent jurisdiction, pursuant to a regulatory demand or the rules of an internationally recognized stock-exchange provided that, so far as practical, the receiving Party

gives prior written notice of such disclosure and provides reasonable assistance to the disclosing Party in trying to prevent or limit such disclosure.

11.4 Return and/or Destruction

At the request of a disclosing Party, the receiving Party shall promptly (and in any event within 30 days) return to the disclosing Party or destroy all Confidential Information of the disclosing Party and shall certify by a signature of a Director (as the term is understood in law) that it has complied with this sub-clause. In respect of Confidential Information stored electronically, it shall be sufficient that a party uses its reasonable endeavours to expunge such data from its systems. This shall not include the expunging of such data from a party's data backups or archives unless and until such backups and/or archives are restored to a live environment.

12. DEFAULTS AND REMEDIES

12.1 Default by vCloud.ie

The occurrence of any of the following will be a "Default" by vCloud.ie: (i) vCloud.ie fails to observe any of its obligations under the Agreement after a period of thirty days after receiving notice from Client of such failure; or (ii) the insolvency or liquidation of vCloud.ie as a result of which vCloud.ie ceases to do business; or (iii) the material breach of any representation or warranty made by vCloud.ie, except to such extent that such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by vCloud.ie within thirty days after receiving written notice from Client of such breach.

12.2 Default by Client

The occurrence of any of the following will be a "Default" by Client: (i) Client fails to pay, when due, any fees or charges owing to vCloud.ie under the Agreement, provided that the first non-payment in any calendar year shall not be a Default unless Client fails to pay such amount within ten business days after notice from vCloud.ie of such non-payment; or (ii) the material breach of any representation or warranty made by Client in the Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Default unless such breach is not cured by Client within thirty days after receiving written notice from vCloud.ie of such breach; or (iii) Client fails to perform or observe any of its other obligations under the Agreement after a period of thirty days after receiving notice from vCloud.ie of such failure; or (iv) Client's insolvency or liquidation as a result of which Client ceases to do business.

If the Client commits a Default, vCloud.ie will be entitled, at its election, to exercise any one or more of the following remedies, then or at any time thereafter: (i) to exercise any remedy for such Default set forth elsewhere in the Agreement; (ii) to pursue any remedy available in law or equity; (iii) to terminate the Agreement; and/or (iv) to suspend Services.

13. TERMINATION

13.1 Immediate Termination by Either Party

Either Party may terminate this Agreement without liability immediately on written notice to the other Party in the event that:

13.1.1 the other Party has committed a Default or otherwise breached any material provision of this Agreement, or, in the Client's case, the Client has breached the provisions of Clause 5 and/or 6 (whether or not such provisions are regarded as material) and:

13.1.2 such breach is not capable of being remedied in the reasonable opinion of the affected Party; or

13.1.3 such breach has not been remedied within 30 days of receipt of written notice from the other Party requiring that such breach be remedied.

13.1.4 the other Party can no longer pay its debts as they fall due or has had an Administrator, Liquidator, Manager, Receiver or Examiner (or any appointment similar in effect to any of the foregoing) appointed over any or all of its assets.

13.1.5 vCloud.ie may terminate the supply of any Service without liability to the Client in the event that it is no longer commercially reasonable to continue the supply of such Service by vCloud.ie due to a change in the applicable legal or regulatory environment. In such a case vCloud.ie will give the Client reasonable prior written notice of same and shall try to provide the Client with reasonable assistance in migrating to an alternative supplier.

13.2 Immediate Termination by vCloud.ie

vCloud.ie may terminate the supply of any Service immediately and without liability to the Client in the event that the Client breaches the Acceptable Use Policy (“AUP”).

13.3 References

References to the termination of a Service in this Clause 13 shall be deemed to include any other Service that is materially dependent on the Service being terminated.

14. RIGHTS TO SUSPEND

In any circumstances in which vCloud.ie may have the right to terminate this Agreement and/or any Order, vCloud.ie may suspend the provision of any Services under any one or more Orders in order to provide the Client and us some time to resolve any issues that have arisen.

Suspension shall not relieve the Client from the liability to pay the Fees during the suspended period. vCloud.ie shall promptly re-enable the relevant Services in the event that the issues prompting the suspension have been resolved to vCloud.ie’s satisfaction (acting reasonably).

The provisions of this Clause are in addition to and are without prejudice to vCloud.ie’s right to terminate this Agreement and/or any Order.

15. FORCE MAJEURE

15.1 Force Majeure Event

Neither Party will be responsible for or liable for any delay or failure in the performance of its obligations under this Agreement where such delay or failure is due to circumstances outside that Party’s reasonable control, including without limitation, acts, omissions, systems, networks, equipment or data of the other party or the acts, omissions, systems, networks, equipment or data of any third party (including without limitation, the internet or any telecommunications network or equipment), acts of God, natural disaster, strike, labour disputes, riot, war, terrorism, malicious damage or governmental requirements (each a “Force Majeure Event”).

15.2 Notice

Upon becoming aware of the occurrence of a Force Majeure Event, the affected Party will notify the other Party in writing as soon as is reasonably possible, including details of the Force Majeure Event and a reasonable estimate (if possible) of the expected duration of same.

15.3 Termination

If a Force Majeure Event continues for a period of 20 consecutive days, or an aggregate of 30 days in any 45 day period, a Party may terminate this Agreement with immediate effect by giving the other Party notice in writing. Such termination will not prejudice the accrued rights and remedies of either Party in law or under this Agreement.

15.4 Failure to Pay Fees

Failure to pay undisputed fees for Services under the terms of this Agreement will not constitute a Force Majeure Event.

16. COMPLIANCE WITH LAW AND REGULATIONS

The Client will comply at all times with all applicable laws and regulations with respect to its use of the Services, including without limitation, Irish and European laws, including data protections legislation.

vCloud.ie will comply at all times with all applicable laws and regulations with respect to its use of the Services, including without limitation, Irish and European laws, including data protections legislation. vCloud.ie confirms that it has a valid registration with the Office of the Data Protection Commissioner in Ireland.

17. MISCELLANEOUS / OTHER PROVISIONS

17.1 Non-Waiver/Severability

Failure of either party to enforce any of its rights hereunder will not be deemed to constitute a waiver of its future enforcement of such rights or any other rights. If any provisions of the Agreement are held to be invalid, illegal, or unenforceable under present or future laws, such provisions will be struck from the Agreement or amended, but only to the extent of their invalidity, illegality or unenforceability. The parties will remain legally bound by the remaining terms of the Agreement, and will strive to reform the Agreement in a manner as consistent as reasonably possible with the original intent of the parties as expressed herein.

17.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral submissions, negotiations, correspondence and agreements relating thereto, except to the extent that they are expressly incorporated herein.

17.3 Independent Contractors

The Parties are entering into this Agreement as independent contractors and nothing in this Agreement will be deemed to place the parties in any other relationship, including employer-employee, principal-agent, partners or joint venture. The Parties shall not have the authority to, nor shall attempt to enter into contracts or commitments in the name of or on behalf of the other Party in any respect whatsoever.

Each Party shall pay all of its own business expenses, including, without limitation, employees' and agents' salaries and costs, taxes and insurance and shall maintain adequate personnel and product liability insurance, which, in respect of the Client, coverage shall include claims made against vCloud.ie.

17.4 Amendments

No amendment to this Agreement shall be valid unless made in writing and signed by authorised representatives of both Parties.

17.5 No Third Party Rights

No rights under this Agreement shall accrue to any person that is not expressly a party to this Agreement.

17.6 Notices

All notices shall be in writing, addressed to the receiving Party's address (set forth below for vCloud.ie and as contained in the relevant Order Form for the Client) or to such other address as either Party may designate by notice hereunder.

If to vCloud.ie:	Unit W4D1 Belgrave Building, Ladytown Business Park, Newhall, Naas, Kildare, Ireland
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All notices shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving Party at the address of such Party set forth above, (ii) if sent by international courier, on the second business day following the day such notice is delivered to the international courier service, or (iii) if sent by pre-paid registered or certified mail, on the fourth business day following the day such mailing is made.

17.7 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Ireland. The Parties expressly and unconditionally submit to the exclusive jurisdiction of the Irish Courts.

18. General Service Level Agreement

18.1 Services

The Services offered by vCloud.ie include but are not limited to:

- Application Hosting
- Virtual Dedicated Servers (VDS)
- Virtual Private Hosted Servers (VPS)
- Cloud Hosting – Public\Private\Hybrid (vCloud)
- Disaster Recovery Solutions
- Business Continuity Services
- Infrastructure as a Service (IaaS)
- Data Storage
- Email Spam and Anti-Virus Filtering (TG v 2.1)
- Off Site Storage of Data Files (Including On-Line Backup)
- Co-Location Facilities
- Technical Services and Consultancy
- Remote Hands
- Scheduled Services
- Monitoring & Alerting

18.2 Support Hours & Service Level Agreement (“SLA”)

Standard Remote Support: Monday to Friday 9.00am to 5.00pm GMT excluding Public Holidays in Ireland (“Office Hours”).

vCloud.ie will respond within 4 hours to Tickets opened Monday to Friday. If Tickets are opened before 13.00 Monday to Friday, they will be responded to within the same working day at the latest. If a Ticket is opened after 13.00 vCloud.ie will endeavour to respond by 13.00 on the next working business day at the latest.

High Priority Tickets: Urgent Tickets opened outside of the normal Support Hours and SLA are chargeable as follows:

- 30 minutes response Monday - Friday 9.00am to 5.00pm (Excluding Public Holidays in Ireland): €100.00 per Ticket.
- 30 minutes response Monday - Friday 5.00pm to 12pm (Excluding Public Holidays in Ireland): €200.00 per Ticket.
- 30 minutes response all other times: €300.00 per Ticket.

For High Priority Tickets the Client appointed Manager or Administrator must create a ticket first using our support website and then a telephone call to the 24 Hours Emergency Support Number, quoting the Support Ticket Number. The Ticket must clearly state that this is a "High Priority" ticket and the Client knows that it is chargeable, as it is not part of the standard support hours and SLA.

18.3 Authorised Support Users

For each individual permitted by the Client (“Authorised Support User”) to use vCloud.ie’s support ticketing system (<http://support.vcloud.ie>), the name, email address, phone number, position and level of authorisation of each individual is required. It is the responsibility of the Client to update vCloud.ie with the details of Authorised Support Users as they change during the Term of the Agreement.

<u>Type</u>	<u>Definition</u>
Support	Permission to report an issue after internal investigations are complete.
Manager	Permission to report issues & restart services
Administrator	Permission to alter contracted services

18.4 Support Website

The vCloud.ie support website is <http://support.vcloud.ie>

All Authorised Support Users are required to be set up on the support system to be able to log a call as per the “Authorisations” section of the Client Order Form prior to logging a ticket. If a Client wishes to amend its Authorised Support Users, we require prior notification at least 24 hours in advance of a working business day via email. The Support Website is not for use as a general user helpdesk, but is specifically for Authorised Support Users only.

18.5 Support Tickets

All support issues **MUST** be raised via our email Ticket system by the Authorised Support Users. The Authorised Support Users are individuals nominated by the Client.

18.6 Support Availability

- vCloud.ie offers three levels of support. “Standard Support” is included with every contract. “Business Support” and “Enterprise Support” can be purchased as extra options; the price of which is dependent on a number of factors that will be quoted separately.
- Specific SLA's are in place for the following Hosted Applications: vCloud.ie Online Backup Manager, vCloud.ie DRaaS and vCloud IaaS.
- Additional support options are available as detailed below.

18.7 Additional Support Options:

Support Type	Time Scale	Monitoring Only	Reactive	Preventative
Business Support	Monday to Friday 9.00am to 5.00pm (Excl Bank Holidays)	Charge per VM per month €65.00 (Equates to Max of 1 Hour Per Week)	Charge per VM per month €85.00 (Equates to Max of 1 Hour Per Week)	Charge per VM per month €100.00 (Equates to Max of 1 Hour Per Week)
Enterprise Support	Monday to Sunday (Out of Hours)	Charge per VM €100.00 (Max of 1 Hour Per Week)	Charge per VM €170.00 (Max of 1 Hr Per Week)	Charge per VM €200.00 (Max of 1 Hr Per Week)

18.8 Monitoring

For each contracted VM vCloud.ie will ensure that each VM is powered-on and services monitored with a monitoring Probe for Power, Network, CPU and HDD performance. The Client will be alerted to the issue for them to deal with.

18.9 Reactive

For each contracted VM we will ensure that each VM is powered-on and services monitored with a monitoring Probe for Power, Network, CPU and HDD performance. Our Engineer will be alerted and they will assess and resolve the issue in question, our engineer will also open a ticket with the Client if a service disruption is required.

18.10 Preventative

For each contracted VM we will ensure that each VM is powered-on and services monitored with a monitoring Probe for Power, Network, CPU and HDD performance. Our Engineer will be alerted and they will assess and resolve the issue in question, our engineer will also open a ticket with the Client if a service disruption is required. Our Engineer will also proactively monitor the VM's in question and carry our scheduled preventative maintenance.

18.11 Engineer\Consultancy:

To include additional REMOTE Engineer expertise to your support contract, there are a number of options available. Engineer time is chargeable at €150.00 per hour (Office Hours) and up to €200 per hour out of Office Hours. Our Engineers can design a Custom support plan that can relieve some of the burden of managing Operating Systems, Performing Failover Tests, Deploying New VM's, Installing standard Microsoft Software or managing the monitoring and general health of your systems at the operating system level.

Blocks of 10 Engineer Days may be purchased in advance at €750.00 per day plus expenses; such as meals, accommodation where required to travel, and taxis, car hire or public transport expenditure.

18.12 Infrastructure/Application Availability

In any Quarter, where less than 99% availability is delivered then the Client will receive a 5% reduction in billing for that Quarter for each 1% below 99% of actual availability achieved.

vCloud.ie does not make any guarantees in regard to Internet connection at the Client side.

18.13 Scheduled Maintenance

The Applications and hosting arrangements of vCloud.ie are constantly being maintained, upgraded and improved. In order to perform some of the required maintenance and upgrade work it may be necessary to down the services on occasions. Client will receive email notification at least one week in advance of Scheduled Maintenance. Where possible Scheduled Maintenance will take place at weekends or such times as the Client may reasonably request in order to minimise disruption to the Client's operations. Scheduled Maintenance will not exceed 8 hours in any one-month period. Scheduled Maintenance is excluded from downtime calculations.

18.14 Specific vCloud.ie IaaS Solutions

18.14.1 Infrastructure/Application Availability

In any Quarter, where less than 99.9% availability is delivered then the Client will receive a 5% reduction in billing for that Quarter for each 1% below 99.9% of actual availability achieved.

vCloud.ie does not make any guarantees in regard to Internet connectivity at the Client's locations(s).

18.14.2 Scheduled Maintenance

The Applications and hosting arrangements of vCloud.ie are constantly being maintained, upgraded and improved. In order to perform some of the required maintenance and upgrade work it may be necessary to down the services on occasions. Client will receive email notification at least one week in advance of Scheduled Maintenance. Where possible Scheduled Maintenance will take place at weekends or such times as the Client may reasonably request in order to minimise disruption to the Client's operations. Scheduled Maintenance will not exceed 8 hours in any one-month period. Scheduled Maintenance is excluded from downtime calculations.

18.4.3 Setup Assistance

"vCloud.ie" (TG), is a Cloud based Virtual Server Hosting Solution. vCloud.ie will enable the Client Control Panel to allow them to create, manage and delete their Hosted Virtual Servers. To assist the Client the Administrator Setup Guide will detail the steps required.

Your Administrator is required to have an understanding of Firewalls, Server/Workstation installation protocols, IP/DNS/MX Records and Administration, and LDAP authentication to be able to configure your Hosted Infrastructure correctly.

If you require our Engineers to advise you on the set up of your own Servers and Firewall, this time will be chargeable at a minimum of €150.00 per hour.

18.15 Operating Systems and Software Licenses

It is the responsibility of the Client to license all software installed on their VM instances. If the Client uses software under:

Microsoft SPLA (Service Provider License Agreement);
VMware VSPD Enterprise License Agreement;
Veeam Enterprise Licence Agreement
Zerto Enterprise Licence Agreement
Any other Software License Agreement in Place;

the Client is required to report to vCloud.ie all usage of any license used with the calendar month and the Client will be charged accordingly as per the agreed rates. We note that from time to time the rates from the software license providers are subject to change. All changes will be notified at least 30 days in advance of license price change.

18.16 vCloud.ie's IaaS - Backup

In addition to any sold services for Infrastructure as a Service or backup, for vCloud.ie's own Disaster Recovery policy, vCloud.ie will retain a 14 Day Incremental Snapshot of a Client's VM. However to enable this functionality, we require the client to provide a list of VM's that they wish to have included in this VM Snapshot schedule.

It is the client's responsibility to update vCloud.ie with a list of VM's, if no list is provided to vCloud.ie then the VM's will not be included in the schedule. There is a charge per VM for this feature to be enabled please see relevant pricing details.

If for any reason, the Client requests a restoration of a VM from our Snapshot, this will be chargeable please see relevant pricing details.

18.17 Server Usage and Contention

vCloud.ie may offer the Client the option to "Over" contend resources of the purchased Bubble of "RAM", "CPU", "HDD" and "Bandwidth". It is the responsibility of the Client to manage such contention ratios, and the Client's responsibility to manage the SLA given to the End User, vCloud.ie's SLA only extends to vCloud.ie's direct Client and not to Clients of our Client or reseller. vCloud.ie cannot be held responsible if over contention by the Client leads to performance issues not under our control.

It should be noted that vCloud.ie may advise the Client if the resources purchased are running at a high level of usage that may impact service.

18.18 Pricing

vCloud.ie may offer the Client any single pricing model that is based on consumption, as opposed to a fixed usage charge. This is at the discretion of vCloud.ie and the Client will be informed of this pricing model before agreement approval.

18.19 Change Management

vCloud.ie will maintain a system to record, track, process and control change requests initiated internally or by Clients in accordance with Information Technology Infrastructure Library ("ITIL") procedures.

18.20 Incident Management

vCloud.ie will maintain a system to record, track, process and control incidents reported by Clients, or reported by internal monitoring systems in accordance with ITIL procedures. This system is a web based tool which Clients may use to record issues. The website address is <http://support.vcloud.ie>

18.21 Problem Management

From time to time vCloud.ie will carry out a review of incidents with a view to grouping them so that systematic corrective actions can be implemented on them. This problem resolution process will be managed in accordance with ITIL procedures.

18.22 Performance Management

18.22.1 Record Access

Client will have access to all records relating to change, incident, and problem management that affect the service of vCloud.ie to the Client.

18.23 Notification of Interruption

18.23.1 Planned Interruption

vCloud.ie shall give Client notice of planned service outages for maintenance or upgrade, such notice to be a minimum of one week. Such outages will, where possible be confined to weekends or such times as the Client may reasonably request in order to minimise disruption to the Client's operations.

18.23.2 Unplanned Service Outages

All unplanned outages of service will be recorded, investigated, and corrective actions implemented where appropriate. All such incidents will be reported to Client. Persistent unplanned service outages shall be considered to be a material breach of the Terms & Conditions and a default for the purposes of Clause 11.1 (Default by vCloud.ie).

18.23.3 Loss of Services

In the event of a Force Majeure Event affecting the data centres in which vCloud.ie maintains its infrastructure, vCloud.ie cannot be held liable for any loss of services, equipment or data. In the event of a staff member (either authorised or unauthorised) of the Client or a designated contractor of the Client, (knowingly or unknowingly) deletes, corrupts or interferes with the operation of the Services vCloud.ie offer, vCloud.ie cannot be held responsible or liable.

18.24 Annual Reviews

The Client is invited to participate in an annual review of performance under this Agreement.

19. Acceptable Use Policy

19.1 Acceptable Use Policy

vCloud.ie's Acceptable Use Policy ("AUP") is provided to give our Clients and users a clear understanding of what vCloud.ie expects of them while using the Service. All users of vCloud.ie's internet Services (those who access some of our Services but do not have accounts, as well as those who pay a service fee to subscribe to the Services) must comply with this AUP which is a constituent part of our General Terms and Conditions. Use of any of vCloud.ie Services by a Client constitutes acceptance and agreement to vCloud.ie's AUP as well as vCloud.ie's General Terms and Conditions. vCloud.ie may amend or update the AUP from time to time without prior notice.

19.2 Suspension/Termination

A violation of this AUP by you the Client, may result in the suspension or immediate termination of your vCloud.ie account **WITHOUT PRIOR NOTICE**.

19.3 Guidelines

The following are the guidelines support vCloud.ie's establishment and enforcement of its AUP:

- ✓ Ensure reliable service to our Clients.
- ✓ Ensure security and privacy of our systems and network, as well as the networks and systems of others
- ✓ Comply with existing laws in Ireland.
- ✓ Maintain our reputation as a responsible service provider.
- ✓ Encourage responsible use of the Internet and discourage activities which reduce the usability and value of Internet service.
- ✓ Preserve the value of Internet resources as a conduit for free expression and exchange of information.
- ✓ Preserve the privacy and security of individual users.

We do not routinely monitor the activity of accounts except for measurements of system utilisation and the preparation of billing records.

19.4 Restrictions and Obligations

You may not use your dedicated system or virtual site to publish material, which vCloud.ie determines, at its sole discretion, to be unlawful, indecent or objectionable. For purposes of this policy, "material" refers to all forms of communications including narrative descriptions, graphics (including photographs, illustrations, images, drawings, and logos), executable programs, video recordings, and audio recordings.

If a vCloud.ie account is used to violate the AUP or the General Terms and Conditions, we reserve the right to terminate your service without notice in accordance with Sub-clause 16.3. While it is vCloud.ie's preference to, in the first instance, advise Clients of inappropriate behaviour and any necessary corrective action, flagrant violations of the AUP will result in immediate termination of service. Our failure or delay to enforce the termination rights under this policy, for whatever reason, shall not be construed as a waiver of our right to do so at any time.

As a member of our network community, you the Client must use your internet access responsibly. If you have any questions regarding this policy, please contact us.

19.5 Violations of vCloud.ie's Acceptable Use Policy

The following will constitute violations of this AUP:

19.5.1 Illegal purposes

vCloud.ie's services may not be used for illegal purposes, or in support of illegal activities. vCloud.ie reserves the right to notify and/or cooperate with law enforcement authorities, regulatory authorities and/or injured third parties in the investigation of any suspected crime or civil wrongdoing.

19.5.2 Harm to minors

Use of the vCloud.ie service to harm, or attempt to harm, minors in any way, including, but not limited to child pornography.

19.5.3 Threats

Use of the vCloud.ie service to transmit any material (by e-mail, uploading, posting or otherwise) that threatens or encourages bodily harm or destruction of property.

19.5.4 Harassment

Use of the vCloud.ie service to transmit any material (by e-mail, uploading, posting or otherwise) that harasses another person or party.

19.5.5 Fraudulent activity

Use of vCloud.ie service to make fraudulent offers to sell or buy products, items, or services, or to advance any type of financial scam such as, but not limited to "pyramid schemes," "Ponzi schemes," and "chain letters".

19.5.6 Forgery or impersonation

Adding, removing or modifying identifying network header information in an effort to deceive or mislead a person or party is prohibited. Attempting to impersonate any person or party by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation.

19.5.7 Unsolicited commercial e-mail / unsolicited bulk e-mail (SPAM)

Use of the vCloud.ie's service to transmit any unsolicited commercial or unsolicited bulk e-mail is expressly prohibited. Violations of this type will result in the immediate termination of the offending vCloud.ie account.

19.5.8 E-mail / News Bombing

Malicious intent to impede another person or party's use of electronic mail services or news will result in the immediate termination of the offending vCloud.ie account.

19.5.9 E-mail / Message Forging

Forging any message header, in part or whole, of any electronic transmission, originating or passing through the vCloud.ie service is in violation of this AUP.

19.5.10 Usenet SPAMing

vCloud.ie has a zero tolerance policy for the use of its network for the posting of messages or commercial advertisements, which violate the rules, regulations, FAQ or charter of any newsgroups or mailing list. Commercial messages that are appropriate under the rules of a newsgroup or mailing list or that are solicited by the recipients are permitted.

19.5.10 Unauthorised access

Use of the vCloud.ie service to access, or to attempt to access, the accounts of other persons or parties, or to penetrate, or attempt to penetrate, security measures of vCloud.ie's or another person or party's

computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data, is expressly prohibited and the offending vCloud.ie account is subject to immediate termination.

19.5.10 Infringement of Copyright, Patent, Trademark, Trade Secret, or Intellectual Property Right

Use of the vCloud.ie service to transmit any material (by e-mail, uploading, posting or otherwise) that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorised copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorised transmittal of copyrighted software.

19.5.10 Collection of personal data

Use of the vCloud.ie service to collect, or attempt to collect, personal data or information about third parties without their knowledge or consent in breach of data protection laws.

19.5.10 Network disruptions and unfriendly activity

Use of the vCloud.ie service for any activity which affects the ability of other people or systems to use vCloud.ie Services or the Internet. This includes "denial of service" (DOS) attacks against another network host or individual user. Interference with or disruption of other network users, services or equipment is prohibited. It is the Member's responsibility to ensure that their network is configured in a secure manner. A Subscriber may not, through action or inaction, allow others to use their network for illegal or inappropriate actions. A Subscriber may not permit their network, through action or inaction, to be configured in such a way that gives a third party the capability to use their network in an illegal or inappropriate manner. Unauthorised entry and/or use of another company and/or individual's computer system will result in immediate account termination. vCloud.ie will not tolerate any subscriber attempting to access the accounts of others, or penetrate security measures of other systems, whether or not the intrusion results in corruption or loss of data.

19.5.10 Fraud

Involves a Client making knowing misrepresentation(s), misleading statement(s), writing or activity with the intent to cause the person or party receiving to take action because of it or omit to take action because of it.

19.5.10 Distribution of Viruses

Intentional distributions of software that attempts to and/or causes damage, harassment, or annoyance to persons, data, and/or computer systems are prohibited. Such an offense will result in the immediate termination of the offending account.

19.5.10 Inappropriate Use of Software

Use of software or any device that would facilitate a continued connection, i.e. ping, while using vCloud.ie services may result in suspension of Services.

19.6 Third Party Accountability

vCloud.ie subscribers will be held responsible and accountable for any activity by third parties, using their account that violates guidelines created within the AUP. The username and password must be kept secure by the Client.