

# ConnectWise Cloud Backup and ConnectWise SaaS Security Customer Terms & Conditions Australia

(formerly SkyKick Customer Terms & Conditions Australia)

Last updated: March 14, 2025

**To avoid any confusion or doubt: These terms & conditions solely apply to ConnectWise customers based in Australia. If a customer is based outside of Australia, the general ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms and Conditions will apply instead which can be accessed on this link: <https://www.connectwise.com/company/legal> and these Australian market specific terms will not apply to such customers.**

**Who is ConnectWise:** These ConnectWise Cloud Backup and SAAS Security Manager Customer Terms & Conditions for Australia (the "**ConnectWise Cloud Backup and SAAS Security Manager Customer Terms & Conditions Australia**") are entered into between the customer ("**Customer**") and ConnectWise S-K B.V. ("**ConnectWise**" as applicable).

**Definitions:** Certain capitalized words in this document have the specific meanings as set out below or in Section 1 below.

ConnectWise and Customer are referred to individually as a "**Party**" and together as the "**Parties**".

**Purpose of these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia:**

These ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia apply to any and all orders placed by Customer based in Australia or ConnectWise authorized IT solutions provider based in Australia on behalf of a Customer ("**Partner Australia**") with ConnectWise either through an electronic marketplace or directly with/from ConnectWise ("**Order**").

**Where this document fits into ConnectWise's agreement with Customer:** All offers and sales of services and products offered by ConnectWise through a Partner Australia are subject to and expressly conditioned on Customer's acceptance of these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia, the Order and any other written or electronic terms executed by ConnectWise and Customer (or a Partner Australia on Customer's behalf) that reference or are executed pursuant to these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia including the ConnectWise Data Processing Addendum (all documents collectively being referred to in this document as the "**Agreement**").

**When the Agreement applies:** The effective date of the Agreement will be the date that the applicable Order referencing or being executed pursuant to these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia is submitted to ConnectWise by Customer or a Partner Australia on Customer's behalf which is accepted by ConnectWise ("**Effective Date**"). Customer agrees that a Partner Australia may accept the

Agreement on Customer's behalf and authority and that Customer will be then bound by the Agreement as if it were directly executed by Customer. By using or receiving the Services, Customer agrees to all terms and conditions of the Agreement. If Customer does not agree to all terms and conditions of the Agreement then Customer is not permitted to use the Services.

IMPORTANT: BEFORE AGREEING TO THE AGREEMENT, YOU SHOULD CLOSELY REVIEW THE PROVISIONS WHICH ARE IN ALL CAPITALS AS THESE TERMS MAY CAUSE DETRIMENT TO YOU IF APPLIED OR RELIED ON BY CONNECTWISE.

## Background

A) ConnectWise is in the business of providing certain IT-related products and services as more fully described in the Documentation and applicable Order (the "**Services**");

B) Customer has entered into an agreement with a Partner Australia (the "**Partner Agreement**") to procure services offered by Partner Australia that involve the use or management of ConnectWise's Services (the "**Partner Offerings**"); and

C) Customer desires to engage ConnectWise to provide the Services for use in connection with the Partner Offerings, and has authorized Partner Australia to act on Customer's behalf with respect to the placement, configuration and/or management of Orders and Customer's utilization of the Services; and

D) ConnectWise desires to provide such Services in accordance with and pursuant to the terms and conditions of the Agreement.

NOW, THEREFORE, the Parties agree as follows:

## Agreement

1. **Definitions.** For the purposes of the Agreement, capitalized terms used in this document will have the meanings set forth below or elsewhere in these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia:

1.1 "**Confidential Information**" means all confidential and other information disclosed or made available (whether in oral, written, or other tangible or intangible form) by a Party to the other Party concerning or related to this Agreement (whether before, on or after the Effective Date), which the receiving Party knows or should know, given the facts and circumstances surrounding the disclosure of the information, is confidential information of the disclosing Party. Customer's Confidential Information includes, but is not limited to, any Order Data and Customer Data and "**ConnectWise's Confidential Information**" includes, but is not limited to, the details of any Order, Usage Data, and other confidential information relating to the Platform, the Services, the software and any other proprietary software or technology of ConnectWise, any inventions, research and design plans or business plans, financial plans, know-how, customer information, strategies and other similar information. Confidential Information will not include information that: (a) is or becomes publicly available without breach of the Agreement through no fault of the receiving Party; (b) the receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the disclosing Party; (c) the receiving Party can demonstrate was developed by the receiving Party without the use of or reference to the

Confidential Information; or (d) the receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

1.2 “**Customer Data**” means any and all information, emails, data, text, audio, video, images or other content provided to, hosted, stored, and/or accessed by ConnectWise in connection with the provision of Services (such as, data Backup, Migration and Cloud Manager), other than Order Data.

1.3 “**Data Protection Law**” means any and all data protection laws and regulations that apply to the processing of Personal Information by ConnectWise under the Agreement.

1.4 “**Documentation**” means ConnectWise’s product, licensing and services descriptions, user instructions and any other documentation relating to the Platform that ConnectWise provides in advance to Customer or through the Partner Australia, from time to time.

1.5 “**Intellectual Property Rights**” means patents, copyrights, moral rights, trademarks, trade secrets, trade dress and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

1.6 “**Order Data**” means data (such as, Partner Australia’s, Customer’s and/or Users’ names and contact information) provided or made available by Customer and/or the Partner Australia to ConnectWise in connection with submitting an Order and otherwise required for ConnectWise to administer the Order.

1.7 “**Person**” means an individual, partnership, limited liability company, association, corporation or other entity.

1.8 “**Personal Information**” means information or an opinion about an identified individual, or an individual who is reasonably identifiable: whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

1.9 “**Provider**” means a service provider that provides, hosts and/or stores, through any product or service, Customer Data accessed by ConnectWise in connection with providing the Services.

1.10 “**Provider Agreement**” means an agreement between the Customer and a Provider pursuant to which the Provider makes the Provider Offerings available to the Customer.

1.11 “**Provider Offering**” means any products or services offered by a Provider.

1.12 “**Platform**” means the proprietary software and any other technology used by ConnectWise in the provision and operation of the Services or made available by ConnectWise to Customer, and the applicable Partner Australia for Customer’s benefit, in connection with the provision or receipt of Services, including the ConnectWise Site Partner Portal, ConnectWise APIs, ConnectWise UI and related Documentation.

1.13 “**ConnectWise Site**” means the ConnectWise website at [www.connectwise.com](http://www.connectwise.com), or any successor website thereto.

1.14 “**User**” means any employee, contractor, delegate, or agent of Customer, or other Person who is authorized by Customer to use, or benefit from the use of, the Services or who otherwise accesses or uses the Platform and/or Services provided, or whose data is processed or accessed by the Platform and/or Services.

WHERE CONNECTWISE HAS DISCRETION IN THE AGREEMENT TO TAKE ACTION OR NOT TO TAKE ACTION, CONNECTWISE SHALL ACT REASONABLY IN EXERCISING ITS DISCRETION AND ACTING REASONABLY SHALL MEAN CONNECTWISE EXERCISING ITS BUSINESS JUDGEMENT BASED ON ITS REASONABLE ASSESSMENT AND LEGITIMATE INTEREST AND INTENDING TO BENEFIT PLATFORM, SERVICES, CONNECTWISE AND ITS CUSTOMERS AND PARTNERS GENERALLY OR THEIR PROFITABILITY INCLUDING CONNECTWISE (REGARDLESS OF WHETHER SOME CUSTOMERS OR PARTNERS INDIVIDUALLY MAY BE FAVOURABLY OR UNFAVOURABLY AFFECTED) OR TO INCREASE OR ENHANCE OVERALL CUSTOMER SATISFACTION OR PLATFORM OR SERVICES PERFORMANCE. THE EXISTENCE OF OTHER REASONABLE ALTERNATIVES TO CONNECTWISE'S ACTION OR INACTION OR THE FACT THAT CONNECTWISE MAY OR DOES BENEFIT ECONOMICALLY FROM AN ACTION OR INACTION IN CONNECTWISE EXERCISING ITS DISCRETION TO ACT REASONABLY WILL NOT OF ITSELF ESTABLISH THAT CONNECTWISE IS NOT ACTING REASONABLY.

## **2. Orders; Access to Systems.**

2.1 Customer Authorization. Customer affirms that it has authorized the Partner Australia to place Orders, purchase Services, and to submit associated information, on its behalf and hereby authorizes ConnectWise to perform the Services purchased through a Partner Australia acting as agent for ConnectWise in accordance with the terms and conditions of the Agreement. To the extent required by the Partner Australia, Customer hereby appoints ConnectWise as a delegated administrator with respect to any applicable Provider Offering that may be accessed by the Platform in relation to providing the Services.

2.2 Access to Customer's Systems and Order Data. Customer grants to ConnectWise access to Customer's systems and online hosted accounts as required for ConnectWise to provide the Services (including administrative-level access). Customer will provide ConnectWise and, if applicable, the Partner Australia, with any credentials or other keys required for Customer to grant the access, any other information necessary to enable ConnectWise to perform the Services, and any other instructions or requirements pertinent to Customer's access to and use of the Services.

CUSTOMER REPRESENTS AND WARRANTS THAT THE INFORMATION PROVIDED TO CONNECTWISE AND PARTNER AUSTRALIA IS COMPLETE AND ACCURATE, AND IT HAS TAKEN, AND WILL TAKE, ALL OTHER STEPS NECESSARY TO ENSURE THAT CONNECTWISE'S PROVISION OF THE SERVICES COMPLIES WITH APPLICABLE LAW, INCLUDING OBTAINING AN APPLICABLE CONSENT AND AUTHORIZATION FROM USERS PERMITTING CONNECTWISE TO ACCESS AND USE ANY RELEVANT INFORMATION.

IN ORDER TO USE THE SERVICES, CUSTOMER'S COMPUTER HARDWARE, SOFTWARE AND INTERNET CONNECTIVITY MUST MEET CERTAIN MINIMUM REQUIREMENTS AS MAY BE SPECIFIED IN THE DOCUMENTATION PROVIDED FROM TIME TO TIME.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT TO THE EXTENT THAT THE LIABILITY WAS CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR CONNECTWISE'S EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, CONNECTWISE IS NOT RESPONSIBLE IF CUSTOMER CANNOT ACCESS OR RECEIVE THE SERVICES DUE TO A FAILURE BY CUSTOMER TO GRANT THE NECESSARY ACCESS OR PROVIDE THE NECESSARY INFORMATION TO CONNECTWISE OR MEET CONNECTWISE'S MINIMUM REQUIREMENTS AS MAY BE SPECIFIED IN THE DOCUMENTATION.

2.3 Customer must purchase through a Partner Australia. Customer must purchase access to, support of, and use of the Platform through a Partner Australia pursuant to a Partner Agreement and Customer must consent to the Agreement before ConnectWise provides any Services to Customer.

### 3. Customer Data, Data Protection, and Confidentiality.

3.1 Customer Data. As between ConnectWise and Customer, Customer is the sole owner of the Customer Data. Customer authorizes ConnectWise to perform such actions with respect to Customer Data as necessary for ConnectWise to fulfill its obligations, including:

- to provide the Services and/or access to the Platform (including, as applicable, to the Partner Australia or a Provider on Customer's behalf), or
- to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

Customer acknowledges that Customer (rather than ConnectWise) is responsible for security, protection and backup of the Customer Data on any equipment and systems not owned or controlled by ConnectWise (including Partner Australia and Provider systems).

3.2 Usage Data. ConnectWise may collect, generate, use and store anonymous or aggregate information regarding use of the Services ("**Usage Data**") solely for ConnectWise's business purposes (including billing, enhancing the Services and creating new features, functionality and services). As between ConnectWise and Customer, ConnectWise is the sole owner of the Usage Data.

3.3 Data Protection. ConnectWise will meet its obligations under the Data Protection Laws that apply to the Services and the provision thereof by ConnectWise. The [ConnectWise Data Processing Addendum](#) applies between Customer and the relevant ConnectWise affiliate. Insofar the Regulation (EU) 2016/679 ("**GDPR**") applies, ConnectWise classifies as a "**processor**" (being the Person who Processes Personal Information for a data controller), and Customer as a "**controller**" (being the Person who determines the purpose and means of Processing Personal Information) with respect to the Customer Data. In case ConnectWise receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of Customer personal data, ConnectWise agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after a careful assessment, ConnectWise concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law, or principles of international comity. Upon request from Customer, ConnectWise shall, where permissible under the laws of the country of destination, provide Customer with as much relevant information as reasonably and technically practicable on the requests received.

3.4 Confidentiality. Without limiting anything in Section 3.3, each Party will, during the Term and after it maintain in confidence the Confidential Information of the other Party and will not use such Confidential Information except as expressly permitted in the Agreement. Each Party will use the same degree of care in protecting such Confidential Information as such Party uses to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than reasonable care. Each Party will use such Confidential Information solely for the purpose of carrying out its respective obligations under the Agreement. In addition, each Party: (a) will not reproduce such Confidential Information, in any form, except as required to accomplish its obligations under the Agreement; and (b) will only disclose such Confidential Information to its employees, consultants and third-party service providers who have a need to know such Confidential Information in order to perform their duties relating to the Agreement and have been informed of the obligation to preserve the confidentiality of such information prior to receiving such information.

Confidential Information will be the property of the disclosing Party during the Term and afterwards in perpetuity, subject only to any exceptions expressly stated elsewhere in the Agreement.

3.5 Security. ConnectWise is responsible for the security of ConnectWise's IT systems. During the Term, ConnectWise shall implement and maintain security safeguards as it deems reasonably necessary to account for (i) material changes to relevant technology or systems; or (ii) the discovery of a material privacy or security vulnerability or weakness.

#### **4. Proprietary Rights.**

As between ConnectWise and Customer, other than the limited rights expressly granted to Customer under this Agreement, ConnectWise or its licensors own and reserve all right, title, and interest in and to the Platform and Services, including, without limitation, any ConnectWise proprietary software or technology utilized in the provision or use thereof, the Documentation, and all Intellectual Property Rights therein. Customer acknowledges that (a) all right, title and interest in and to the Services, including the Platform and Documentation provided in connection with them, and all Intellectual Property Rights embodied in them or associated with them, are and shall remain with ConnectWise or its third-party licensors; (b) no right or interest in the Platform is conveyed other than the limited rights expressly granted in the Agreement; (c) the Platform is protected by copyright and other intellectual property laws; and (d) the Platform embodies valuable confidential and trade secret information of ConnectWise or its licensors, the development of which required the expenditure of considerable time and money. Customer will not take or encourage any action during or after the Term that will infringe any rights of ConnectWise or its licensors in and to the Platform, any proprietary software or technology of ConnectWise, or any Intellectual Property Rights in and to any of the foregoing.

#### **5. ConnectWise Services.**

5.1 Provision of Services. ConnectWise will, subject to the terms and conditions of the Agreement, use commercially reasonable efforts to provide the Services substantially in accordance with the applicable Documentation for such Services.

5.2 Access and Use of the Platform. During the Term, ConnectWise grants to Customer a limited, non-exclusive, non-transferable right to access and use, and permit and enable its Users to access and use, the Platform, including the right to install any software clients and other code as provided and instructed by ConnectWise, and related Documentation, solely in connection with the Services provided under this Agreement, strictly for Customer's own business operations, and not for re-sale or redistribution. Except for the limited rights granted under the Agreement, ConnectWise reserves all rights not expressly granted and no additional rights are implied.

#### **6. Customer's Obligations and Acknowledgements.**

6.1 Customer Cooperation. Customer understands and agrees that Customer's full, reasonable cooperation is required in order for ConnectWise to properly, efficiently and effectively perform the Services. CUSTOMER AGREES TO COMPLY WITH ALL OF CONNECTWISE'S AND THE PARTNER AUSTRALIA'S REASONABLE REQUESTS MADE IN CONNECTION WITH THE PROVISION OF SERVICES TO CUSTOMER FOR SUCH PURPOSE. CUSTOMER AGREES THAT FAILURE TO SO COOPERATE WITH CONNECTWISE OR THE PARTNER AUSTRALIA COULD RESULT IN CONNECTWISE'S INABILITY TO PROPERLY, EFFICIENTLY AND EFFECTIVELY PERFORM THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT AND IS A MATERIAL BREACH OF THIS AGREEMENT BY CUSTOMER. ConnectWise's provision of the Services is subject to Customer's cooperation (including the cooperation of third parties under such Customer's control) with ConnectWise and the Partner Australia and Customer's compliance with the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY

APPLICABLE LAW AND EXCEPT TO THE EXTENT CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, CUSTOMER (RATHER THAN CONNECTWISE) IS RESPONSIBLE FOR ANY DELAYS, DEFICIENCIES OR FAILURES THAT OCCUR IN THE PERFORMANCE OF SERVICES AS A RESULT OF CUSTOMER'S FAILURE TO COOPERATE WITH CONNECTWISE AS REQUIRED UNDER THE AGREEMENT. Customer consents to receive communications from ConnectWise (via email or other means) regarding ConnectWise's performance of the Services.

6.2 Customer Compliance with Provider Agreement and Partner Agreement. Customer will comply with the Partner Agreement and any applicable Provider Agreement. Acts and omissions of Customer, Providers or Partner Australia under any Provider Agreement or Partner Agreement are their own responsibility. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND EXCEPT TO THE EXTENT THAT SUCH ACTS OR OMISSIONS ARE CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, CONNECTWISE WILL NOT BE RESPONSIBLE FOR THE ACTS OR OMISSIONS OR BREACH OF CUSTOMER, PARTNER AUSTRALIA OR PROVIDERS OF THE PARTNER AGREEMENT AND/OR PROVIDER AGREEMENT.

6.3 Customer Compliance with Law. Customer will comply with all applicable laws, rules, regulations and orders relating to its access and use of the Platform and Services under the Agreement (including without limitation (a) laws and policies related to unsolicited, commercial e-mails including, the Spam Act 2003 (Cth) or any illegal, objectionable or offensive activities, (b) laws applicable to Customer's processing and storage of Customer Data in connection with Customer's use of the Platform and the Services, and (c) as applicable, those concerning the exporting, importing and re-exporting of computer software and the protection of privacy and Personal Information, including the Australian Privacy Act 1988 (Cth) (even if Customer is not an organization bound by the Act).

6.4 Obligations Regarding Customer Data. Customer acknowledges that ConnectWise has no control over Customer Data outside of ConnectWise's systems including Customer's own collection or use of the Customer Data. ACCORDINGLY, CUSTOMER AGREES THAT IT (RATHER THAN CONNECTWISE) IS RESPONSIBLE FOR, AND CUSTOMER WILL INDEMNIFY CONNECTWISE AGAINST ANY LIABILITIES OF CONNECTWISE ARISING FROM: (A) THE COLLECTION, USE OR DISCLOSURE OF THE CUSTOMER DATA BY CUSTOMER BEING NOT COMPLIANT WITH APPLICABLE LAWS, RULES AND REGULATIONS, AND CONNECTWISE POLICIES; (B) ANY CLAIMS ARISING FROM OR RELATING TO THE CUSTOMER DATA AND CUSTOMER'S BREACH OF THE AGREEMENT OR CONNECTWISE COMPLYING WITH THE AGREEMENT; AND (C) CONNECTWISE HANDLING AND PROCESSING NOTICES SENT TO CUSTOMER BY ANY PERSON CLAIMING THAT ANY PROCESSING OF CUSTOMER DATA BY CONNECTWISE IN ACCORDANCE WITH THE AGREEMENT VIOLATES SUCH PERSON'S RIGHTS. The exclusion of ConnectWise's liability and the indemnity of ConnectWise will not apply to the extent the Liabilities of ConnectWise arise as a result of breach of the Agreement, mistake, fraud, negligence or wilful misconduct of ConnectWise or its employees, officers, contractors or agents.

6.5 Customer agreement to ConnectWise changes to Services during the Term. In addition to the changes that may be made in accordance with Section 13.10 (Modifications to the ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia and other changes), given the rapidly changing technology landscape, Customer acknowledges that ConnectWise may need to expand, modify or cease providing the Services (or parts of it) or to update the Documentation from time to time where reasonably necessary due to changes in the industry (such as best practices or technology), changes in applicable law (including applicable industry codes, rules, standards and regulations), changes in ConnectWise's business processes and products (such as new functionalities or features) or where third party suppliers and service providers to ConnectWise undergo similar changes which are imposed on

ConnectWise and are necessary to providing the Services. ConnectWise will endeavour to provide Customer with reasonable advance notice in writing prior to implementing any such expansions, modifications or cessations where it is reasonably practicable to do so. CUSTOMER AGREES THAT CONNECTWISE MAY INTRODUCE NEW SERVICES AND/OR ALTER OR CEASE EXISTING SERVICES OR PARTS OF THEM, INCLUDING REVISING THE USER INTERFACE, FEATURES, AND FUNCTIONALITY OF THE SERVICES AS PART OF SUCH CHANGES TO THE SERVICES DURING THE TERM OR REVISE THE DOCUMENTATION DURING THE TERM ON REASONABLE NOTIFICATION TO THE CUSTOMER (DIRECTLY OR VIA THE PARTNER AUSTRALIA). In each case, where the change is expected to have a material adverse impact on Customers, ConnectWise will communicate that and endeavour to minimise such adverse impacts to the extent reasonably practicable to do so and provide a right of Customer to terminate the Services without payment of any early termination charges.

6.6 User Restrictions. Customer will not, and will not encourage or permit any User or other Person to: (a) use the Platform, including the Services, in any manner or for any purpose other than as expressly permitted by the Agreement; (b) access or use the Platform in a way intended to avoid incurring fees to be paid to ConnectWise pursuant to the Agreement and in breach of it; (c) upload, post or store any content that infringes the rights of any Person or unlawfully contains hate speech, promotes or encourages violence or otherwise violates ConnectWise policy in relation to the same which has been provided to the Customer; (d) access or use the Platform in any way that violates the Agreement or any applicable laws, rules, or regulations; (e) modify, alter, tamper with, repair or otherwise create derivative works of any ConnectWise software, technology, content or infringe any Intellectual Property Rights of ConnectWise included in or used to provide the Platform; (f) reverse engineer, disassemble or decompile the Platform or any software or technology of ConnectWise included in or used to provide the Services; or (g) attempt to discover or recreate the Platform or any software, technology or intellectual property of ConnectWise for any purposes other than to perform Customer's obligations under the Agreement.

6.7 Customer responsible for Third Party Products and Services. Except as otherwise expressly provided under this Agreement, Customer is solely responsible for obtaining and maintaining, at its sole cost and expense, hardware, equipment, software and services required to access or use any of the Partner Offering, the Platform and any Provider Offering. Customer must obtain and maintain, and pay all charges, taxes and other costs and fees related to, internet access, telephone, computer, and other equipment, and any communications or other charges incurred by Customer to access and use the Platform.

6.8 Customer Responsibility for Other Parties. Customer is responsible for any action that it permits, assists or facilitates any of its affiliates, officers, directors, employees, contractors, representatives, agents, or Users (each, a "**Customer Party**" and collectively, "**Customer Parties**") to take related to the Agreement, the Order Data, Customer Data, the use of any Partner Offerings, or the use of the Platform. Customer will ensure that all Customer Parties comply with Customer's obligations under the Agreement.

6.9 Customer Notification of Unauthorized Use. In the event that Customer becomes aware of any unauthorized use by any third party that obtained access to the Platform directly or indirectly through Customer, Customer will promptly notify ConnectWise through the Partner Australia or via email to [support@ConnectWise.com](mailto:support@ConnectWise.com), take all steps necessary to terminate such unauthorized use and will provide ConnectWise such cooperation and assistance as reasonably requested by ConnectWise or the Partner Australia in connection with ConnectWise' actions to stop or prevent unauthorized use of the Platform.



6.10 Limited Use by Customer of the Platform. Customer's access to the Platform shall be limited to the purpose of using and receiving the Services for Customer's internal use. Customer may not access and use the Platform for commercial purposes or for the purpose of developing (or intending to develop) a product or service that contains substantially similar capabilities or functionalities as, or that otherwise competes with the Services.

6.11 Customer responsible for Account Credentials. Customer is responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user IDs or other credentials and login information (collectively, "**Account Credentials**") that have been provided to Customer or that are generated in connection with Customer's use of the Platform. Customer will not disclose or make available Account Credentials other than to authorized Users, if applicable, and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Account Credentials or the Platform. Customer is responsible for all activities of Customer and Users that occur in connection with the Account Credentials.

6.12 Customer responsible for own costs for Downtime. GIVEN CONNECTWISE'S RELIANCE ON THIRD PARTY TECHNOLOGY PROVIDERS SUCH AS TELECOMMUNICATIONS OPERATORS AND OTHERS OUTSIDE OF CONNECTWISE'S CONTROL AND GIVEN THE NEED FOR ONGOING MAINTENANCE, CHANGES OR IMPROVEMENTS IN ACCORDANCE WITH INDUSTRY PRACTICE, CUSTOMER ACKNOWLEDGES THAT ACCESS TO THE PLATFORM MAY BE AT TIMES LIMITED, OR THE PLATFORM MAY BE AT TIMES UNAVAILABLE, FOR THE DURATION OF ANY SCHEDULED OR EMERGENCY DOWNTIME, OR DUE TO OTHER CAUSES OUTSIDE OF THE REASONABLE CONTROL OF CONNECTWISE, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES, MAINTENANCE, UPGRADES OR OTHER INTERRUPTION, WHETHER AFFECTING CONNECTWISE, THE PARTNER AUSTRALIA OR A PROVIDER. CONNECTWISE SHALL MAKE REASONABLE COMMERCIAL EFFORTS TO PROVIDE ADVANCE WARNING OF THESE WHERE PRACTICABLE AND ENDEAVOUR TO MINIMISE THEIR ADVERSE IMPACT. CUSTOMER IS RESPONSIBLE FOR ITS OWN PLANNING AND MANAGEMENT AND COSTS DURING SUCH DOWNTIMES AND IS NOT ENTITLED TO COMPENSATION FOR SUCH INTERRUPTIONS EXCEPT TO THE EXTENT ONLY WHERE CONNECTWISE IS IN BREACH OF ITS OBLIGATIONS UNDER THE AGREEMENT AND SUCH BREACH CAUSED SUCH DOWNTIME.

## **7. ConnectWise Suspension or Termination of Access.**

ConnectWise may, acting reasonably, limit, suspend or terminate access to the Platform or Services in the following circumstances: (a) ConnectWise reasonably determines that the Platform is being used by Partner Australia on Customer's behalf or Customer or Users in violation of applicable federal, state or local law or regulations, the Agreement, or any ConnectWise policy provided in advance by ConnectWise to Customer relevant to the same; (b) ConnectWise reasonably determines that the Platform is being used by any of them in an unauthorized or fraudulent manner or that Customer (or the Partner Australia on Customer's behalf) has submitted fraudulent or material inaccurate information to ConnectWise, a Provider or the Partner Australia; (c) ConnectWise reasonably determines that Customer's use of the Platform (or the Partner Australia's use on Customer's behalf) adversely and materially affects ConnectWise's equipment or service to others; (d) ConnectWise is prohibited by an order of a court or other governmental agency from providing the Services; (e) of a denial of service attack or any other event which ConnectWise reasonably determines may create a risk to the Services, the Platform, to Customer or to Partner Australia, Customers, Users or any other customers; (f) of a security incident or imminent security risk or threat that impacts the Services or Platform, or the security of Order Data or Customer Data; or (g) the Partner Australia's failure to pay ConnectWise any Fees applicable to Customer's use of the Platform, provided that in such event ConnectWise will notify Customer and offer to continue providing the Services to Customer if Customer pays the outstanding and any ongoing Fees payable by

the relevant Partner Australia to ConnectWise. Customer (rather than ConnectWise) is responsible for its own costs of such limitation, suspension or termination pursuant to this Section 7, except to the extent caused by the breach, mistake, fraud, negligence or wilful misconduct of ConnectWise or its employees, officers, contractors or agents.

## **8. Fees.**

Customer acknowledges that all fees, costs and expenses due and payable by Customer to the relevant Partner Australia or ConnectWise (where Partner Australia has not paid ConnectWise for them) for the Services (“Fees”) and corresponding payment terms and conditions are established between Customer and the relevant Partner Australia as set out in the applicable Partner Agreement between Customer and Partner Australia and are independent of any amounts due and owing from the Partner Australia to ConnectWise with respect to such Services.

CUSTOMER OR PARTNER AUSTRALIA (RATHER THAN CONNECTWISE) ARE RESPONSIBLE FOR ANY DISPUTES ARISING OUT OF OR RELATED TO THE INVOICING, BILLING, COLLECTION, PAYMENT OR NON-PAYMENT OF ANY AMOUNTS PAID OR OWED AS BETWEEN CUSTOMER AND PARTNER AUSTRALIA UNDER THE PARTNER AGREEMENT.

CUSTOMER ACKNOWLEDGES THAT (A) IF A PARTNER AUSTRALIA FAILS TO PAY ANY FEES PAYABLE TO CONNECTWISE FOR THE SERVICES PROVIDED TO CUSTOMER, CONNECTWISE WILL NOTIFY CUSTOMER AND OFFER TO CONTINUE PROVIDING THE SERVICES TO CUSTOMER WHERE CUSTOMER PAYS THE OUTSTANDING AND ANY ONGOING FEES NOT PAID BY THE RELEVANT PARTNER AUSTRALIA TO CONNECTWISE FOR THE SERVICES PROVIDED TO CUSTOMER, (B) IF CUSTOMER ACCEPTS CONNECTWISE’S OFFER, CONNECTWISE HAS THE RIGHT TO TAKE ACTION AGAINST CUSTOMER FOR ANY SUBSEQUENT DELINQUENT PAYMENTS OF ANY AMOUNTS THAT ARE DUE AND PAYABLE TO CONNECTWISE ARISING OUT OF THE AGREEMENT OR FOR THE SERVICES; AND (C) SUCH ACTION, INCLUDING ANY CONNECTWISE RIGHTS TO SUSPEND OR TERMINATE THE SERVICES OR AGREEMENT IN ACCORDANCE WITH SECTION 7 OF THESE CONNECTWISE CLOUD BACKUP AND CONNECTWISE SAAS SECURITY CUSTOMER TERMS & CONDITIONS AUSTRALIA, AS DIRECTLY BETWEEN CONNECTWISE AND CUSTOMER SHALL BE WITHOUT REGARD AS TO WHETHER CUSTOMER HAS PAID THE PARTNER AUSTRALIA FOR SUCH SERVICES.

## **9. Representations and Warranties; Disclaimers of ConnectWise’s Liability.**

9.1 Mutual Warranties. Each Party represents and warrants that: (a) it is validly existing and in good standing under the laws of its country or state of incorporation; (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement; (c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement will not result in its breach of or default under any agreement or arrangement by which it is bound; (d) the Person entering into this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement; and (e) this Agreement is valid, binding and enforceable against it in accordance with its terms.

9.2 ConnectWise Warranties. CUSTOMER ACKNOWLEDGES THAT THE SERVICES AND THE ASSOCIATED FEES AND PRICES ARE CALCULATED ON A COMMERCIAL BASIS AND ARE COMMERCIALY DEPENDENT ON THE WARRANTY AND LIMITATIONS OF LIABILITY REGIME SET OUT IN THIS SECTION 9.2 AND SECTION 10.

CONNECTWISE ACCEPTS LIABILITY TO THE EXTENT ARISING FROM BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS AND NOTHING IN THIS SECTION 9.2 OR THE AGREEMENT WILL OR INTENDS TO MODIFY, RESTRICT OR EXCLUDE ANY RIGHTS, REMEDIES, WARRANTIES OR GUARANTEES PROVIDED TO CUSTOMER WHICH CANNOT BE LAWFULLY MODIFIED, RESTRICTED OR EXCLUDED UNDER APPLICABLE LAW INCLUDING THE AUSTRALIAN CONSUMER LAW (SEE SECTION 9.3 BELOW).

SUBJECT TO THE PREVIOUS SENTENCE, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND CONNECTWISE AND ITS AFFILIATES MAKE NO AND DISCLAIM OTHER WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE PLATFORM INCLUDING ANY (A) WARRANTIES OF MERCHANTABILITY, (B) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY SPECIFIC PURPOSE, (C) WARRANTY THAT THE PLATFORM WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE ORDER DATA OR CUSTOMER DATA WILL NOT BE LOST OR DAMAGED, (D) WARRANTIES THAT THE CONNECTWISE API OR ANY OTHER CONNECTWISE PRODUCTS OR SERVICES PROVIDED UNDER THE AGREEMENT WILL MEET ANY OF CUSTOMER'S SPECIFIC REQUIREMENTS OR THAT USE OF SUCH CONNECTWISE API OR OTHER PRODUCTS OR SERVICES WILL BE ERROR-FREE, UNINTERRUPTED, VIRUS-FREE OR SECURE OR (E) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE.

TO THE EXTENT THAT CONNECTWISE MAY AS A MATTER OF APPLICABLE LAW DISCLAIM OR LIMIT ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH LAW AND FOR ANY LIABILITY WHICH CONNECTWISE CANNOT LAWFULLY EXCLUDE, CONNECTWISE'S LIABILITY IS LIMITED TO CONNECTWISE'S CHOICE OF RE-SUPPLYING, OR PAYING THE COST OF RE-SUPPLYING, AFFECTED SERVICES AND REPAIRING, REPLACING, OR PAYING THE COST OF REPAIRING OR REPLACING, AFFECTED GOODS.

**9.3 Consumer Guarantees Required by Law.** Notwithstanding anything to the contrary in the Agreement, the following provisions shall apply if Customer is a consumer or a small business for the purposes of the Australian Consumer Law (as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth) ("**ACL**")) and only to the extent the Australian Consumer Law applies to Customer. In addition to other rights and remedies Customer may have at law and under the Agreement: (a) If Customer is a consumer or small business for the purposes of the Australian Consumer Law, the goods and services of ConnectWise come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with services, Customer is entitled to cancel its Services order; and to a refund for the unused portion, or to compensation for its reduced value. Customer is also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or services does not amount to a major failure, Customer is entitled to have the failure rectified in a reasonable time. If this is not done Customer is entitled to a refund for the goods and to cancel the service order and obtain a refund of any unused portion of the service. Customer is entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or services. (b) Notwithstanding sub-Section (a), unless the goods or services were of a kind ordinarily acquired for personal, domestic or household use or consumption, ConnectWise's liability for a breach of the consumer guarantees is limited (at its option) to: (i) for services: resupply of the services; or payment for the cost of having the services supplied again; or (ii) for goods: replacing the goods, repairing the goods, paying the cost of replacing the goods or acquiring equivalent goods or payment of having the goods repaired. Where applicable, the New Zealand Consumer Guarantees Act 1993 may require that certain guarantees must be given by ConnectWise to Customer in relation to the supply by ConnectWise of goods or services to Customer and acquired by the Customer in trade in terms of sections 2 and 43 of the New Zealand Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer (directly or via the Partner Australia), and the Customer agrees and acknowledges that it is fair and reasonable, in all circumstances, for the Customer to be bound by the terms set out in this Section 9.3.

## **10. Limitation of Liability.**

CUSTOMER ACKNOWLEDGES THAT THE SERVICES AND THE ASSOCIATED FEES AND PRICES ARE CALCULATED ON A COMMERCIAL BASIS AND ARE COMMERCIALY DEPENDENT ON THE WARRANTY AND LIMITATIONS OF LIABILITY REGIME SET OUT IN THIS SECTION 10 AND SECTION 9.

SUBJECT TO SECTION 9 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY IS LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, INVESTMENTS, EXPENDITURES, OR ANY INVESTMENTS OR COMMITMENTS UNDERTAKEN IN RELIANCE ON THIS AGREEMENT, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (EXCLUDING FEES UNDER THE AGREEMENT) IN EACH CASE EXCEPT TO THE EXTENT CAUSED BY ITS OWN BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OR OF ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS.

SUBJECT TO SECTION 9 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONNECTWISE WILL NOT BE LIABLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SERVICES INCLUDING AS A RESULT OF (I) THE TERMINATION OR SUSPENSION OF AN ORDER, THE PARTNER AGREEMENT OR ANY PROVIDER AGREEMENT, OR (II) OF CUSTOMER'S USE OF OR ACCESS TO ANY PARTNER OFFERINGS OR PROVIDER OFFERINGS, OR (III) ANY DOWNTIME AFFECTING ALL OR ANY PORTION OF THE PLATFORM, PARTNER OFFERINGS OR PROVIDER OFFERINGS FOR ANY REASON INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) ERRORS OR OMISSIONS BY CUSTOMER, THE PARTNER AUSTRALIA OR ANY PROVIDER, (C) CONNECTWISE'S INABILITY TO PERFORM THE SERVICES DUE TO LIMITATIONS IMPOSED BY A PROVIDER, OR CUSTOMER'S SYSTEMS OR ARCHITECTURE; (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE OR LOSS OF ANY ORDER DATA OR CUSTOMER DATA OR OTHER DATA IN EACH CASE IN ACCORDANCE WITH THIS AGREEMENT. NOTHING IN THE PRIOR SENTENCE SHALL OR INTENDS TO LIMIT ANY CONNECTWISE LIABILITY TO THE EXTENT CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS.

SUBJECT TO SECTION 9 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONNECTWISE'S AGGREGATE LIABILITY FOR ANY CLAIM OF CUSTOMER UNDER THE AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER ITS ORDER FOR THE SERVICES GIVING RISE TO THE LIABILITY FOR THE CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

## **11. Indemnification.**

11.1 General. Customer acknowledges that ConnectWise may not have control over a Partner Australia's or a Customer's actions and their respective use of the Services or Customer Data except where in the possession and control of ConnectWise. CUSTOMER MUST DEFEND, INDEMNIFY AND HOLD HARMLESS CONNECTWISE AND ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "**CONNECTWISE INDEMNITEES**") FROM AND AGAINST ANY AND ALL ACTUAL OR THREATENED CLAIMS (INCLUDING THIRD-PARTY CLAIMS), SUITS, ACTIONS, PROCEEDINGS (AT LAW OR IN EQUITY), CLAIMS (GROUNDLESS OR OTHERWISE), DAMAGES, PAYMENTS, DEFICIENCIES, FINES, JUDGMENTS, SETTLEMENTS, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, COSTS, PENALTIES, INTEREST AND DISBURSEMENTS) (COLLECTIVELY, "**LIABILITIES**") AGAINST ANY CONNECTWISE INDEMNITEE RESULTING FROM OR ARISING IN CONNECTION WITH: (A) ANY BREACH BY CUSTOMER OF THE AGREEMENT, A PROVIDER AGREEMENT, PARTNER AGREEMENT OR OTHER AGREEMENT TO WHICH CUSTOMER OR A CUSTOMER PARTY IS A PARTY TO; (B) CUSTOMER'S

USE OR A CUSTOMER PARTY'S USE OF ANY PROVIDER OFFERINGS OR PARTNER OFFERINGS; (C) ANY VIOLATION OF APPLICABLE LAW BY CUSTOMER OR ANY CUSTOMER PARTY; (D) ANY COLLECTION, USE, OR DISCLOSURE BY CONNECTWISE OF ANY ORDER DATA, OR CUSTOMER DATA OR THE COMBINATION OF SUCH DATA WITH OTHER APPLICATIONS, CONTENT OR PROCESSES BY CONNECTWISE IN ACCORDANCE WITH THE AGREEMENT OR ANY CLAIM THAT ANY SUCH DATA IS INFRINGING, MISAPPROPRIATING OR OTHERWISE VIOLATING THE RIGHTS OF ANY THIRD PARTY; (E) THE NEGLIGENCE OR WILFUL MISCONDUCT OF CUSTOMER OR ANY CUSTOMER PARTY; OR (F) CUSTOMER'S FAILURE TO OBTAIN ANY REQUIRED CONSENTS OR AUTHORIZATIONS FROM USERS AS REQUIRED IN SECTION 2.2 OF THESE CONNECTWISE CLOUD BACKUP AND CONNECTWISE SAAS SECURITY CUSTOMER TERMS & CONDITIONS AUSTRALIA. The indemnity set out in the previous sentence does not apply to the extent arising from or caused by the breach, mistake, fraud, negligence or wilful misconduct of ConnectWise or its employees, officers, contractors or agents.

11.2 Indemnity Process. ConnectWise will notify Customer (directly, or via the applicable Partner Australia) of any claim which is the subject of the indemnification obligations of Customer set out in the Agreement. Provided that Customer promptly investigates and defends any such claim, Customer will have control over the defense and settlement of it at Customer's sole cost and expense except that CUSTOMER WILL NOT SETTLE OR COMPROMISE ANY CLAIM IN A MANNER THAT DOES NOT FULLY RELEASE CONNECTWISE FROM SUCH CLAIM OR RESULTS IN A RESTRICTION ON OR ADMISSION BY CONNECTWISE OR SUBJECTS CONNECTWISE TO ANY ADDITIONAL OBLIGATIONS WITHOUT CONNECTWISE'S PRIOR CONSENT (NOT TO BE UNREASONABLY WITHHELD). In the event that ConnectWise reasonably determines that Customer has failed to promptly investigate or rigorously defend any claim for which Customer has an obligation to indemnify and ConnectWise is not the cause of such failure, ConnectWise may defend and settle such claim at Customer's cost and expense where Customer's failure to defend any such claim has actual or threatened detrimental effects on ConnectWise.

## **12. Term; Termination; Effect of Termination.**

12.1 Term. The Agreement will commence on the Effective Date and continue in effect as set forth in the applicable Order (the "Term"), unless terminated earlier in accordance with the terms of the Agreement.

12.2 Termination. EITHER PARTY MAY TERMINATE THE AGREEMENT FOR ANY OR NO REASON UPON PRIOR WRITTEN NOTICE OF AT LEAST FIVE (5) DAYS TO THE OTHER PARTY (DIRECTLY OR VIA THE PARTNER AUSTRALIA). Orders will be terminated automatically, if suspended pursuant to the terms of the Agreement and the cause for such suspension is not cured within ninety (90) days. In the event of termination under this Section 12.2 by ConnectWise for any reason other than for Customer's material breach of this Agreement, ConnectWise will (a) complete all Services (other than subscription-based Services) under Orders received and accepted prior to such termination date; and (b) perform all subscription-based Services under Orders received and accepted prior to such termination date for the duration of the then-current subscription term set forth in the applicable Order (without renewal) or a period of ninety (90) days (whichever is shorter). REMOVAL OF CONNECTWISE BY CUSTOMER OR BY PARTNER AUSTRALIA ON CUSTOMER'S BEHALF AS CUSTOMER'S DELEGATED ADMINISTRATOR WITH RESPECT TO A PARTNER OFFERING OR PROVIDER OFFERING WILL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT BY CUSTOMER.

12.3 Effect of Termination. Upon any expiration or termination of the Agreement for any reason, (a) any and all liabilities accrued prior to the date of such expiration or termination will survive (including the payment of Fees for Services ordered), (b) save as set out in the Agreement (i) each Party shall promptly destroy all copies of the other Party's Confidential Information in its possession or control, and (ii) Customer must discontinue use of the Platform and uninstall any software client or other code provided by ConnectWise, (c) ConnectWise may retain Order Data for its own

records in accordance with its data retention policy and the [ConnectWise Privacy Policy](#), and (d) unless otherwise specified in the [ConnectWise Data Processing Addendum](#) or other applicable law: (i) Customer Data will be deleted at Customer's request, or as required by Customer's data retention policy (of which Customer (directly or via the Partner Australia) has notified ConnectWise in writing); (ii) ConnectWise reserves the right to delete all Customer Data retrieved or received by ConnectWise, including, but not limited to, Customer Data in the Platform, in connection with a Backup or Migration Order at any time upon expiration or termination of this Agreement; and (iii) Customer Data retrieved or received by ConnectWise in connection with a Cloud Manager Order is retained only while there is an active connection to Customer's environment, and automatically deleted and purged when the connection to the applicable Provider Offering (e.g., SAAS, IAAS or PAAS) is removed. ConnectWise may also retain Customer Data as required by law or pursuant to a lawful subpoena or court order. Except in the case of Customer Data retrieved or received in connection with Cloud Manager, ConnectWise will use commercially reasonable efforts to inform Customer (directly or via the Partner Australia) prior to deleting Customer Data by means of a banner in the Customer Self-Service portal or via other channels.

The following sections will survive any expiration or termination of this Agreement: Sections 1, 3, 4, 8, 9, 10, 11, 12.3, and 13.

### **13. General Provisions.**

13.1 Entire Agreement. Except where expressly agreed otherwise in writing between the Parties, the Agreement and any other terms and conditions referenced in this Agreement and provided to and agreed by Customer in accordance with the Agreement (collectively, "**Additional Policies**") are the entire agreement of the Parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof.

13.2 Governing Law; Venue; Dispute Resolution. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Washington, without resort to its conflict of law provisions. As ConnectWise is an international company doing business in multiple jurisdictions, it has a legitimate business interest in not dealing with claims in multiple countries with different substantive and procedural laws. Accordingly, except where this would not be reasonably necessary to protect such interests, THE PARTIES AGREE THAT ANY ACTION AT LAW OR IN EQUITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE FILED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN SEATTLE, WASHINGTON, AND THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT. Notwithstanding the foregoing, ConnectWise has the right, at its sole discretion, to bring any claim against the Customer in the court of the Partner Australia's or Customer's place of establishment. ConnectWise has an additional right to bring any claim against the Customer in the court of the Partner Australia's or Customer's place of establishment where it is not reasonably practicable for ConnectWise to bring such claim in the State of Washington or where ConnectWise requires urgent or injunctive relief against Customer. Customer agrees that money damages would be an inadequate remedy for ConnectWise for breach or threatened breach of ConnectWise's Intellectual Property Rights or ConnectWise's Confidential Information and ConnectWise is entitled to seek preliminary or injunctive relief (including an order prohibiting Customer from taking actions in breach of such) and specific performance. The Parties agree that there are no uniform contracting rules (as set out in the United Nations Convention on Contracts for the International Sale of Goods or the United States of America's Uniform Computer Information Transaction Act (UCITA)) applying to the Agreement.

13.3 Assignment. Neither the Agreement nor any right or duty under the Agreement may be transferred, assigned or delegated by Customer, by operation of law or otherwise, without the prior written consent of ConnectWise (not to be unreasonably withheld), and any attempted transfer, assignment or delegation without such consent will be void and without effect. ConnectWise may assign or novate the Agreement and any right or duty under the Agreement to an affiliate or other Person including by operation of law, change of control, merger, reorganization, or sale of stock or all or substantially all of ConnectWise's assets on prior notice of Customer provided that the Person to whom it is assigned agrees to perform all obligations under the Agreement and has sufficient financial capacity to perform its obligations under the Agreement (in which case Customer must undertake all actions ConnectWise reasonably requests to effect that assignment or novation, including signing any required documentation. The Agreement will be binding upon and will inure to the benefit of the Parties and their respective representatives, heirs, administrators, successors and permitted assigns.

13.4 Relationship of the Parties. Neither Party will, for any purpose, be or be deemed to be an employee, representative, owner, franchisee or partner of the other Party and, the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

13.5 References. Neither Party may disclose the specific terms of the Agreement or issue a public statement or press release regarding the Agreement without the prior consent of the other Party. ConnectWise may during the Term identify Customer as a customer or user of the Services and display Customer's logo and/or other branding materials on ConnectWise's website and other marketing materials.

13.6 Nonwaiver. The failure of a Party to insist upon or enforce strict performance of any of the provisions of the Agreement or to exercise any rights or remedies under the Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision, right or remedy in that or any other instance rather, the same will remain in full force and effect.

13.7 Severability. If any provision of the Agreement is invalid, illegal, or unenforceable by any rule of law or public policy, all other provisions of the Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by the Agreement is not affected in any manner adverse to any Party. Upon any determination that a provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify the Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated under the Agreement are fulfilled.

13.8 Notice. Except as otherwise provided in the Agreement, any notice, demand or communication required or permitted to be given by any provision of the Agreement will be deemed to have been sufficiently given or served for all purposes if: (a) delivered personally; (b) deposited with a pre-paid messenger, express or air courier or similar courier; or (c) transmitted by email or other communication equipment that transmits the notice to like equipment that receives and reproduces such notice. Notices will be addressed to a Party (or, in the case of Customer, to the Partner Australia) at the address or email address as set forth in an applicable Order. Notices will be deemed to have been received (i) in the case of personal delivery, upon receipt, (ii) in the case of messenger, express or air courier or similar courier, two days after being deposited, and (iii) in the case of email or other communication equipment, the day of receipt as evidenced by an email or similar communication equipment confirmation statement. A Party may change its contact information by notice in accordance with this Section 13.8.

13.9 Force Majeure. Except for any payment obligations under the Agreement, in the event that a Party is delayed or prevented from performing any of its obligations under the Agreement due to any cause beyond its reasonable control, its performance will be excused and the time for performance will be extended for the period of delay or inability to perform to the extent only due to such occurrence. The delayed Party will endeavour to (a) provide the other Party (directly or via the Partner Australia) with prompt notice of the nature and expected duration of the event, (b) use commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provide periodic notice of relevant developments, and (d) provide notice of the end of such event.

13.10 Modifications to the ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia and other changes. Except for the types of changes set out in this Section 13.10 or Section 6.5 (Customer agreement to ConnectWise changes to Services during the Term), the Agreement may only be varied by written agreement. Customer acknowledges that ConnectWise's provision of the Services, the rates for Fees for the Services, the Services and the terms of the Agreement are subject to changes in the industry (such as industry best practices or new technology and processes), changes in applicable law (including applicable industry codes, rules, standards and regulations), ConnectWise's ordinary operations and processes (such as new services, products, functions and features) and the actions of third party suppliers and service providers engaged by ConnectWise in connection with the Services and ConnectWise may not have control or foreseeability of these matters. In addition to the changes that may be made by ConnectWise in accordance with Section 6.5 (Customer agreement to ConnectWise changes to Services during the Term), CONNECTWISE MAY CHANGE THESE CONNECTWISE CLOUD BACKUP AND CONNECTWISE SAAS SECURITY CUSTOMER TERMS & CONDITIONS AUSTRALIA, THE SERVICES, THE PLATFORM, THE CONNECTWISE POLICIES, THE RATES FOR FEES AND CONNECTWISE'S OPERATIONS AND PROCESSES, OTHER SERVICES, PRODUCTS, FUNCTIONS AND FEATURES OR THIRD PARTY SUPPLIERS AND SERVICE PROVIDERS ENGAGED BY CONNECTWISE IN CONNECTION WITH THE SERVICES. When making such changes, ConnectWise will act reasonably, including giving Customer reasonable advance notice of the changes to the extent it is reasonably practicable to do so. ConnectWise may give Customer shorter advance notice (or no notice) of a change if it is reasonable in order for ConnectWise to manage a material and immediate risk or issue. ConnectWise may modify, limit, suspend or cancel the relevant Services to the extent it is reasonably necessary to protect its legitimate business interests and will give Customer as much notice as reasonably practicable in the circumstances. For changes where ConnectWise decide, or are required, to exit a Service from the market (or part of the market), ConnectWise will give Customer prior reasonable notice and inform Customer of the potential impacts and may cancel the Service Customer acknowledges and agrees that ConnectWise may provide its notices of changes under this Section by notifying in writing or posting the details on the ConnectWise Site. Customer may accept such change through the ConnectWise provided mechanism for the acceptance such as a click-through confirmation or acceptance button. BY CONTINUING TO USE OR RECEIVE THE SERVICES AFTER SUCH EFFECTIVE DATE, CUSTOMER IS BOUND BY SUCH CHANGES. CUSTOMER AGREES TO CHECK THE CONNECTWISE SITE REGULARLY FOR CHANGES. If Customer disagrees with such modifications before the effective date, Customer may terminate this Agreement in accordance with Section 12 of these ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions Australia.

13.11 Audit. During the Term, ConnectWise will have the right to audit the records of Customer relating to Customer's use of the Services to ensure that Customer is compliant with the terms and conditions of the Agreement, including the calculation of Fees.

13.12 Remedies Not Exclusive. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each remedy shall be cumulative and shall be in addition to every other remedy



given under the Agreement or at law. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

13.13 GST. Unless expressed to the contrary in the Agreement, all prices and amounts (including any monetary or non-monetary consideration required to be provided under this agreement) are exclusive of GST. If GST is payable in respect of a supply made under or in relation to this agreement, the recipient must pay to the supplier an amount ("GST Amount") equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as any consideration for the supply, provided the supplier has given the recipient a tax invoice. Without limiting the prior sentence, if a party ("payer") is required to reimburse another party ("payee") for a cost (eg, if the payer is obliged to pay the payee's legal costs), or a payer is obliged to make a payment to a payee under an indemnity, the reimbursement or indemnity is for the payee's cost inclusive of GST but excludes any GST component of the cost for which the payee is entitled to claim an input tax credit. If an adjustment event arises in respect of a taxable supply, the GST Amount payable by a recipient will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier, or by the supplier to the recipient, as the case requires. Unless otherwise provided in the Agreement, (a) terms used in this Section 13.13 have the meanings given to those terms by the GST Act; (b) a reference to a liability of a Party to pay GST or an entitlement of a Party to input tax credits includes a reference to GST payable by, or an input tax credit entitlement of, the representative member of a GST group to which that party is a member; (c) where required to give practical effect to this Section 13.13, a recipient includes any Party to the Agreement that is required to provide consideration and a supplier includes any party to whom consideration must be provided (even if there is never any supply); (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as if it were a separate supply; and (e) this Section 13.13 is subject to any other specific agreement regarding the payment of GST on supplies. "GST" has the meaning given by section 195-1 of the GST Act or any replacement or other relevant legislation and regulations. "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

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