

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

(formerly SkyKick Partner Terms & Conditions Australia)

Last updated: March 14, 2025

**To avoid any confusion or doubt: These terms & conditions solely apply to Partners based in Australia. If a Partner is based outside of Australia, the general ConnectWise Cloud Backup and ConnectWise SaaS Security Partner 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 that Partner.**

These Partner Terms & Conditions for Australia (the “**ConnectWise Cloud Backup and SAAS Security Manager Partner Terms & Conditions Australia**”) are entered into between the IT solutions provider based in Australia and authorized by ConnectWise to resell ConnectWise Cloud Backup and SAAS Security Manager services to a customer in Australia (“**Partner Australia**”), and/or to use and manage ConnectWise Cloud Backup and SAAS Security Manager Services on behalf of a customer (“**Customer**”) and are entered into between the Partner Australia and ConnectWise S-K, LLC or its affiliates (each “**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 Partner Australia are sometimes referred to individually as a “**Party**” and together as the “**Parties**”.

**Purpose of these ConnectWise Cloud Backup and SAAS Security Manager Partner Terms & Conditions Australia:** These ConnectWise Cloud Backup and SAAS Security Manager Partner Terms & Conditions for Australia apply to each Partner Australia operating in Australia authorized by ConnectWise to resell ConnectWise Cloud Backup and SAAS Security Manager Services to Customers or to use and manage Cloud Backup and SAAS Security Manager Services on behalf of Customers in connection with Partner Australia’s own products and services (the “**Partner Offerings**”) and apply, together with the ConnectWise Cloud Backup and SAAS Security Manager Customer Terms & Conditions for Australia, to any and all orders for Services placed by Partner Australia on behalf of a Customer with ConnectWise via ConnectWise’s Partner Portal, the API, through an electronic marketplace or customer portal hosted by Partner (“**Order**”).

**Where this document fits into ConnectWise’s agreement with Partner:** All marketing, promotion, resale, management and use of the Services, and all other access, use and interaction with the Platform by Partner Australia or any Customer purchasing through Partner Australia are subject to and expressly conditioned on Partner Australia’s acceptance of these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia, the Order and any

other written or electronic terms executed by ConnectWise and Partner Australia or otherwise presented by ConnectWise and accepted by Partner Australia that reference or are executed pursuant to these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia (all documents collectively being referred to in this document as the "**Agreement**").

**When the Agreement applies:** The effective date means the date that Partner Australia first markets, promotes, resells, manages or uses the Services, otherwise accesses, uses or interacts with the Platform, or otherwise accepts these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia (which Partner Australia may accept through the ConnectWise provided mechanism for the acceptance such as a click-through confirmation or acceptance button) or submits an Order referencing these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia to ConnectWise on Customer's behalf which is accepted by ConnectWise ("**Effective Date**"). By using or receiving the Services, Partner Australia agrees to all terms and conditions of the Agreement. If Partner Australia does not agree to all terms and conditions of the Agreement then Partner Australia and its customers are 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. Partner Australia wishes be granted the right to resell, manage and use the Services to/on behalf of Customers in connection with the Partner Offerings, which are provided for the Customer's own business operations and not for further re-sale, redistribution or servicing of third parties.

C. Partner Australia desires to engage ConnectWise to provide the Services for use in connection with the Partner Offerings and Partner Australia shall obtain the authorization 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 wishes to permit Partner Australia to resell, manage and use the Services, subject 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 Partner 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 the 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. ConnectWise's Confidential Information includes, but is not limited to, the details of any Order including pricing terms, 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, 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**" means any Person based in Australia that purchases Services through Partner Australia in Australia for use in connection with a Partner Offering.

1.3 "**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.

1.4 "**Customer Terms & Conditions Australia**" means the ConnectWise Cloud Backup and ConnectWise SAAS Security Customer Terms & Conditions specific to the Australian market located at <https://www.connectwise.com/company/legal>, together with any other any terms and conditions governing the Services or ConnectWise's direct relationship with the Customer provided by ConnectWise on the ConnectWise Site or to Partner Australia from time to time and notified in advance or mutually agreed.

1.5 "**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.

1.6 "**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 the Partner Australia from time to time.

1.7 "**Effective Date**" has the meaning given in Background.

1.8 "**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.

1.9 "**Order**" has the meaning given in Background.

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

1.11 "**Partner Agreement**" means the agreement between Partner Australia and each Customer that governs Partner's provision of the Partner Offering(s) procured by the Customer.

- 1.12 “**Partner Portal**” means the portion of the Platform designed specifically and solely for use by Partner Australia to submit Orders and facilitate Partner Australia’s resale, management and use of the Services.
- 1.13 “**Person**” means an individual, partnership, limited liability company, association, corporation or other entity.
- 1.14 “**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.
- 1.15 “**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.
- 1.16 “**Provider Agreement**” means an agreement between the Customer and a Provider pursuant to which the Provider makes the Provider Offerings available to the Customer.
- 1.17 “**Provider Offering**” means any products or services offered by a Provider.
- 1.18 “**Schedule**” means a schedule to these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia.
- 1.19 “**API**” means each of the application programming interfaces (or, APIs) made available by ConnectWise via the Platform, and all related Documentation, code, and other materials, as updated from time to time.
- 1.20 “**ConnectWise Marks**” means the ConnectWise name, trademarks, service marks, logos and other words, symbols and designs that identify ConnectWise.
- 1.21 “**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, APIs, ConnectWise UI and related Documentation.
- 1.22 “**ConnectWise Site**” means the ConnectWise website at [www.ConnectWise.com](http://www.ConnectWise.com), or any successor website thereto.
- 1.23 “**ConnectWise UI**” means the user interface or other interaction models, whether white-labelled or ConnectWise-branded, that ConnectWise makes available to Partner Australia to present to Customers.
- 1.24 “**User**” means any employee, contractor, delegate, or agent of Partner Australia or Customer, or other Person who is authorized by Partner Australia or 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. Partner's Appointment and Responsibilities.**

2.1 Non-Exclusive Appointment. Subject to the terms and conditions of this Agreement, ConnectWise appoints Partner Australia, and Partner Australia hereby accepts the appointment, as an agent of ConnectWise to market, promote, resell Services to Customers, and to manage and use the Services on behalf of Customers. The relationship created by the Agreement is non-exclusive in all respects. ConnectWise reserves the right at its sole discretion to appoint and remove other partners, resellers, distributors, or representatives in the sale of the Services, or to sell the Services to Customers directly.

2.2 Customer Terms & Conditions Australia. Prior to submitting any Order or utilizing a Service for the Customer or for the benefit of a Customer, Partner Australia shall obtain Customer's authorization to act on the Customer's behalf with respect to (i) the placement and management of Orders, and (ii) the use and management of the Services. In addition, Partner Australia shall require the Customer to review and accept the Customer Terms & Conditions Australia, and secure either (a) the Customer's acceptance of the Customer Terms & Conditions Australia, or (b) the requisite authority from the Customer to accept the Customer Terms & Conditions Australia on the Customer's behalf and to legally bind the Customer thereto. Only upon receipt of the necessary authorization, acceptance and authority may Partner Australia place any Order for any Customer or manage or use the Services on behalf of the Customer. By taking any such action, Partner Australia represents and warrants that it has obtained such authorization, acceptance, and authority from the Customer.

2.3 Partner Agreements. Partner Australia shall not in acting as agent of ConnectWise include in any Partner Agreement any term or provision that is inconsistent or conflicts with or which misrepresents the Documentation, the Agreement, or the Customer Terms & Conditions Australia.

2.4 Marketing and Promotion of the Services. Partner Australia shall use reasonably diligent efforts to market, promote and resell the Services. While ConnectWise may from time to time provide promotional and marketing materials to Partner Australia (the "ConnectWise Materials"), Partner Australia is solely responsible for the means, manner and method of its own performance under the Agreement or any Partner Agreement. Partner Australia may build its own marketing strategies and market the Services using commercially reasonable marketing concepts and channels (e.g., forums, blogs, social networks, personal or business websites, printed media, etc.); provided, however, that Partner Australia shall not (a) utilize any marketing methods that violate the Agreement; (b) infringe, dilute or otherwise violate the intellectual property rights of ConnectWise or any third parties; (c) misrepresent the Services or otherwise violate any applicable law, rule, regulation or order; or (d) include any representation or warranty that is inconsistent or conflicts with the Documentation, the Agreement or the Customer Terms & Conditions Australia.

2.5 Publicity. Neither Party may issue a public statement or press release regarding the Agreement without the prior written consent of the other Party. However, either Party may, during the Term (as defined below), identify that Partner Australia is an authorized partner of ConnectWise and display the other Party's name, trademarks, service marks, and/or logos on its website and in its marketing and advertising materials. All use by a Party of the other Party's name, trademarks, service marks and logos pursuant to the Agreement, and all goodwill arising out of such use, will inure to such other party's benefit, provided that nothing in this Section 2.5 acts to transfer to a Party any rights, title or interest in the name, trademarks, service marks and logos of the other Party.

2.6 Use of ConnectWise Marks. The ConnectWise Marks may not be included in, or as part of, Partner Australia's registered corporate name, any of its logos, or any of the Partner Offering or product names; and Partner Australia may not (i) create any derivative works of the ConnectWise Marks or use the ConnectWise Marks in a manner that creates or reasonably implies a sense of endorsement, sponsorship, or association with ConnectWise, (ii) otherwise use the ConnectWise Marks in a manner that can mislead, confuse, or deceive users of the Partner Offering, (iii) use the ConnectWise Marks for any purpose except as expressly authorized herein without ConnectWise's prior, written consent; or (iv) remove or alter any proprietary notices or ConnectWise Marks from the Platform.

2.7 Internal Use Prohibited. The Services are intended for use only by or on behalf of Customers. If Partner Australia wishes to use the Services for its own account, it must place an Order naming itself as the Customer and its use of the Services in that capacity will be subject to the Customer Terms & Conditions Australia and other terms and conditions applicable to Customers.

2.8 Distributor Relationship. If Partner Australia accesses and uses the Partner Portal pursuant to its relationship with a ConnectWise-approved third-party distributor ("**Approved Distributor**"), Partner Australia acknowledges that the terms and conditions of ConnectWise's applicable agreement with such Approved Distributor ("**Distributor Agreement**") may establish a different order process or different payment terms than those set out in the Agreement. To the extent of any conflict between Section 3 (Order Process; Partner Portal) and Section 4 (Fees; Payment) of the Agreement and any Distributor Agreement, the terms of such Distributor Agreement will govern. Partner Australia is responsible for contacting its Approved Distributor to obtain any information about any conflicting Order Process, Partner Portal, Fees or Payment before placing any Orders and with any questions regarding the Order Process and payment terms, including pricing applicable to its use of the Partner Portal. PARTNER AUSTRALIA (RATHER THAN CONNECTWISE) IS 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 ANY APPROVED DISTRIBUTOR AND PARTNER AUSTRALIA UNDER THE DISTRIBUTOR AGREEMENT OR THE RELATIONSHIP BETWEEN PARTNER AUSTRALIA AND ANY APPROVED DISTRIBUTOR.

### **3. Order Process; Partner Portal.**

3.1 Registration; Partner Portal. ConnectWise will provide Partner Australia with an account granting Partner Australia access to and use of the Partner Portal. Partner Australia is responsible for establishing credentials for each of its Users, maintaining the confidentiality of all account credentials and passwords, and for all activities that occur under Partner Australia's account. During the registration process for the Partner Portal, Partner Australia will provide certain information, including contact information, business qualifications (if applicable) and any other information required by ConnectWise ("**Portal Data**"). Partner Australia represents and warrants that (i) all information provided by it during the registration process is accurate and complete; and (ii) if registering on behalf of an entity or organization, Partner Australia is an authorized representative of such entity or organization with the authority to legally bind such entity or organization to the Agreement. IF CONNECTWISE REASONABLY DETERMINES THAT PARTNER AUSTRALIA HAS KNOWINGLY PROVIDED FALSE, MISLEADING, OR OTHERWISE INACCURATE INFORMATION TO CONNECTWISE WHICH CONNECTWISE HAS ASSESSED HAS AN ADVERSE IMPACT ON CONNECTWISE OR WHICH, IF KNOWN BY CONNECTWISE, CONNECTWISE WOULD NOT HAVE ENTERED INTO THE AGREEMENT OR CONTINUED ITS RELATIONSHIP WITH PARTNER AUSTRALIA, CONNECTWISE MAY TERMINATE THE AGREEMENT IMMEDIATELY UPON REASONABLE NOTICE TO PARTNER AUSTRALIA AND PARTNER AUSTRALIA SHALL CEASE HOLDING ITSELF OUT AS A PARTNER AUSTRALIA OF THE SERVICES.

3.2 Orders. From time to time during the Term, Partner Australia may order Services from ConnectWise for its use for the benefit of its customers, or on behalf of the Customers by submitting an Order via the Partner Portal or API. Any Orders received from Partner Australia by ConnectWise shall be deemed to have been authorized by both Partner Australia and the Customer. Such Order will include all required information to enable ConnectWise to perform the Services for the Customer as set forth in the Partner Portal.

3.3 Information. Partner Australia is responsible for providing complete and accurate information to ConnectWise with respect to all Customers in order for ConnectWise to make the Services available such Customers. Partner Australia acknowledges that ConnectWise will have access to all of the data and information provided by Partner Australia and the Customers. Failure to provide accurate and complete information about the Customer or Services required by the Customer, may result in a delay in ConnectWise's performance or cancellation of an Order if ConnectWise later reasonably determines that it is unable to provide the Services requested for such reason.

#### **4. Fees; Payment.**

4.1 Fees. Partner Australia will pay ConnectWise the fees for the Services in the amounts set out in the Order ("**Fees**"). Partner Australia acknowledges that ConnectWise's provision of the Services, and rates set out in the Order for the Services, 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 and the costs of third party suppliers and service providers incurred by ConnectWise in providing the Services and acknowledges that ConnectWise may not have control or foreseeability of these matters. PARTNER AUSTRALIA AGREES THAT CONNECTWISE MAY MODIFY THE FEES ON REASONABLE ADVANCE NOTICE FOR ANY SERVICES FROM TIME TO TIME WHERE IT IS REASONABLE FOR CONNECTWISE TO DO SO AND IN ACCORDANCE WITH THE CUSTOMER TERMS & CONDITIONS AUSTRALIA. The then-current Fees for the Services will be made available on the Partner Portal. Partner shall have full discretion to set its own prices for the sale of its own services to Customers.

4.2 Invoice Terms. Each Service is subject to a different invoicing schedule, as described in the applicable Order. Except as otherwise set out in an applicable Order, all Fees for Partner Australia's or Customer's purchase of Services shall be due and payable at the time Partner Australia receives an invoice in accordance with the relevant schedule from ConnectWise and the applicable payment term has expired. Notwithstanding the invoicing schedule, Partner Australia is obliged to pay all Fees upon submission of the Order. Partner Australia acknowledges that, upon placement of an Order by Partner Australia, ConnectWise will commence processing the Order internally and expend efforts, allocate resources and/or incur costs and expenses to fulfil such Order. ACCORDINGLY, WHERE AN ORDER IS CANCELLED BY PARTNER AUSTRALIA PRIOR TO THE COMPLETION AND/OR END OF THE ORDER, AND EXCEPT WHERE PARTNER AUSTRALIA HAS CANCELLED THE ORDER DUE TO THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS OR EXCEPT WHERE CONNECTWISE IS OBLIGED TO REFUND THE FEES UNDER APPLICABLE LAW OR UNDER THE CUSTOMER TERMS AND CONDITIONS AUSTRALIA, PARTNER AUSTRALIA WILL STILL BE OBLIGED TO PAY THE FEES FOR THAT ORDER TO CONNECTWISE AND ANY FEES ALREADY PAID BY PARTNER AUSTRALIA TO CONNECTWISE FOR THAT ORDER ARE NOT REFUNDABLE. In the event of any early termination of an Order or the Agreement, Partner Australia will pay all outstanding amounts due and payable in respect of that Order immediately upon the effective date of termination.

4.3 Payment Card Terms. Except as otherwise set out in an applicable Order, Partner Australia will pay ConnectWise any subscription-based Fees via Partner Australia's credit or debit card ("**Payment Card**") and will be charged on the date each invoice is issued by ConnectWise in accordance with the relevant schedule. By providing ConnectWise with

Payment Card information (including account number, expiration date, card verification code, and billing address), Partner Australia authorizes ConnectWise to charge such Payment Card for all subscription-based Fees that are due and payable. ConnectWise will initiate periodic charges to such Payment Card for all subscription-based Fees incurred during the Term. Partner Australia's authorization of such recurring charges will remain effective for the duration of the Term, unless Partner Australia notifies ConnectWise in writing that Partner Australia revokes such consent via the Partner Portal. PARTNER AUSTRALIA IS NOT ALLOWED TO CHANGE ITS PAYMENT PREFERENCES WITHOUT CONNECTWISE'S PRIOR ACCEPTANCE (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD). Partner Australia can submit a request to change its payment preferences via the Partner Portal. Partner Australia further authorizes ConnectWise to receive updated Payment Card account information from the issuer of the Payment Card. For all other forms of payment, payment is due within thirty (30) days from the invoice date or under payment terms set by Approved Distributor.

4.4 Disputed Invoices. If Partner Australia in good faith disputes any portion of an invoice, Partner Australia shall pay the undisputed portion of the invoice and submit written notice to ConnectWise regarding the disputed amount, which shall include documentation supporting the alleged billing error or other reason for the dispute (each such notice, a "**Fee Dispute Notice**"). Fee Dispute Notices must be submitted to ConnectWise within thirty (30) days from the date the invoice at issue is received by Partner Australia or the date that Partner Australia first becomes aware of the billing error or other reason for the dispute. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PARTNER AUSTRALIA WAIVES THE RIGHT TO DISPUTE ANY FEES NOT DISPUTED IN ACCORDANCE WITH THE PROCESS SET OUT IN THIS SECTION 4.4. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Partner Australia's delivery of the applicable Fee Dispute Notice.

4.5 Purchase Orders. In the event that Partner Australia requires a purchase order in order to pay invoices, it is Partner Australia's responsibility to input the purchase order number together with each Order and update the purchase order information as necessary. Partner Australia will submit any updated purchase order number at least five (5) business days in advance of the scheduled invoice date. Partner Australia will be responsible to pay all Fees based on the Services ordered or consumed, regardless of any omission, error or conflicting information in purchase order

4.6 Collection of Delinquent Accounts and Interest Payable or Overdue. Any amount not paid when due shall incur interest at the rate of 3% per month. In the event ConnectWise incurs any costs (including reasonable collections agency fees, attorneys' fees, and court costs) from efforts collecting overdue amounts from Partner Australia, Partner Australia agrees to reimburse such costs promptly upon demand in addition to payment of interest. IF ANY AMOUNT REMAINS UNPAID FOR A PERIOD OF FIVE (5) BUSINESS DAYS AFTER CONNECTWISE INFORMS PARTNER AUSTRALIA IN WRITING OF THE DELINQUENCY, CONNECTWISE MAY SUSPEND ALL SERVICES, INCLUDING ACCESS TO THE PARTNER PORTAL, UNTIL ALL AMOUNTS DUE ARE PAID IN FULL. Partner Australia acknowledges that ConnectWise has the additional right to take direct action against Customers for delinquent payment by Partner Australia of Fees that are due and payable from Partner Australia to ConnectWise arising out of the Services provided to such customer.

4.7 Taxes. All amounts payable are exclusive of applicable taxes and duties, including GST and applicable goods and services, value added or sales tax. Partner Australia will provide ConnectWise with any information requested by ConnectWise to determine whether ConnectWise is obligated to collect such taxes from Partner Australia, including Partner Australia's tax identification number. If Partner Australia is legally entitled to an exemption from any sales, use, goods and services or value added or similar transaction tax, Partner Australia is responsible for providing ConnectWise with legally-sufficient tax exemption certificates for each taxing jurisdiction. ConnectWise will apply the tax exemption certificates to charges under Partner Australia's account occurring after the date ConnectWise receives the tax



exemption certificates. If any deduction or withholding is required by applicable law to be made by Partner Australia from amounts payable to ConnectWise, Partner Australia will notify ConnectWise and will pay ConnectWise any additional amounts necessary to ensure that the net amount that ConnectWise receives, after any deduction and withholding has been made by Partner Australia, equals the amount ConnectWise would have received if no such deduction or withholding had been required. Additionally, Partner Australia will provide ConnectWise with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority. 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 (e.g., 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 4.7 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 4.7, 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 4.7 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).

4.8 Audit. During the Term, ConnectWise will have the right to audit the records of Partner Australia relating to Partner Australia's sale of the Services to Customers to ensure that Partner Australia is compliant with the terms and conditions of the Agreement, including the calculation of Fees in accordance with this Section 4.

## **5. Usage Data; Confidentiality; Security; Support and Data Protection.**

5.1 Usage Data. ConnectWise may collect, generate, use and store anonymous, pseudonymized or aggregate information regarding use of the Services ("**Usage Data**") solely for ConnectWise's business purposes (including, but not limited to, billing, enhancing the Services and creating new features, functionality and services). As between ConnectWise and Partner Australia, ConnectWise is the sole owner of the Usage Data.

5.2 Data Protection. ConnectWise will meet its obligations under the Data Protection Laws that apply to the Services and their provision by ConnectWise. The Parties agree to comply with the ConnectWise Cloud Backup and SAAS Security Data Processing Addendum and applicable Data Protection Law. As between ConnectWise and the Customer, ConnectWise is a "**processor**" (being the Person who Processes Personal Information for a data controller) and Customer is the "**controller**" (being the Person who determines the purpose and means of Processing Personal Information). As

between ConnectWise and the Partner Australia, ConnectWise is a controller. In case ConnectWise receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination to where ConnectWise has disclosed Customer Personal Information, 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 conventional international principles.

**5.3 Confidentiality.** Without limiting anything in Section 5.2, 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, or in connection with the Services. In addition, each Party: (a) will not reproduce such Confidential Information, in any form, except as required to accomplish its obligations or exercise its rights 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 who 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 the exceptions expressly stated in the Agreement.

**5.4 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.

**5.5 Support.** ConnectWise shall provide Partner Australia support regarding the Services in accordance with the terms set out in Schedule 1.

**6. Proprietary Rights.** As between ConnectWise and Partner Australia, other than the limited rights expressly granted to Partner Australia under the 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. Partner Australia 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. Save to the extent required to enforce Partner Australia's own legal rights under applicable law, Partner Australia 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.

**7. ConnectWise Services.**

7.1 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.

7.2 Access and Use of the Platform. During the Term, ConnectWise grants to Partner Australia a limited, non-exclusive, non-transferable right to access and use, and permit and enable its Customers and its or their 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 Partner Australia's resale, management or use of Services provided under this Agreement, strictly for its Customers' 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.

## **8. API License.**

8.1 License. Subject to the in the Agreement, ConnectWise hereby grants Partner Australia a non-exclusive, royalty free, non-transferable, non-sublicensable, revocable license during the Term solely to (i) use the API to integrate the Partner Offerings with ConnectWise's Services. Partner Australia acknowledges that ConnectWise operates the Services, and has calculated the Fees accordingly on the basis that Partner Australia will use data and API calls on a reasonable basis. CONNECTWISE MAY INFORM PARTNER AUSTRALIA AND IMPOSE LIMITS ON DATA USAGE AND API CALLS AND MAY THROTTLE, SUSPEND OR REASONABLY TERMINATE ACCESS TO THE SERVICES (OR PARTS THEREOF) OF PARTNER AUSTRALIA THAT USE EXCESSIVE AMOUNTS OF DATA OR UNREASONABLY SUBMIT AN EXCESSIVE NUMBER OF API CALLS.

8.2 Rate Limits. Partner Australia will not (and will not attempt to) exceed 10,000 (ten thousand) end-point requests per day through the API under the Agreement, or circumvent (or attempt to circumvent) such limitations on use of the API ("**Rate Limits**"), or otherwise use, in ConnectWise's reasonable opinion, the API in a manner that exceeds reasonable request volume or which reasonably constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the Agreement. IF PARTNER AUSTRALIA CIRCUMVENTS OR BREACHES, OR CONNECTWISE REASONABLY BELIEVES THAT PARTNER AUSTRALIA HAS ATTEMPTED TO CIRCUMVENT OR BREACH, RATE LIMITS, CONTROLS TO LIMIT USE OF THE APIS, OR THE INTENT OF THE AGREEMENT, THEN CONNECTWISE MAY INFORM PARTNER AUSTRALIA AND SUSPEND PARTNER AUSTRALIA'S ABILITY TO USE THE API ON A PERMANENT OR TEMPORARY BASIS. ConnectWise may monitor Partner Australia's use of the API to improve the ConnectWise Service and to ensure Partner Australia's compliance with the Agreement. If Partner Australia wishes to have the right to issue more than 10,000 end-point requests per day, they shall contact ConnectWise to request this.

8.3 Reverse Engineering and other Limitations. Partner Australia will not or attempt to (and will not allow others to) (a) reverse engineer, decompile, disassemble or translate the API, or otherwise attempt to derive source code, trade secrets or know-how in or underlying any API or any portion thereof; (b) interfere with, modify, disrupt or disable features or functionality of the API, including without limitation any mechanism used to restrict or control the functionality of the API, or defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection or monitoring mechanisms of the API; (c) sell, rent, lease, sublicense, distribute, redistribute, syndicate, create derivative works of, make available to or for the benefit of any third party as part of any time-sharing, ASP, cloud services, or service bureau arrangement, assign or otherwise transfer or provide access to, in whole or in part, the API to any third party, except as expressly permitted herein; (d) create links to the API or "frame" or "mirror" the API on any other server, or wireless or Internet-based device, or otherwise make available to a third party, any token, key, password or other login credentials

to the API; (e) use the API in connection with third-party backup or migration services; or (f) use the API for any illegal, unauthorized or other improper purposes.

**8.4 Updates.** ConnectWise may update or modify the APIs 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 (in each instance, "**Update/s**"). ConnectWise will endeavour to provide Partner Australia with reasonable advance notice in writing of any upcoming Updates. The Partner Australia is required to implement and use the most current version of the API and to make any changes to the Partner Offerings that are required as a result of such Update, at Partner Australia's cost and expense to ensure functionality of the revision is maintained. Partner Australia acknowledges that Updates may adversely affect the manner in which the Partner Offerings access or communicate with the API or the Customer Data. The Partner Australia's continued access or use of the APIs following an update or modification will constitute binding acceptance of the Update.

**8.5 Ownership.** Partner Australia acknowledges that ConnectWise, its licensors and its Customers retain all worldwide right, title and interest in and to the API, including all Intellectual Property Rights, and Partner Australia does not acquire any rights in the API, express or implied, except as expressly set forth in the Agreement. Partner Australia agrees not to do anything inconsistent with such ownership, including without limitation, challenging ConnectWise's ownership of the ConnectWise Marks, challenging without cause or foundation the validity of the licenses granted herein, or otherwise copying or exploiting the ConnectWise Marks during or after the termination of the Agreement, except as specifically authorized in the Agreement.

## **9. Partner Australia Obligations and Acknowledgements.**

**9.1 Cooperation.** Partner Australia understands and agrees that Partner Australia and the Customer's full, reasonable cooperation is required in order for ConnectWise to properly, efficiently and effectively perform the Services for the Partner Australia and/or Customer. Partner Australia agrees to comply with all of ConnectWise's reasonable requests made in connection with the provision of Services to the Partner Australia and/or Customer for such purpose. Partner Australia understands and agrees that its failure or the Customer's failure to so cooperate with ConnectWise could result in ConnectWise's inability to properly, efficiently, and effectively perform the Services in accordance with the Agreement and is a material breach of the Agreement by Partner Australia or the Customer (as the case may be). ConnectWise's provision of the Services is subject to Partner Australia's and the Customer's cooperation (including the cooperation of third parties under such Partner Australia's or the Customer's control) with ConnectWise, as well as Partner Australia's and the Customer's compliance with the Agreement and/or any other ConnectWise Policy which ConnectWise has provided in advance to them in connection with the Services and which is essential for ConnectWise to provide the Services properly, efficiently and effectively in accordance with the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AS BETWEEN CONNECTWISE AND PARTNER AUSTRALIA, PARTNER AUSTRALIA (RATHER THAN CONNECTWISE) IS RESPONSIBLE FOR ANY DELAYS, DEFICIENCIES OR FAILURES THAT OCCUR IN THE PERFORMANCE OF SERVICES AS A RESULT OF PARTNER AUSTRALIA'S OR THE CUSTOMER'S FAILURE TO SO COOPERATE WITH CONNECTWISE AS REQUIRED UNDER THE AGREEMENT, EXCEPT TO THE EXTENT THEY ARE CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS,

CONTRACTORS OR AGENTS. Partner Australia acknowledges that the Customer can receive communications from ConnectWise directly (via email or other means) regarding ConnectWise's performance of the Services.

9.2 Compliance with Law. Partner Australia will obtain all registrations, licenses and permits required to perform its obligations under the Agreement. The API is subject to U.S. export laws and may be subject to import and use laws of the country where it is delivered or used. Partner Australia will comply with all applicable laws, rules, regulations and orders relating to its performance under the Agreement (including, without limitation (a) those concerning the exporting, importing and re-exporting of computer software, (b) Data Protection Law including, without limitation, the Australian Privacy Act 1988 (Cth) (even if it is not an organization bound by the Act), and (c) laws and policies related to unsolicited, commercial e-mails ("**SPAM**") including the Spam Act 2003 (Cth), or any illegal activities). Under the U.S. export laws, the API may not be sold, leased, downloaded, moved, exported, re-exported, or transferred across borders without a license, or approval from the relevant government authority, to any country or to any foreign national restricted by these laws, including countries embargoed by the U.S. Government (currently Cuba, Iran, North Korea, Northern Sudan and Syria); or to any restricted or denied User who is any person or entity prohibited by the U.S. Office of Foreign Assets Control; or for any unlawful restricted end-use. Partner Australia will maintain throughout the Term all rights and licenses that are required with respect to the Services that Partner Australia requires under applicable laws.

9.3 Security. Partner Australia understands, agrees, and acknowledges per Section 5.4 ConnectWise is responsible for the security of ConnectWise's IT systems, and as such, Partner Australia will not perform scans of ConnectWise systems and/or technology.

9.4 Misrepresentations. Partner Australia will not make any false or misleading representations concerning the Services, including the Platform, or make any representations concerning the Services', including the Platform, specifications, features, capabilities and applicable warranties which are inconsistent with or are in addition to those set forth in the Agreement, any other ConnectWise Policy in relation to the same, the Documentation, product descriptions or other ConnectWise Materials made available by ConnectWise to Partner Australia or applicable law.

9.5 Customer Requirements. Partner Australia acknowledges that it will be required to provide ConnectWise with certain information regarding each Customer via the Partner Portal or API to enable ConnectWise to provide the Services to such Customer, including the Customer Data, Order Data and the Customer's payment information. In connection with each Customer engagement, Partner Australia represents and warrants that (a) it has and will maintain all requisite authority to grant ConnectWise access to such Customer's systems and cloud computing accounts as required for ConnectWise to provide the Services (including administrative-level access); (b) it has obtained and will maintain all required consents and authorizations from such Customer; (c) it is authorized by each Customer to share such Customer Data and other information with ConnectWise; (d) that each Customer has agreed to receive communications from ConnectWise, via email or other means, regarding ConnectWise's performance of the Services; (e) the information provided to ConnectWise is complete and accurate; and (f) it has taken, and will take, all other steps as may be necessary to ensure that ConnectWise's provision of the Services complies with applicable law, including where applicable requiring such Customer to obtain consent and authorization from its Users permitting ConnectWise to access and use any such relevant information. In order to use the Services, a 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, AS BETWEEN CONNECTWISE AND PARTNER AUSTRALIA, PARTNER AUSTRALIA OR CUSTOMER (RATHER THAN CONNECTWISE) ARE RESPONSIBLE IF PARTNER AUSTRALIA OR THE CUSTOMER CANNOT ACCESS OR RECEIVE THE SERVICES DUE TO A FAILURE BY PARTNER

AUSTRALIA OR CUSTOMER TO MEET THESE MINIMUM REQUIREMENTS, EXCEPT TO THE EXTENT CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS.

9.6 Compliance with Partner Agreement and Provider Agreement. Partner Australia will comply with all terms and conditions set forth in the Partner Agreement and any applicable Provider Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AS BETWEEN CONNECTWISE AND PARTNER AUSTRALIA, CONNECTWISE IS NOT RESPONSIBLE OR LIABLE FOR ANY BREACH BY PARTNER AUSTRALIA, ANY CUSTOMER OR ANY PROVIDER OF THE PARTNER AGREEMENT AND/OR PROVIDER AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS.

9.7 Changes to Services. Given the rapidly changing technology landscape, Partner Australia acknowledges that ConnectWise may need to expand, modify or cease providing the Services (or parts thereof) 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. ConnectWise will endeavour to provide Partner Australia with reasonable advance notice in writing prior to implementing any such expansions, modifications or cessations where it is reasonably practicable to do so. PARTNER AUSTRALIA ACKNOWLEDGES AND 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 IMPROVEMENTS OR OTHER NECESSARY CHANGES TO THE SERVICES DURING THE TERM. CONNECTWISE MAY ALSO UPDATE OR REVISE THE DOCUMENTATION DURING THE TERM ON REASONABLE NOTIFICATION TO PARTNER AUSTRALIA DIRECTLY OR VIA THE PARTNER PORTAL. In each case, where such Services are expected to have a material adverse impact on Partner Australia, or Customers or Users, ConnectWise will communicate that and endeavour to minimize such adverse impacts to the extent reasonably practicable to do so and provide a right of to terminate the Agreement without payment of any early termination charges.

9.8 User Restrictions. Partner Australia will not, and will not encourage or permit any Customer, Users 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 in breach of the Agreement; (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 Partner Australia; (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 Partner's obligations under the Agreement.

9.9 Responsibility for Other Parties. Partner Australia is responsible for any action that it permits, assists or facilitates any of its affiliates, officers, directors, employees, contractors, representatives, agents or other Person (each, a "**Partner Party**," and collectively, "**Partner Parties**") to take related to the Agreement, the Portal Data, Order Data, Customer

Data, or the use of the Platform. Partner Australia will ensure that all Partner Parties comply with Partner Australia's obligations under the Agreement.

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

9.11 Limited Use by Partner Australia of the Platform. Partner Australia's access to the Platform shall be limited to the purpose of reselling or providing the Services to Customers. Given the ConnectWise Confidential Information and IP rights contained within it, Partner Australia may not access and use the Platform for the purpose of developing (or intending to develop) a product or service that contains similar capabilities or functionalities as or that otherwise competes with the Software and Services.

9.12 Account Credentials. Partner Australia 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 Partner Australia or that are generated in connection with Partner's or its Customers' use of the Platform. Partner Australia 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. Partner Australia and/or its Customers are responsible for all their and their Users' activities that occur in connection with the Account Credentials.

9.13 Partner Australia responsible for own costs for Downtime. GIVEN RELIANCE ON THIRD PARTY TECHNOLOGY PROVIDERS SUCH AS TELECOMMUNICATIONS OPERATORS OUTSIDE OF CONNECTWISE'S CONTROL AND THE NEED FOR ONGOING MAINTENANCE AND IMPROVEMENTS IN ACCORDANCE WITH INDUSTRY PRACTICE, PARTNER AUSTRALIA 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 OR A PROVIDER, AND CONNECTWISE SHALL MAKE REASONABLE COMMERCIAL EFFORTS TO PROVIDE ADVANCE WARNING OF THESE WHERE PRACTICABLE AND MINIMISE THEIR ADVERSE IMPACT BUT PARTNER AUSTRALIA IS RESPONSIBLE FOR ITS OWN PLANNING AND MANAGEMENT FOR ANY SUCH INTERRUPTION AND IS NOT ENTITLED TO COMPENSATION FOR SUCH INTERRUPTIONS EXCEPT TO WHERE CONNECTWISE IS IN BREACH OF ITS OBLIGATIONS UNDER THE AGREEMENT AND SUCH BREACH CAUSED SUCH INTERRUPTION.

9.14 Partner Australia's responsibilities. Partner Australia acknowledges that it is responsible for acquiring access to the Internet in order to access the ConnectWise Services and that problems with internet connectivity, including equipment, software or network failures, impairments, or congestion, may prevent, interrupt or delay Partner Australia's access to the ConnectWise Services. In respect of its use of the ConnectWise Services, Partner Australia shall be responsible for maintaining adequate technical and organizational measures and controls over its processing and content of its data transmissions; for monitoring the input and output of such processing and transmissions; and for notifying ConnectWise of any non-conforming processing and/or transmissions. Partner Australia acknowledges and agrees that ConnectWise is

not responsible for checking, verifying, or editing data transmissions or message content for completeness or for detecting errors or anomalies.

**9.15 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 or Customers or their Users in violation of applicable federal, state or local law or regulations, the Agreement, or any other ConnectWise Policy provided in advance by ConnectWise to Partner Australia 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 Partner Australia or the Customer (or the Partner Australia on Customer's behalf) has submitted fraudulent or inaccurate material information to ConnectWise or Partner Australia; (c) ConnectWise reasonably determines that Partner Australia's or the 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) Partner Australia's failure to pay ConnectWise all Fees applicable to Customer's use of the Platform, provided that in such event ConnectWise will notify Partner Australia and Customer in advance. PARTNER AUSTRALIA (RATHER THAN CONNECTWISE) IS RESPONSIBLE FOR ITS OWN COSTS OF SUCH LIMITATION, SUSPENSION OR TERMINATION PURSUANT TO THIS SECTION 9.15, EXCEPT TO THE EXTENT CAUSED BY THE BREACH, MISTAKE, FRAUD, NEGLIGENCE OR WILFUL MISCONDUCT OF CONNECTWISE OR ITS EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS.

**9.16 Feedback.** Partner Australia grants ConnectWise a perpetual, irrevocable, royalty-free, non-exclusive, worldwide, sublicensable permission to use, edit, reproduce, distribute, display, and publish at any time, in whole or in part and in any media, and at ConnectWise's discretion (including, without limitation, publication on the Internet) any postings, comments, reviews, or other feedback made by Partner Australia regarding ConnectWise, the Platform or the Services, whether to ConnectWise directly, on any third party websites, or otherwise ("**Feedback**"). Partner Australia acknowledges and agrees that Feedback may include, but are not limited to, Partner Australia's name, statements, and employer name (if applicable). ConnectWise has the right to identify Partner Australia as a partner of the Services in the ConnectWise Materials and releases, however printed or displayed and in any medium of expression, and if applicable, to use Partner Australia's corporate logo as it appears from time to time on Partner Australia's website or other promotional materials for such purpose. Partner Australia represents and warrants such Feedback reflect Partner Australia's honest beliefs and real experience in connection with ConnectWise or the Services, are made voluntarily, and are provided without compensation to Partner Australia. Partner Australia's grant of the rights and licenses under this Section 9.16 includes the rights to use, edit, reproduce, distribute, display, or publish the Feedback by ConnectWise or by any third party authorized to do so by ConnectWise. Partner Australia acknowledges that the Fees offered by ConnectWise to Partner Australia for the Services have been calculated by reference to the potential commercial benefit receivable by ConnectWise as a result of its rights to the Feedback as contained in this Section 9.16, and accordingly Partner Australia agrees that it will not to assert to the detriment of ConnectWise: (a) any other right or interest in the Feedback, or (b) any claim for compensation related to the Feedback or the use, reproduction, distribution, or publication thereof. Partner Australia may withdraw Partner Australia's permission to ConnectWise to use, edit, reproduce, distribute, display, or publish Feedback at any time by contacting ConnectWise at support@ConnectWise.com, provided that such withdrawal shall only apply to Feedback which ConnectWise can easily



remove from the ConnectWise Site or other websites, and shall not apply to any printed materials or publications in circulation or ordered for circulation at the time of such withdrawal.

## **10. Representations and Warranties; Disclaimers of ConnectWise's Liability.**

10.1 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 the Agreement; (c) its execution and delivery of the Agreement and its performance of its obligations under the 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 the Agreement on its behalf has been duly authorized and empowered to enter into the Agreement; and (e) the Agreement is valid, binding and enforceable against it in accordance with its terms.

10.2 ConnectWise Warranties. PARTNER AUSTRALIA 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 10.2 AND SECTION 10.4.

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 10.2 OR THE AGREEMENT WILL OR INTENDS TO MODIFY, RESTRICT OR EXCLUDE ANY RIGHTS, REMEDIES, WARRANTIES OR GUARANTEES PROVIDED TO PARTNER AUSTRALIA WHICH CANNOT BE LAWFULLY MODIFIED, RESTRICTED OR EXCLUDED UNDER APPLICABLE LAW INCLUDING THE AUSTRALIAN CONSUMER LAW (SEE SECTION 10.3 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 API OR ANY OTHER CONNECTWISE PRODUCTS OR SERVICES PROVIDED UNDER THE AGREEMENT WILL MEET ANY OF PARTNERS' SPECIFIC REQUIREMENTS OR THAT USE OF SUCH 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.

10.3 Consumer Guarantees Required by Law. Notwithstanding anything to the contrary in the Agreement, the following provisions shall apply if Partner Australia 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 Partner Australia. In addition to other rights and remedies Partner Australia may

have at law and under the Agreement: (a) If Partner Australia 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, Partner Australia is entitled to cancel its Services order; and to a refund for the unused portion, or to compensation for its reduced value. Partner Australia 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, Partner Australia is entitled to have the failure rectified in a reasonable time. If this is not done Partner Australia 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. Partner Australia 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 Partner Australia in relation to the supply by ConnectWise of goods or services to Partner Australia and acquired by the Partner Australia 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 Partner Australia (directly or via the Partner Australia), and the Partner Australia agrees and acknowledges that it is fair and reasonable, in all circumstances, for the Partner Australia to be bound by the terms set out in this Section 10.3.

**10.4 Limitation of Liability.** PARTNER AUSTRALIA 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.

SUBJECT TO SECTION 10.2 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NO PARTY IS LIABLE TO THE OTHER PARTY, ANY CUSTOMER 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 BY PARTNER AUSTRALIA 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 10.2 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) PARTNER AUSTRALIA'S OR CUSTOMER'S INABILITY TO USE THE SERVICES INCLUDING AS A RESULT OF (I) THE TERMINATION OR SUSPENSION OF AN ORDER, THE AGREEMENT, ANY DISTRIBUTOR AGREEMENT OR AGREEMENT BETWEEN PARTNER AUSTRALIA AND CUSTOMER 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 PARTNER AUSTRALIA'S OR CUSTOMER'S SYSTEMS OR ARCHITECTURE; (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE OR LOSS OF ANY ORDER

DATA, CUSTOMER DATA, PORTAL 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 10.2 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONNECTWISE'S AGGREGATE LIABILITY FOR ANY CLAIM OF PARTNER AUSTRALIA UNDER THE AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMERS UNDER ORDER FOR THE SERVICES PLACED BY PARTNER AUSTRALIA 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. Partner Australia 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 or Portal Data except where in the possession and control of ConnectWise. PARTNER AUSTRALIA, AT ITS EXPENSE, WILL 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 PARTNER AUSTRALIA'S SALE, FAILURE TO SELL, OR PROVISION OF SERVICES TO ANY CUSTOMER IN BREACH OF THE AGREEMENT, ANY PROVIDER AGREEMENT OR DISTRIBUTOR AGREEMENT; (B) ANY BREACH OF ANY AGREEMENT BETWEEN PARTNER AUSTRALIA AND CUSTOMER; (C) PARTNER AUSTRALIA'S OR CUSTOMER'S USE OF CUSTOMER DATA OR THE PLATFORM IN BREACH OF ANY AGREEMENT BETWEEN THEM OR ANY PROVIDER AGREEMENT OR DISTRIBUTOR AGREEMENT; (D) ANY BREACH OF APPLICABLE LAW BY PARTNER AUSTRALIA; (E) ANY COLLECTION, USE, OR DISCLOSURE BY CONNECTWISE OF ANY ORDER DATA, PORTAL 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; (F) THE USE OF THE API IN ANY MANNER INCONSISTENT WITH THE AGREEMENT; (G) ANY STATEMENT, REPRESENTATION, WARRANTY, CONTRACTUAL OBLIGATION OR OTHER COMMITMENT MADE TO THIRD PARTIES BY PARTNER AUSTRALIA WITH RESPECT TO THE SERVICES THAT IS INCONSISTENT WITH OR NOT PROVIDED BY CONNECTWISE IN THE TERMS OF THE AGREEMENT, THE DOCUMENTATION PROVIDED BY CONNECTWISE OR ANY RELEVANT CONNECTWISE POLICY PROVIDED TO PARTNER AUSTRALIA OR IN BREACH OF APPLICABLE LAW; (H) THE NEGLIGENCE OR WILFUL MISCONDUCT OF PARTNER AUSTRALIA IN BREACH OF THE AGREEMENT; OR (I) PARTNER AUSTRALIA'S FAILURE TO OBTAIN ANY REQUIRED CONSENTS OR AUTHORIZATIONS FROM THE CUSTOMER AS REQUIRED IN SECTION 2.2 OR SECTION 9.5 OF THESE CONNECTWISE CLOUD BACKUP AND CONNECTWISE SAAS SECURITY PARTNER TERMS & CONDITIONS AUSTRALIA, IN EACH CASE EXCEPT 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 Partner Australia of any claim which is the subject of the indemnification obligations of Partner Australia set out in the Agreement. PROVIDED THAT PARTNER AUSTRALIA

PROMPTLY INVESTIGATES AND DEFENDS ANY SUCH CLAIM, PARTNER AUSTRALIA WILL HAVE CONTROL OVER THE DEFENSE AND SETTLEMENT OF IT AT PARTNER AUSTRALIA'S SOLE COST AND EXPENSE EXCEPT THAT PARTNER AUSTRALIA 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 Partner Australia has failed to promptly investigate or rigorously defend any claim for which Partner Australia has an obligation to indemnify and ConnectWise is not the cause of such failure, ConnectWise may defend and settle such claim at Partner Australia's cost and expense where Partner Australia'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 until terminated by the Parties in accordance with the terms of the Agreement (the "Term").

12.2 Termination. EITHER PARTY MAY TERMINATE THE AGREEMENT, INCLUDING ALL RIGHTS AND LICENSES GRANTED HEREIN, WITH OR WITHOUT CAUSE, UPON FIVE (5) DAYS WRITTEN NOTICE TO THE OTHER PARTY. In addition, Orders will be terminated automatically, if suspended pursuant to the terms of the Agreement or the Customer Terms & Conditions Australia, 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 Partner Australia's material breach of the 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 PARTNER AUSTRALIA AS CUSTOMER'S DELEGATED ADMINISTRATOR WITH RESPECT TO A PARTNER OFFERING OR PROVIDER OFFERING WILL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT BY PARTNER AUSTRALIA.

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); (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, (ii) Partner Australia shall cease to hold itself out in any fashion as a Partner Australia of the Services and cease the placement of Orders, (iii) Partner Australia shall discontinue use of the Platform, including the API, and uninstall any software client or other code provided by ConnectWise, and (iv) Partner Australia shall cease all use of any promotional, marketing or instructional materials, including ConnectWise Materials, relating to the Services and immediately return such materials to ConnectWise; (c) ConnectWise may retain Order Data and Portal Data for its own records in accordance with its data retention policy and the [ConnectWise Privacy Policy](#); and (d) Partner Australia acknowledges that, unless otherwise specified in the [ConnectWise Data Processing Addendum](#) between ConnectWise and the Customer or other applicable law: (i) the Customer Data will be deleted at the Customer's request, or as required by the Customer's data retention policy (of which the Customer (directly or via Partner Australia) has notified ConnectWise in writing or in an Order); (ii) ConnectWise reserves the right to delete all the Customer Data retrieved or received by ConnectWise, including, but not limited to, the Customer Data in the Platform, in connection with a Backup or Migration Order at any time upon expiration or termination of the Agreement; and (iii) the Customer Data retrieved or received by ConnectWise in connection with a Cloud Manager Order is retained only while there is an active

connection to the Customer's environment, and automatically deleted and purged when the connection to the applicable Provider Offering (e.g., SAAS, IAAS or PAAS) is removed. Partner Australia acknowledges that ConnectWise may retain the Customer Data, as required by applicable law or pursuant to a lawful subpoena or court order. Except in the case of the Customer Data retrieved or received in connection with Cloud Manager, ConnectWise will use commercially reasonable efforts to inform Partner Australia prior to deleting the Customer Data. The following sections will survive any expiration or termination of the Agreement: Sections 1, 4, 5, 6, 9.13, 9.16, 10.2, 10.3, 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 the Agreement and provided to Partner Australia or 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 Partner Australia in the court of the Partner Australia's or Customer's place of establishment. Despite the foregoing, Partner Australia agrees that money damages would be an inadequate remedy for ConnectWise in the event of a breach or threatened breach of a provision of this Agreement protecting ConnectWise's Intellectual Property Rights or ConnectWise's Confidential Information, and that in the event of such a breach or threat, ConnectWise, in addition to any other remedies to which it is entitled, is entitled to such preliminary or injunctive relief (including an order prohibiting Partner Australia from taking actions in breach of such provisions), without the need for posting bond, and specific performance as may be appropriate. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated. ConnectWise has an additional right to bring any claim against the Partner Australia 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 the Partner Australia. Partner Australia 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 Partner Australia 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 Partner Australia 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 Partner Australia 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 Partner Australia 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 and Partner Australia acting as an agent for ConnectWise who is the principal. 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 Partner Australia as a partner or user of the Services and display Partner Australia'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 provided by Partner Australia in the Partner Portal or to ConnectWise at 200 W Thomas St #400, Seattle, WA 98119, United States or [contracts@skykick.com](mailto:contracts@skykick.com). 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 a email or similar communication equipment confirmation statement. A

Party may change its contact information by notice in accordance with this Section 13.8 or using tools available via the Partner Portal.

**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 endeavor to: (a) provide the other Party 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 Partner Terms & Conditions Australia and other changes.** Except for the types of changes set out in this Section 13.10 or Sections 4.1 (Fees), 8.4 (Updates), or 9.7 (Changes to Services), the Agreement may only be varied by written agreement. Partner Australia acknowledges that ConnectWise's provision of the Services, the rates for Fees for 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 Sections 4.1 (Fees), 8.4 (Updates), or 9.7 (Changes to Services), CONNECTWISE MAY CHANGE THESE CONNECTWISE CLOUD BACKUP AND CONNECTWISE SAAS SECURITY PARTNER 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 Partner Australia reasonable advance notice of the changes to the extent it is reasonably practicable to do so. ConnectWise may give Partner Australia 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 necessary to protect its legitimate business interests and will give Partner Australia 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 Partner Australia prior reasonable notice and inform Partner Australia of the potential impacts and cancel the Service.

Partner Australia 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 or Partner Portal. Partner Australia may accept such change through the ConnectWise provided mechanism for the acceptance such as a click-through confirmation or acceptance button. BY CONTINUING TO ACCESS, USE OR INTERACT WITH THE PLATFORM, RESELL, MANAGE, OR USE THE SERVICES, OR PLACE ORDERS, AFTER SUCH EFFECTIVE DATE, PARTNER AUSTRALIA IS BOUND BY SUCH REVISED TERMS AND CONDITIONS AND CHANGES. PARTNER AUSTRALIA MUST CHECK THE CONNECTWISE SITE AND PARTNER PORTAL REGULARLY FOR CHANGES. If Partner Australia disagrees with any modifications to the agreement before such effective date, Partner Australia may terminate this Agreement in accordance with Section 12 of these ConnectWise Cloud Backup and ConnectWise SAAS Security Partner Terms & Conditions Australia.

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

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.

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## Schedule 1 – Support

### 1. Technical Support

ConnectWise provides 3rd line product support to Partner Australia, and to Partner Australia only. Support will be provided via the ConnectWise support global telephone system or via email: [support@skykick.com](mailto:support@skykick.com), during the business hours and via the telephone numbers as outlined on its website.

Partner Australia agrees that any first (1st), second (2nd) and third (3rd) line support for its Customers shall be handled by the Partner Australia support organization. Only if Partner Australia is unable to resolve support issues from its Customers, and Partner Australia has reasonable grounds to believe that a particular support incident is in relation to the ConnectWise Services, Partner Australia may contact ConnectWise support (see contact details above).

Once a support request has been received ConnectWise will acknowledge receipt. Once Partner Australia has informed ConnectWise of all information ConnectWise has requested in relation to the support request ConnectWise will endeavor to respond within the applicable targeted response time listed in the table below.

“**Targeted response time**” means the maximum allowed time to acknowledge the receipt of a support request and initiate the resolution process. The targeted response time (**t.r.t.**) does not define the time that is required to reach a final resolution of a support incident reported by Partner Australia, as this is strongly dependent on the complexity of the issue.

Partner Australia will cooperate with ConnectWise as reasonably necessary to assist ConnectWise in trying to resolve the support issue. ConnectWise will collaborate with Partner Australia to set priorities that take into consideration Partner Australia needs and ConnectWise’s business judgment as to the severity of any reported support incidents.

ConnectWise will work to address support incidents with the Partner Australia support organization per the following severity levels:

Level	Type	T.r.t.	Description
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1	Support incident causes an immediate major impact on Partner Australia's business, and Partner Australia's business cannot reasonably continue.	1 hour	Solution, documented workaround or written information within 1 hour and regular updates.
2	The support incident causes a significant impact on Partner Australia's business. A workaround is not available; however, processing can still continue in a restricted manner.	3 hours	Solution, documented workaround or written information same business day and regular updates
3	The support incident has a minimal impact on Partner Australia's business. It does not prevent operation of the system.	24 hours	Solution, documented workaround or written information.
4	The support incident has no immediate or mid-term impact on Partner Australia's business	5 business days	Solution, documented workaround or written information.

All support cases must be related to the ConnectWise Services. ConnectWise support will only spend time investigating and/or resolving support incidents submitted by Partner Australia that pertain a Customer and the live production environment.

Partner Australia shall pay ConnectWise according to ConnectWise standard hourly rates provided in advance to Partner Australia for all partner support that is provided for problems or issues that do not relate to the ConnectWise Services, or when customer requests support from ConnectWise directly. Prior to submitting a support incident to ConnectWise, Partner Australia will make a general determination whether the incident is caused by the ConnectWise Services.

## 2. Uptime

The ConnectWise Services as they pertain to availability, uptime and maintenance is defined as ConnectWise's products and services, including the servers, software and network that are under the control of ConnectWise. This definition explicitly excludes any servers, software or network that is not under the control of ConnectWise, including but not limited to Partner Australia or Customer's computing and network resources, the internet, and point-to-point connections.

Scheduled maintenance, unforeseen downtime and unscheduled remedial maintenance of equipment, software and Internet access may interrupt Partner Australia access to the ConnectWise Service. ConnectWise provides a [status page](#) to inform Partner Australia of the Platform status and of any scheduled or unscheduled downtime and maintenance.

