

REALVNC END USER LICENSE AGREEMENT

PLEASE READ CAREFULLY BEFORE DOWNLOADING, INSTALLING OR EXECUTING THE SOFTWARE DOWNLOADED FROM WWW.REALVNC.COM OR WWW.REALVNC.HELP. UNLESS A SPECIFIC END USER LICENSE AGREEMENT APPLIES TO THE SOFTWARE YOU ARE USING, THIS EULA WILL APPLY.

THIS END USER LICENSE AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN YOU AND REALVNC (AS DEFINED IN CLAUSE 1 BELOW) IN RELATION TO THE ACCESS AND USE OF REALVNC'S SOFTWARE.

IMPORTANT NOTICE TO ALL USERS:

- IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT CLICK TO ACCEPT THIS AGREEMENT OR CONTINUE TO DOWNLOAD OR ACCESS OR USE THIS SOFTWARE OR DOCUMENTS.
- REALVNC MAY MODIFY THIS AGREEMENT AT ANY TIME.
- BY INSTALLING ANY UPDATED VERSION OF THE SOFTWARE WHICH MAY BE MADE AVAILABLE, YOU ACCEPT THAT THE TERMS OF THIS AGREEMENT APPLY TO SUCH UPDATED SOFTWARE.

1 Definitions

In this Agreement:

"Acceptable Use Policy" means RealVNC's policy available at <https://www.realvnc.com/realvnc-acceptable-use-policy> as may be updated from time to time.

"Authorized User" means you if you are an individual, or, if you are an organization, a particular designated employee or independent contractor authorized by you, and where applicable, employees or authorized staff of End Clients who are authorised by you, to use the Software under this Agreement.

"Concurrent Session" means a remote connection made by no more than one (1) Authorized User, via the Software provided under the relevant Subscription, to no more than one (1) Device at a given point in time (such that: (i) where, for example, an Authorized User uses such Software to make a connection to two (2) Devices concurrently, such use shall constitute two (2) Concurrent Sessions; and (ii) where, for example, three (3) Authorized Users use such Software to connect concurrently to one (1) Device, such use shall constitute three (3) Concurrent Sessions).

"Concurrent Session Band" means the maximum number of Concurrent Sessions permitted to be made by you or your Authorized Users at any particular point of time during the period of your Subscription, as agreed between the parties in writing or confirmed or requested by you via your purchase of the relevant Subscription through the Website.

"Confidential Information" means all confidential or proprietary information (however recorded or preserved) disclosed by one party or its employees, officers, subcontractors, representatives or advisers (together "**Representatives**") to the other party and the other party's Representatives, including the terms of this Agreement, the business, affairs, customers, clients, plans, intentions, market opportunities, operations, processes, products, services, data, know-how, or trade secrets of the disclosing party, including anything specified as being Confidential Information.

"Customer Data" means any commercial or proprietary data which is uploaded or otherwise submitted to the Software directly by you or your Authorized Users, including any data

submitted into the Software indirectly via any third party application used by you, excluding any Derived Data and account management data. For the avoidance of doubt, RealVNC does not process Customer Data outside of the necessary processing specified in the Data Processing Addendum.

"Data Processing Addendum" means the data processing addendum as may be updated from time to time at <https://help.realvnc.com/hc/en-us/articles/5438412949405>.

"Deployment Software" means deployment tools and services available from the Website including documentation, updates, modified versions and copies of the Deployment Software.

"Derived Data" means any data which is derived from your or Authorized Users' use of the Services, whether for your own benefit or that of End Clients (where applicable) which shall include: (i) any meta-data on your use of the Software such as the number of connections and volume of data; (ii) any data which is processed and stored as mathematical constructs; and (iii) statistical or aggregated data, but shall exclude any Personal Data and, for the avoidance of doubt, does not include the Customer Data itself.

"Device" means the relevant computer or other device on which the relevant Software is run, accessed, used, deployed, or installed.

"End Client" means a third-party organization for whose benefit you provide a Managed Service.

"Free Subscription" means RealVNC's free to access subscriptions that include basic functionality and is for non-commercial use only.

"Insolvency Event" means, with respect to a party, (a) entering into a composition or arrangement with its creditors other than for the sole purpose of a solvent reconstruction; (b) an inability to pay its debts as they become due; (c) a person becoming entitled to appoint or appointing a receiver or an administrative receiver over that party's assets; (d) a creditor or encumbrancer attaches or takes possession of the whole or any part of that party's assets which is not discharged within 14 days; or (e) any event occurs, or proceeding is taken, in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in (a) to (d) above.

"License Capacity" means restrictions placed on your use of the relevant Software under your license, including: (i) the number of Authorized Users; (ii) the Concurrent Session Band; (iii) the types of permitted connections as set out on the Website; (iv) the number of Devices; and (v) any other restrictions set out on the Website or communicated to you in writing.

"Managed Service" means a professional managed technology service delivered by you to End Clients and solely for the purpose of which, and solely in connection with which, you may, subject always to the terms hereof, permit Authorized Users to use and access the Software.

"RealVNC Contracting Entity" means either: (i) where expressly stated in the quotation provided to you setting out your chosen Subscription or in any invoice submitted to you in connection with such Subscription, RealVNC LLC, a limited liability corporation organized under the laws of the State of Delaware and whose registered office is at 850 New Burton Road, Suite 201, Dover, DE 19904, United States; or (ii) in all other cases, RealVNC Limited, a company incorporated in England and Wales with company number 0446945 at Edinburgh House, St John's Innovation Park, Cowley Rd, Cambridge CB4 0DS, United Kingdom.

"Reseller" means a third-party entity that agrees to purchase a Subscription to the Software from RealVNC on your behalf.

“Services” means the support services as set out on the Website.

“Software” means RealVNC's software as described on the Website including any portal used to access such software and, to the extent relevant to your Subscription, any related back-end services that comprise any cloud connection brokering services and subscription management functionality.

“Subscription” means a subscription purchased for or by you and/or obtained from RealVNC that grants certain usage rights to the Software in consideration of the relevant Subscription Fee.

“Subscription Fee” means the fees payable for the relevant Subscription as set out on the Website, and which is determined on the basis of the Concurrent Session Band selected or requested by you at the time of entering into this Agreement.

“Third Party Software” means third party software incorporated in the Services, as listed at <https://help.realvnc.com/hc/en-us/articles/360002255218-RealVNC-Connect-Acknowledgements>.

“Viewer Software” means VNC Viewer Version 4.0 – 7.x or later of the programs available from the Website including documentation, updates, modified versions and copies.

“Virus” means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware, network, data, or the user experience, including worms, Trojan horses, viruses and other similar things or devices.

“Website” means <https://www.realvnc.com>, <https://www.realvnc.help>, <https://manage.realvnc.com> and associated web applications.

2 Limited Trial Period

The Software can be evaluated for a limited trial non-exclusive license period as set out on the Website in accordance with the terms of this Agreement. It will perform for only a limited period of time. THE LIMITED TRIAL SOFTWARE IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OR LIABILITY ON REALVNC'S PART TO YOU WHATSOEVER.

3 License

- 3.1 Subject to your paying the Subscription Fees and complying with the terms and conditions of this Agreement, RealVNC hereby grants to you, subject to the relevant License Capacity for your Subscription, a non-exclusive, worldwide, non-transferable license to download, install and use the Software for (a) your personal use or for the internal use of your business organization, or (b) where applicable, and subject to clause 5, for the purposes of providing Managed Services to your End Clients. Except as permitted under a Managed Service (as applicable), you are expressly prohibited from transferring or distributing the Software in any format, in whole or in part, for sale, for commercial use (except as otherwise stated in this Agreement), or for any unlawful purpose.
- 3.2 The Viewer Software is only warranted and supported to the extent it is used in conjunction with a licensed copy of any Software explicitly stated to qualify for use with the Viewer Software.
- 3.3 You hereby acknowledge and agree that the Software may only be used on your Devices in object code form for the purposes set forth in clause 3.1 of this Agreement and for no other use.
- 3.4 In the case of a Free Subscription, the Software may only be used for your private,

noncommercial purposes.

- 3.5 You may make as many copies of the Software as your Subscription allows and use it to install the Software on your Devices.

4 Access to the Software

- 4.1 You shall not (and shall ensure that no Authorized User or End Client shall):
- a) access, store, distribute or transmit any Viruses or any material during its use of the Software that is unlawful, harmful, infringing, offensive, discriminatory, or which facilitates illegal activity or depicts sexually explicit images or causes damage or injury to any person or property. RealVNC reserves the right, without liability or prejudice to its other rights to you, to disable yours and the Authorized Users' access to any material that breaches the provisions of this clause;
 - b) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement, you shall not, and shall not attempt to, copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means, or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software (including its object code and source code);
 - c) access all or any part of the Software in order to build a product or service which competes with the Software;
 - d) exceed (and you will procure that no Authorized Users will exceed), at any time during your Subscription the applicable Concurrent Session Band).
- 4.2 You shall not at any time make the Software or any of the Services available to (or otherwise provide the Software or Services to) any third party except to: (i) Authorized Users as permitted under this Agreement; or (ii) End Clients as permitted under clause 5.
- 4.3 You agree to use all reasonable endeavors to prevent any unauthorized access to, or use of, the Software and, in the event of any such unauthorized access or use, promptly notify RealVNC.
- 4.4 You acknowledge and agree that each Authorized User must keep a secure password for their use of the Software which must be kept confidential and secure against unauthorized access or use (including any other Authorized User).
- 4.5 You shall be responsible for setting the access rights for each of your Authorized Users and shall ensure that all Authorized Users' use of the Software is strictly in accordance with the terms of this Agreement, including the terms in the Acceptable Use Policy available at <https://www.realvnc.com/realvnc-acceptable-use-policy>. You shall be responsible for any Authorized User's breach of this Agreement and for monitoring the number of users making use of the Software to ensure you do not exceed the number of Authorized Users.
- 4.6 You acknowledge and agree that the Software may provide access to Third Party Software. RealVNC makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the use of any such Third Party Software.
- 4.7 You are responsible for providing any dependencies (i.e. any network or connectivity requirements, or back up requirements that you need to have in place in order to use the

Software) stated on the Website or otherwise outside of RealVNC's control and shall ensure that its network and systems comply with the relevant specifications provided by RealVNC from time to time necessary for the operation of the Software. You shall be solely responsible for procuring and maintaining all network connections and telecommunications links from your systems to RealVNC's data centers.

- 4.8 You shall comply with all applicable laws and regulations in the exercise of your rights and the performance of your obligations pursuant to this Agreement.
- 4.9 You warrant and represent that: (i) you and your End Clients (as applicable) are not incorporated or organized to do business in or resident in, and are not under the control of the government of, any country subject to economic or trade sanctions by the U.S. State Department, the U.S. Office of Foreign Assets Control or any successor body thereto ("**OFAC**"), the United Nations Security Council, the European Union, or the U.K. government; (ii) you and your End Clients (as applicable) are not included on any list of sanctioned or ineligible parties maintained by the U.S. or U.K. government or the European Union, including without limitation OFAC's lists of Specially Designated Nationals and Blocked Persons. You will not (and, where applicable, will procure that your End Clients will not) sell, export, re-export, transfer, use or enable the use of any Software, its related technology and/or services, or any other items that RealVNC may provide in connection therewith to or for any end use: (A) in or by the countries specified in this clause 4.9 or any permanent residents thereof; (B) by any person or entity determined by any U.S. or U.K. government agency or body or the European Union to be ineligible to receive exports, including without limitation persons and/or entities designated on the lists described in subsection (ii) of this clause 4.9; or (C) prohibited by export or sanctions, laws, and/or regulations of the United Kingdom, the United States, or the European Union. If the warranty or representation given by you in this clause 4.9 is breached or the representation given by you in this clause 4.9 is or becomes untrue, false, erroneous, or misleading at any time, or if you become subject to any of the circumstances described in this clause 4.9, then this will constitute an incurable material breach of this Agreement by you.

5 Managed Services

- 5.1 Where you have an explicit written agreement from RealVNC that you are authorized to use the Software to deliver a Managed Service to your End Clients, or you have purchased Software from one of RealVNC's authorized third party web portals, the terms of this clause 5 shall apply.
- 5.2 You acknowledge and agree that you are solely responsible for all use of the Software provided under this Agreement when providing a Managed Service, and that you are not entering into this Agreement in the capacity of an agent on behalf of any particular End Client. You shall ensure that End Clients fully comply with the terms and conditions of this Agreement governing the use of and access to the Software (and the limitations and restrictions in respect thereof) as though they applied to them and any other applicable policies or guidelines provided by us in relation to the Software from time to time.
- 5.3 Subject to clause 11.4, RealVNC accepts no liability in connection with use of the Software or Services on behalf of End Clients. You are responsible for the acts and omissions of End Clients (including Authorized Users of End Clients) as if those acts and omissions were your own. You agree to indemnify RealVNC against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees) arising from the acts or omissions of End Clients.
- 5.4 You shall ensure that End Clients are aware of and comply with the terms of this Agreement as they pertain to the use (and restrictions of use) of the Software. In the event of any breach by an End Client, you must immediately notify us thereof in writing.

6 Suspension of Service

6.1 RealVNC may suspend the access to or use of the Software by any or all of the Authorized Users if RealVNC determines that use of the Services:

- a) is in breach of this Agreement;
- b) poses a security risk;
- c) is adversely impacting or may adversely impact (as appropriate) the Services or any service provided by RealVNC to a third party; or
- d) where it is in the legitimate interests of RealVNC to do so, including where there is a reasonable risk that you may default in the payment of the Subscription Fees,

and RealVNC shall use its reasonable endeavors to notify the affected Authorized Users before the suspension takes effect and as soon as reasonably practicable thereafter, and may use any reasonable means to do so.

6.2 Where RealVNC suspends access to or use of the Software under clause 6.1, the Customer remains responsible for all Subscription Fees.

7 Support Services

7.1 During the term of this Agreement, provided all relevant Subscription Fees which are due and owing have been paid, RealVNC will provide the following Services to you in relation to the Software in accordance with the terms and conditions of this Agreement:

- a) provided you promptly notify RealVNC of any material defect in the Software (being any corrupt download), RealVNC shall, subject to the following provisions, use its reasonable endeavors to correct the problem and provide a corrected version as soon as practicable after being so notified; or
- b) make available any updates or improvements to the Software as published by RealVNC (which shall be made available on the Website). RealVNC may at its absolute discretion determine whether any updates or improvements are made available within existing Subscription packages or require an enhanced Subscription to access.

7.2 The Services do not include the correction of any defects due to:

- a) any combination or inclusion of the Software with or in any computer program, equipment or devices not on the approved list on the Website;
- b) any modification of the Software not made by RealVNC;
- c) you not giving RealVNC a sufficiently detailed description of the defect to enable RealVNC to identify the defect and to perform the Services; or
- d) any improper or unauthorized use or operation of the Software, including any use not in accordance with the Acceptable Use Policy available at <https://www.realvnc.com/realvnc-acceptable-use-policy>.

7.3 If a defect cannot be resolved in a reasonable time your sole and exclusive remedy will be for RealVNC to either, at its sole discretion:

- a) replace the Software; or

b) refund to you such an amount as is equal to the Subscription Fee prorated over the remaining duration of the Subscription.

7.4 The Services shall continue in force for the chosen Subscription period from the start of the Subscription, and may be continued by renewing the Subscription at any time.

7.5 The Services are automatically renewed for an additional term of twelve months if you fail to terminate your Subscription before the expiry of the relevant Subscription period.

7.6 RealVNC shall notify you via email at least seven days before the Subscription Fees for any renewed Subscription become due.

7.7 You can opt out of having your Subscription auto-renew on the Website. If you elect not to have your Subscription auto-renew then your Subscription will automatically terminate on the last day of your Subscription period.

8 Fees

8.1 You shall pay the Subscription Fees in accordance with this clause 8 and any payment terms specified by RealVNC from time to time without set-off in respect of any liability of RealVNC. To the extent that your (or your Authorized Users') access or usage of the Software exceeds the applicable Concurrent Session Band at any point during the period of the relevant Subscription, we reserve the right to increase the Subscription Fees in accordance with such excess usage by notifying you in writing, and such increase may apply retrospectively (on a pro-rated basis) to the first time in which the applicable Concurrent Session Band was thus exceeded.

8.2 Unless otherwise agreed with RealVNC, Subscription Fees (and any expenses or other sums) payable under this Agreement are due at the start of the Subscription and shall be paid online using a credit or debit card. Payment confirmation will be provided after payment has been taken).

8.3 In the event you have purchased a Subscription to the Software through a Reseller and the Reseller does not pay the Subscription Fees to RealVNC in accordance with this clause 8, you will be liable to pay the Subscription Fees to RealVNC in full, notwithstanding any payment you may have made to the Reseller.

8.4 All Subscription Fees, expenses or other sums payable under this Agreement are exclusive of any applicable value added tax, sales tax, or other applicable taxes or duties for which you shall be additionally liable.

8.5 If any sum payable to RealVNC is not paid within 14 days after the due date, including any sums payable by a Reseller for your Subscription, RealVNC may suspend performance of its obligations and/or charge interest on a daily basis at the rate of the lesser of: (i) 4% above the Bank of England's base rate from time to time in force, compounded quarterly; or (ii) the maximum rate permitted by applicable law, from the date for payment of that sum to the date of actual payment.

8.6 RealVNC shall be entitled to increase the Subscription Fees at any time upon thirty (30) days' prior written notice to you before the start of a new or renewed Subscription.

9 Limited Warranty

9.1 RealVNC warrants to you that the Software within your Subscription will perform substantially in accordance with any documentation provided for it for 90 days from the date of purchase of a Subscription (the "**Warranty Period**").

9.2 You shall not benefit from the warranty set out in clause 9.1 above if: (a) you report a problem

outside of the Warranty Period; and/or (b) if the failure of the Software is the result of accident, abuse, misapplication or inappropriate use of the Software or use with Devices not meeting the minimum hardware and software requirements specified on the Website.

- 9.3 Notwithstanding clause 9.1, you acknowledge that the Software may evolve over time and that functionality may be added or removed from time to time.
- 9.4 RealVNC does not warrant that your use of the Software will be uninterrupted or error-free, or that the Software and/or the information or results obtained by you through its use of the Software will meet your requirements or those of End Clients (where applicable). Subject to its obligations under Applicable Data Protection Law (as defined in the Data Processing Addendum), RealVNC is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Customer Data over communications networks and facilities, including the internet, and you acknowledge that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.
- 9.5 In the event that a problem is reported in writing to RealVNC during the Warranty Period, your sole and exclusive remedy will be for RealVNC to either, at its sole discretion:
- a) replace the Software; or
 - b) refund to you such an amount as is equal to the Subscription Fee.

10 Intellectual Property Rights

- 10.1 All Intellectual Property Rights in and to the Software, the Services, and the Derived Data, shall belong to and remain vested in (or automatically upon creation shall vest in), RealVNC. Except for the license(s) granted to you in this Agreement, nothing in this Agreement grants to you or to any End Client or to any Authorized User any rights to or in any Intellectual Property Rights in the Software or the Services.
- 10.2 Without prejudice to clause 10.1, to the extent that you or any End Client's or Authorized User's use of the Software results in any modifications, adaptations, developments, or any derivative works of or to the Software or the Services ("**Improvements**"), then notwithstanding any rights or remedies of RealVNC under this Agreement, any and all intellectual property rights in and to such Improvements shall immediately vest in and be owned by RealVNC.
- 10.3 RealVNC makes no representation or warranty as to the validity or enforceability of the intellectual property rights in the Software.
- 10.4 RealVNC shall defend you against any third party claim that the use of the Software in accordance with this Agreement infringes any third party Intellectual Property Right and shall indemnify you for and against any amounts awarded against you in judgment or settlement of such claims, provided that: (i) RealVNC is given prompt notice of such claim; (ii) you provide reasonable co-operation to RealVNC in the defense and settlement of such claim, at RealVNC's expense; (iii) RealVNC is given sole authority to defend or settle the claim; and (iv) you make no admission of liability or fault yourself, or on behalf of RealVNC.
- 10.5 In the defense or settlement of any claim pursuant to clause 10.4 above, RealVNC may at its sole option and expense either: (i) procure for you the right to continue using the Software in the manner contemplated by this Agreement; (ii) replace or modify the Software so that it becomes non-infringing; or (iii) terminate this Agreement immediately by providing written notice to you, without liability to you or any End Client (as applicable).
- 10.6 RealVNC shall not in any circumstances have any liability (including in respect of the indemnity provided under clause 10.4) if the alleged infringement is based on: (i) modification

of the Software by anyone other than RealVNC; or (ii) your, any End Client's or any Authorized User's use of the Software otherwise than in accordance with this Agreement or in a manner contrary to the instructions given to you by RealVNC; or (iii) your, any End Client's or any Authorized User's use of the Software after notice of the alleged or actual infringement from RealVNC or any appropriate authority; or (iv) use or combination of the Software with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.

- 10.7 You shall defend RealVNC against all or any costs, claims, damages or expenses incurred by RealVNC in respect of any third party claim relating to the Customer's or any End Client's or Authorized User's use of the Software otherwise than in accordance with this Agreement, provided that: (i) you are given prompt notice of such claim; (ii) RealVNC provides reasonable co-operation to you in the defense and settlement of such claim, at your expense; and (iii) you are given sole authority to defend or settle the claim; and (iv) RealVNC makes no admission of liability or fault itself or on behalf of you.

11 Limitation on Liability

- 11.1 This clause 11 sets out the entire financial liability of RealVNC to you arising under this Agreement, including in respect of any use made by you or the End Clients or the Authorized Users of the Software and the Services.
- 11.2 Except as expressly and specifically provided in this Agreement, you assume sole responsibility for any information or results obtained by you or the Authorized Users from use of the Software and Services, and for conclusions drawn from such use. RealVNC shall have no liability for any damage caused by errors or omissions in any information or data, or any actions taken by RealVNC at your direction. No other party is entitled to rely on the output, information or results produced by you through your and the Authorized Users' use of the Software for any purpose.
- 11.3 Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions, and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement. You acknowledge that the Software, the Services and any information provided by or on behalf of RealVNC are provided to you on an 'as is' basis.
- 11.4 Nothing in this Agreement excludes either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.
- 11.5 Subject to clause 11.4, RealVNC shall not be liable for any consequential, indirect, special, incidental, punitive or exemplary damages, whether foreseeable or unforeseeable, including loss of profit, loss of business, loss of goodwill, loss of or corruption of data, loss caused or contributed to by any of your agents or Representatives, Authorized Users or End Client, loss caused as a result of the Software being unavailable as a result of planned downtime for the Software, as notified to you from time to time, loss arising from any failure of your infrastructure and/or utilities, loss caused as a result of the Software being unavailable due to a Force Majeure Event, or loss caused by the failure or delay of any third party application or service or network.
- 11.6 Subject to the other provisions of this clause 11, RealVNC's entire, aggregate liability to you whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising out of or relating to this Agreement shall be limited to the total Subscription Fees paid by you during the twelve (12) months immediately preceding the date on which the claim arose.

12 Confidentiality

12.1 Each party agrees to keep confidential and not use for any purpose other than the performance of its obligations under this Agreement, all Confidential Information of the other party.

12.2 Each party will only disclose or reveal any of the other party's Confidential Information disclosed to it to:

- a) those of its personnel who are required in the course of their duties to receive it for the purpose for which it is supplied (provided that each party shall ensure that any such personnel to whom it discloses the other party's Confidential Information comply with this clause 12); and
- b) any court, governmental or administrative authority competent to require the same, or as required by any applicable law, regulation, or governmental or regulatory body which is lawfully entitled to require the disclosure (and in each such case, the party shall, if legally permissible, notify the other party of the requirement as soon as reasonably practicable and use commercially reasonable endeavors to discuss with the other party and agree any possible limitations or restrictions on disclosure in advance to the extent permitted by law).

12.3 The provisions of clauses 12.1 and 12.2 shall not apply to information that:

- a) is or becomes generally available in the public domain otherwise than arising in connection with a breach of this clause by the recipient;
- b) is lawfully in the recipient's possession free of any restrictions as to its use or disclosure at the time of disclosure by the disclosing Party;
- c) is lawfully acquired from an independent third party who did not itself obtain it under an obligation of confidentiality; or
- d) is independently developed without access or reference to any information disclosed by the disclosing party.

12.4 You acknowledge that the Software, including the way in which data, information, works and materials are visualized when using, or are otherwise presented by, the Software and the results of any performance tests of the Software, constitute RealVNC's Confidential Information.

12.5 RealVNC acknowledges that the Customer Data is your Confidential Information or the Confidential Information of your End Client (as applicable)..

12.6 The provisions of this clause 12 shall survive termination or expiry of this Agreement, however arising.

13 Customer Data and Derived Data

13.1 You or the relevant End Client(s) (as applicable) shall own all right, title and interest in and to all the Customer Data and you shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data.

13.2 You warrant and represent that you have the authority, including all necessary rights, licenses, and permissions, to upload and use, and to permit RealVNC to process, the Customer Data in accordance with this Agreement.

13.3 You hereby grant to RealVNC a worldwide, non-exclusive, irrevocable, royalty-free license

during the Term to process the Customer Data for the purpose of providing the Software and the Services. For the avoidance of doubt, RealVNC does not process Customer Data outside of the necessary processing specified in this Agreement or the Data Processing Addendum as may be updated from time to time at <https://help.realvnc.com/hc/en-us/articles/5438412949405>.

- 13.4 You authorize RealVNC to use the Customer Data to improve the performance and functionality of the Software to develop improvements, updates, upgrades, modifications, or derivative works thereof which shall constitute Improvements (as defined in clause 10.2).
- 13.5 RealVNC may track and analyze your, End Clients', and the Authorized Users' use of the Software for the purposes of security and to help RealVNC improve the Services, including the Software.
- 13.6 Each Party shall comply with its obligations under the Data Processing Addendum as may be updated from time to time at <https://help.realvnc.com/hc/en-us/articles/5438412949405>. The Data Processing Addendum is in addition to, and does not relieve, remove, or replace, the Parties' respective obligations or rights under the Data Protection Legislation.
- 13.7 You shall indemnify and hold harmless RealVNC from and against all losses, damages, liabilities and claims, arising from or in relation to any third party claim that the processing and use of the Customer Data in accordance with this Agreement infringes or misappropriates any third party Intellectual Property Rights or breaches Data Protection Legislation.

14 Audit

- 14.1 RealVNC is entitled on reasonable notice from time to time to require you to permit or procure the permission for a duly authorized employee, agent or representative of RealVNC to audit the use of the Software, and to assess compliance with this Agreement, including for this purpose to access your premises and systems, and to take copies of records.
- 14.2 If any such audits reveal that you have underpaid RealVNC for your use of the Software, including exceeding the number of Authorized Users or End Clients (as applicable) then, without prejudice to RealVNC's other rights, you shall pay to RealVNC, in accordance with clause 8.4, an amount equal to such underpayment as calculated in accordance with the Subscription Fees and RealVNC's reasonable costs of conducting such audit.

15 Export Control

The United States and other countries control the export of Software and information. You are responsible for compliance with the laws of your local jurisdiction regarding the import, export or re-export of the Software, and agree to comply with such restrictions and not to export or re-export the Software where this is prohibited. By downloading the Software, you are agreeing that you are not a person or entity to which such export is prohibited.

16 Term and Termination

- 16.1 This Agreement shall continue in force for the duration of your Subscription (and any subsequent renewal Subscription) (the “**Term**”) unless terminated in accordance with this clause.
- 16.2 You may terminate your Subscription at any time by giving thirty (30) days' notice in writing to RealVNC. Termination of your Subscription and this Agreement by you or by RealVNC shall not entitle you to any refund for any unexpired portion of your Subscription period (as renewed or extended from time to time).

16.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any terms of this Agreement, which breach is incurable or (if such breach is curable) fails to cure that breach within ten (10) business days after being notified in writing to do so; or
- b) the other party suspends, ceases, or threatens to suspend or cease carrying on its business or a substantial part thereof, or suffers an Insolvency Event.

16.4 On termination of this Agreement for any reason:

- a) all licenses granted under this Agreement shall immediately terminate;
- b) all Subscription Fees which are outstanding on the date of termination shall become immediately due and payable;
- c) subject to the terms and conditions of this Agreement, you shall and, where applicable, shall procure that each End Client shall return or destroy and make no further use of any Confidential Information, equipment, property and other items (and all copies of them) belonging to the other party, including in your case, and shall irretrievably delete the Software from all Customer Devices and any media on which the Software is stored within 5 days of termination of this Agreement and shall certify to RealVNC in writing that it has complied with this clause; and
- d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

17 General Terms

17.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. For the avoidance of doubt, no additional terms and conditions that a party includes in or with a purchase order, purchase order acceptance, payment, course of dealing between the parties or otherwise, shall vary the terms and conditions set forth in this Agreement except as provided by clause 17.7.

17.2 The construction, validity and performance of this Agreement, and any dispute that might arise between you and RealVNC relating to the subject matter of this Agreement, shall be governed in all respects by, without reference to conflict of law rules, either: (i) the laws of the State of New York, solely where the contracting RealVNC entity is RealVNC, LLC, and the parties agree to submit to arbitration as described further below in clause 17.3 and otherwise to the exclusive jurisdiction of the state and federal courts located in the State of New York; or (ii) in all other cases, English law, and the parties agree to submit to the exclusive jurisdiction of the English courts. The United Nations Convention for the Sale of Goods does not apply to this Agreement.

17.3 If the contracting RealVNC entity is RealVNC, LLC, disputes will be resolved by binding arbitration, rather than in court, except that either party may elect to proceed in small claims court if your claims qualify, and the Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. Before you may begin an arbitration proceeding, you

must send a letter notifying us of your intent to pursue arbitration and describing your claim to our registered office at 850 New Burton Road, Suite 201, Dover, DE 19904, United States. The arbitration will be conducted by the American Arbitration Association (AAA) under its commercial rules, which are available at www.adr.org or by calling 1-800-778-7879. Payment of filing, administration and arbitrator fees will be governed by the AAA commercial fee schedule. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. We and you further agree that the underlying award in arbitration may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules. If for any reason a claim proceeds in court rather than in arbitration we and you waive any right to a jury trial. Notwithstanding the foregoing we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

- 17.4 Neither party is responsible for failing to fulfil its obligations (other than its payment obligations) under this Agreement due to causes beyond its reasonable control that directly or indirectly delay or prevent timely performance ("**Force Majeure Event**"). Any dates or times by which each party is required to render performance under this Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by a Force Majeure Event. If the Force Majeure Event prevents, hinders, or delays the affected party's performance of its obligations for a continuous period of more than 30 days, the affected party may terminate this Agreement by giving 30 days' written notice to the other party.
- 17.5 If any provision of this Agreement is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.
- 17.6 Despite anything else contained in this Agreement, neither party will be liable for any delay in performing its obligations under this Agreement if that delay is caused by circumstances beyond its reasonable control (including, without limitation, any delay caused by an act or omission of the other party) and the party affected will be entitled to a reasonable extension of time for the performance of its obligations.
- 17.7 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized Representatives) or offered by RealVNC by means of a quote and accepted by you.
- 17.8 This Agreement does not create any third-party beneficiary rights in any person that is not a party to this Agreement. A person who is not a party to this Agreement shall not have any right to enforce any term of this Agreement.
- 17.9 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 17.10 You may not assign, subcontract, sublicense, novate, or otherwise transfer any of your rights or obligations under this Agreement to any third party (for example, any End Client). RealVNC may assign all or part of the benefits or all or part of its obligations under this Agreement to any affiliated company.