



Terms And Conditions of Use Updated and effective as of 1st Jan, 2010

Read This Agreement Carefully.

Second Chance is willing to provide Second Chance Products or Services to you only if you accept all of the following terms and conditions, the Second Chance Privacy Policy, as well as any operating rules, policies, price schedules, and other supplemental documents Published by Second Chance from time to time, all of which are incorporated herein by reference (collectively, "Terms and Conditions of Use" or "this Agreement").

1. Definition of Terms

As used in these Terms and Conditions of Use:

"Backup Data" includes any data you back up through Use of the Second Chance Products or Services and any related data that are in the possession of Second Chance or Second Chance Affiliates.

"Second Chance," "we," "us," or "our" (whether or not capitalized) mean Vizible Solutions Pty Ltd ABN 27 110 189 467 and its subsidiaries.

"Second Chance Affiliate" means persons or entities who have provided products, licenses, or services to Second Chance and persons or entities with which Second Chance has entered into an agreement to sublicense or to provide Second Chance Products or Services to users.

"Second Chance Products or Services" means data backup services, websites (including without limitation, www.SecondChance.net.au), all other documentation, features, tools, Second Chance Software, and any other products or services provided by Second Chance or its authorised agents, distributors, and licensees.

"Second Chance Software" means software provided to you or for your use by Second Chance.

"Computer" (whether or not capitalized) means a desktop or laptop computer, network device, and any storage device attached to them in any fashion.

"Days" (whether or not capitalized) means calendar days.

"Personal Information" means information that you may provide at the time of registration or otherwise, such as name, physical location or address, IP address, e-mail address, employment, or similar information that identifies you as a specific individual.

To "Publish" documents or information means to provide to or make them accessible to you by mailing, emailing, desktop messaging, faxing, or delivering them to you, or

by posting them to www.SecondChance.net.au or any other website you visit to register for, subscribe to, license, buy, or Use Second Chance Products or Services.

The “Subscription Period” for any license to use Second Chance Products or Services begins at purchase, regardless of the date of activation, and expires at the end of your specific purchased term. A specific purchased term may be monthly, yearly, multi-year or for another periodic metric. For example, if you are billed on a monthly basis, your Subscription Period is for the month billed.

To “Use” or “Using” Second Chance Products or Services means each time you visit a Second Chance website, register with Second Chance, download Second Chance Software, use Second Chance Software to encrypt or back up data, view the status of your Backup Data, store or restore Backup Data, access any Backup Data or request support.

“You,” “yourself”, “user,” and “customer” (whether or not capitalised) refer to the individual or legal entity registering for or using the Second Chance Products or Services.

2. Acceptance of Terms and Conditions of Use; Modification; Cancellation

By registering to Use Second Chance Products or Services, and each time you Use a Second Chance Product or Service, you affirm your acceptance of these Terms and Conditions of Use and agree to comply with them now and throughout the period of your Use of the Second Chance Products or Services and thereafter, as noted in Section 6 (Second Chance License to You; Renewals, etc.) below. If you do not agree to these Terms and Conditions of Use in their entirety, do not Use Second Chance Products or Services.

Second Chance may change the Terms and Conditions of Use at any time, without prior notice to you, and in its sole discretion. The new or modified Terms and Conditions of Use will be effective immediately after we publish them on our website at www.secondchance.net.au.

If you do not agree to be bound by Second Chance’s Terms and Conditions of Use as Published by Second Chance from time to time, your sole and exclusive remedy is to discontinue using Second Chance Products or Services.

If you wish to cancel your Second Chance license after a change in the Terms and Conditions of Use, you must do so in writing or by email within thirty (30) days after your next Use of a Second Chance Product or Service following the change in the Terms and Conditions of Use. For this type of cancellation you will receive a pro-rata refund for the unused portion of your Second Chance license as of your date of notice. You acknowledge and agree that if you do elect to cancel your license within this specified period after a change in the Terms and Conditions of Use, or if you cancel your license or fail to renew an expired or terminated license for any reason, Second Chance may delete any information that Second Chance has obtained through your Use of Second Chance Products or Services, including without limitation, your Backup Data, and Second Chance will not have any Backup Data available for your Use.

3. Requirements for Registration or Use of Second Chance Products

Second Chance Products or Services are intended and offered only for lawful Use by individuals or organisations with the legal capacity and authority under applicable law to enter into a contract for such products or services. Second Chance does not offer Second Chance Products or Services to minors or where prohibited by law. By registering for and/or by Using Second Chance Products or Services, you represent and warrant that you have the legal capacity and authority to enter into a binding agreement to adhere to the Second Chance Terms and Conditions of Use and that you will Use Second Chance Products or Services only in accordance with these Terms and Conditions of Use and with all applicable laws. If an individual is registering or Using Second Chance Products or Services on behalf of an entity or organisation, that individual warrants, represents, and covenants to Second Chance that such individual is duly authorized to agree to these Terms and Conditions of Use on behalf of the organisation and to bind the organisation to them. If an individual uses Second Chance Products or Services that are provided by any third party including any person, entity or organisation, the individual Using the Second Chance Products or Services, by virtue of such use, agrees that any information the individual provides to Second Chance (including but not limited to the individual's Backup Data and Personal Information) will be accessible to, and may be viewed, changed, or deleted by the person, entity or organisation that provided the Second Chance Products or Services to the individual.

You agree to provide accurate and complete information when you register for a Second Chance Product or Service and you agree to keep such information accurate and complete during the entire time that you Use Second Chance Products or Services.

We may ask you from time to time to establish a user name, encryption key or password to access or Use the Second Chance Products or Services. You are solely responsible for any consequences arising in whole or in part out of your failure to maintain the confidentiality of your username, encryption key and/or password.

4. Lawful Use of Second Chance Products or Services

You may not Use Second Chance Products or Services for any unlawful purpose.

Without limiting the foregoing:

(a) Second Chance Products or Services may not be Used to store, backup, or distribute child pornography and may not be Used in violation of Australian export control laws or the export or import regulations of other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain licenses to export, re-export, or import as may be required.

(b) You may not Use Second Chance Products or Services if you are a citizen, national, or resident of, or are under control of, the government of Cuba, Iran, Sudan, Libya, North Korea, Syria, or any other country to which Australia has prohibited export. Each time you Use Second Chance Products or Services you represent, warrant, and covenant that:

(i) You are not a citizen, national, or resident of, nor under the control of, any such country to which Australia has prohibited export; (ii) You will not download or otherwise export or re-export the Second Chance Software, directly or indirectly, to the above mentioned countries nor to citizens, nationals or residents of those countries; (iii) You have not been denied a visa into Australia; (iv) You will not download or otherwise export or re-export the Second Chance Software, directly or

indirectly, to persons on the above mentioned lists; (v) You will neither Use nor allow the Second Chance Software to be Used for, any purposes prohibited by Australian federal or state law; (vi) The Second Chance Software will not be exported, directly, or indirectly, in violation of these laws, nor will the Second Chance Products or Services be Used for any purpose prohibited by these laws including; and (vii) You are not using or permitting others to Use Second Chance Products or Services to create, store, backup, distribute, or provide access to child pornography.

5. Changes to the Second Chance Products or Services

Second Chance has the right at any time to change, modify, add to, discontinue, or retire any Second Chance Product or Service and any aspect or feature of the Second Chance Products or Services including, but not limited to, the software, hours of availability, equipment needed for access or Use, the types of files that are backed-up (not every file on your computer is backed-up), the maximum disk space that will be allotted on Second Chance servers on your behalf either cumulatively or for any particular service, or the availability of Second Chance Products or Services on any particular device or communications service.

Second Chance will provide notice of material changes to the Second Chance Products or Services or changes to this Agreement by posting them to www.secondchance.net.au. Second Chance shall have no obligation to provide you with notice of any such changes in any other manner. It shall be your responsibility to check our website periodically to inform yourself of any such changes.

From time to time, Second Chance may issue new releases, revisions, or enhancements to the Second Chance Products or Services available to you free of charge or for a fee. New releases, revisions or enhancements may be licensed, downloaded, and installed only to the extent that you hold a valid license to Use the Second Chance Products or Services being updated or upgraded, and you may Use them only in accordance with the then-current Terms and Conditions of Use and any additional license terms that may accompany them.

Second Chance may automatically update Second Chance Products or Services you have installed on your computer without your prior consent. If any automatic updates involve the payment of additional fees, we will provide you with the opportunity to approve such fees prior to the new functionality being enabled. If you fail or refuse to approve such fees, Second Chance may, in its sole discretion, terminate your current license, continue to support your current Second Chance Products or Services without the automatic update, or replace your Second Chance Products or Services with other Second Chance Products or Services. If Second Chance terminates your current license on account of your failure or refusal to approve such fees, then Second Chance will refund, on a pro-rata basis based on the remaining term of the current license, any fees related to the period during which you will not have access to your Second Chance Products or Services. If Second Chance updates the Second Chance Products or Services without requiring an additional fee and you object to such change, your sole remedy shall be to terminate your use of the Second Chance Products and Services.

These Terms and Conditions of Use (including any documents incorporated by reference) constitute the entirety of the agreement between us and you concerning the subject matters discussed herein. This Agreement supersedes any prior written or oral representations, understandings, or agreements, and may not be modified except by the posting of changes to www.secondchance.net.au as provided in this

Section 5. No written or oral statement, understanding, representation, or alleged agreement made outside the Terms and Conditions of Use posted to www.secondchance.net.au may be used to modify, interpret, add to, supersede, or construe the terms of this Agreement, except by means of a written agreement signed by an officer of Second Chance.

6. Second Chance License to You; Renewals, Modifications, Limits

(a) Scope of License. Second Chance grants you a non-exclusive, non-transferable limited and revocable license to install the Second Chance Software only on the computer(s) for which you have paid the applicable fees and taxes and from which you are licensed to access the Second Chance Products or Services, and to Use the Second Chance Products or Services for the sole and exclusive purposes of connecting to and Using the Second Chance Products or Services for your personal or internal business purposes in accordance with these Terms and Conditions of Use. We reserve all other rights to the Second Chance Products or Services.

You may Use a license for the Second Chance Products or Services with only one computer at a time unless the Second Chance Products or Services you Use are explicitly designed and marketed to operate on more than one computer at a time concurrently. The type of license you have (including such variables as whether the license permits use of Second Chance Products or Services on more than one computer, whether the licenses fees are based on the number of computers, volume of data, or both, and the length of the Subscription Periods, etc.) is set forth as part of the Second Chance Product or Service description available at www.secondchance.net.au.

Should your license for the Second Chance Product or Services you Use be designed for only one computer at a time you may transfer your license to another computer in the event that you cease to use the computer on which Second Chance Software was originally installed. If you wish to protect multiple computers, you must obtain a separate paid license for each computer or you must obtain a multi-computer license which will be applicable to the number of computers stated in such license.

You may not sub-license, or charge others to Use or access the Second Chance Products or Services and you may not redistribute the Second Chance Products or Services or provide others with access to or Use of them, unless you have entered into a separate Reseller Agreement or other agreement with Second Chance that expressly authorizes you to engage in this activity. Without limiting the forgoing, you will not permit others to Use the Second Chance Products or Services to access or decrypt data stored on servers provided by Second Chance or Second Chance Affiliates; you will not Use or permit others to Use the Second Chance Products or Services to decrypt data encrypted by others; and you will not Use or permit others to Use the Second Chance Products or Services to provide encryption or decryption services to others, whether or not such services are compensated.

(b) Trial Licenses. You may have received as part of your Second Chance license the opportunity to extend the expiration date of your license or trial through the Use of various marketing codes. If you do not enter these codes at the time you purchase your license or start your trial license, Second Chance will not add this additional time to your license or trial at a later date.

If you received a free trial or evaluation license for which you have not paid a license fee, Second Chance grants to you a non-exclusive, non-transferable limited license to Use the Second Chance Software during the trial or evaluation period in accordance with these Terms and Conditions of Use. If you wish to protect multiple computers with a free trial or evaluation license, you must obtain a separate license for each computer or you must obtain a multi-computer license which will be applicable to the number of computers stated in such license. You may only install one free trial or evaluation license in each calendar year per computer.

(c) Renewals. You agree that Second Chance shall have the right to automatically and without notice renew your license to continue to Use the Second Chance Products or Services upon expiration of your then-current license, and that as part of such renewal Second Chance shall have the right to charge the applicable renewal fees and any applicable taxes, which may be different than those you paid when you initially purchased or last renewed your license for Second Chance Products or Services to any credit card you used to purchase your then-current license. You agree that if you elect to not permit Second Chance the right to automatically renew your license to Use Second Chance Products or Services or your credit card information on file with Second Chance does not permit automatic renewal, then Second Chance may terminate your license if you do not otherwise renew your license.

(d) Cancellation of Renewals.

You may cancel a renewal of a license only on the following terms:

You may not Use Second Chance Products or Services for any unlawful purpose.

If your most recent original or renewal license of Second Chance Products or Services was for a period of greater than ninety (90) days, you have thirty (30) days from the date that your license was last renewed to elect to discontinue your Use of Second Chance Products or Services. If you elect to discontinue your Use of Second Chance Products or Services within this period, you will be issued a full refund for the amount of your license renewal.

If your most recent original or renewal license of Second Chance Products or Services was for a period of thirty-two (32) to ninety-one (91) days, you have seven (7) days from the date that your license was renewed to elect to discontinue your Use of Second Chance Products or Services. If you elect to discontinue your Use of Second Chance Products or Services within this period, you will be issued a full refund for the amount of your license renewal.

If your most recent original or renewal license of Second Chance Products or Services was for a period of thirty-one (31) days or less, you will not be eligible for any refund for any monies paid to Second Chance for each license period. You may discontinue your use of Second Chance Products or Services and give Second Chance notice of discontinuance with such discontinuance taking effect at the end of the then current license period.

All monies due Second Chance for subscriptions which are paid in arrears, whether or not invoiced, are payable in full when invoiced.

Should you fail to pay amounts invoiced and due within seven (7) days of being invoiced, or should your payment be otherwise rejected or denied, then Second Chance may at its sole discretion begin collection proceedings to recover any and all amounts due. Should Second Chance elect to refer your past due obligations for collection proceedings you will also become responsible for any costs associated

with said collections and shall pay Second Chance the greater of the then permissible interest rate on the past due balance or 1.5% per month calculated and due on a monthly basis.

You are responsible for ensuring that Second Chance has current and accurate records necessary, to renew your license, including without limitation, credit card data.

(e) Upgrades. Second Chance may in its sole discretion provide automatic upgrades to the Second Chance Products or Services. These upgrades may not be consistent across all platforms and computers; and the performance and features offered by Second Chance may vary depending on your computer and other equipment. You agree that we may automatically check your version of the Second Chance Software and automatically update the Second Chance Software on your computer. You agree to accept and to take no action to interfere with such automatic upgrades, scanning, and related activities and services. If you shut down your computer or the Second Chance Software during an automatic update or otherwise interfere with the installation of the update, the software may be damaged and/or cease to operate.

(f) Refunds. By purchasing a license, you acknowledge that you are aware of the opportunity to “try before you buy” by using a free or evaluation Second Chance Product or Service. Second Chance does not offer any refunds for purchases of Second Chance Products or Services, except as expressly provided in this Agreement. Should you purchase a Second Chance Product or Service that does not offer a free or evaluation opportunity you may request a refund for monies paid within seven (7) days of having first installed said Second Chance Product or Service.

(g) Duration of Agreement. You agree that you shall be bound by these Terms & Conditions of Use beginning on the earlier of when you first install Second Chance Products or Services or when you first agree to the Second Chance Terms and Conditions of Use until the later of the dates when (i) your license and any renewal thereof terminates, ii) your Backup Data is deleted, or iii) you have your last contact with Second Chance for customer support.

7. Assignment and Delegation by Second Chance

Second Chance may, in its sole discretion, transfer or assign all or any part of its rights in the Second Chance Software, the Second Chance Products or Services, and any license or contract related thereto, and may delegate all or any portion of its duties, if any, under any such Second Chance Products or Services, licenses, or other contracts.

8. No Transfers or Modifications by You

You may not sell, assign, grant a security interest in or otherwise transfer any right in the Second Chance Products or Services, nor incorporate them (or any portion of them) into another product or service. You may not copy the Second Chance Products or Services. You may not translate, reverse-engineer or reverse-compile or decompile, disassemble, make derivative works from, or otherwise attempt to discover any source code in the Second Chance Software or decrypt any files that are not associated with your computer.

You may not modify the Second Chance Software or use it in any way not expressly authorized by these Terms and Conditions of Use. You may not obtain the communications protocol for accessing the Second Chance Products. You may not authorize or assist any third party to do any of the foregoing.

9. Protection of Files

You are solely responsible for protecting the information on your computer such as by installing anti-virus software, updating your applications, password protecting your files, and not permitting third party access to your computer. You understand that the Second Chance Products or Services may back-up files that are no longer usable due to corruption from viruses, software malfunctions or other causes. This might result in you restoring files that are no longer usable.

10. Retention or Deletion of Backup Data and Personal Information

Second Chance Software saves to a server operated by Second Chance or a Second Chance Affiliate an encrypted copy of each file you designate. The Second Chance Software scans for changes or additions to these files and then periodically creates an encrypted copy of a modified or newly designated file. You will not be able to restore files that Second Chance has not completed copying, files that have been changed but not yet been backed up, or files or folders or disc drives that are not eligible for back up. Second Chance does not maintain a secondary copy of your data that you have Backed Up to our servers. Should your data be lost by Second Chance we will undertake commercially reasonable efforts to create a replacement back-up from the files stored on your computer.

If your license to Use Second Chance Products or Services expires, is terminated, is not renewed, or is otherwise discontinued for any reason, Second Chance and the Second Chance Affiliates may, without notice, delete or deny you access to any of your Backup Data that may remain in our possession or control.

You agree that if i) you mark a file to no longer be backed-up, ii) you delete a file from your computer, iii) move a file to a location on your computer that is not marked for back-up, iv) you delete a computer from your Second Chance Products or Services account, v) your computer is unable to access Second Chance, or vi) you terminate or allow your trial or license to terminate, non-renew, or otherwise lapse for any reason, that the files you have marked, deleted, moved or stored on a deleted, inaccessible, or unlicensed computer may not be available to you should you wish to restore them.

You agree that Second Chance and Second Chance Affiliates may retain (but shall have no obligation to retain) your Backup Data for a period after your trial or license has been terminated, expired, or otherwise lapsed, as part of Second Chance's marketing to you of the opportunity to purchase, renew, or extend a license. You also agree that Second Chance may retain your Personal Information and related account information for a reasonable time after your license has been terminated.

11. Customer Support

Second Chance may, in its sole discretion, provide customer support or service to you. This service may be available only on selected days and during a limited number of hours. Service may also only be made available through certain delivery vehicles such as email or telephone and some services may only be available for the payment of an additional fee or charge. As part of the delivery of services, Second Chance may employ a variety of tools to aid in the process of resolving your issues as a user. You grant Second Chance the right to use these tools and hold Second Chance harmless for the use of these tools as well as the guidance provided by its customer support staff who, you acknowledge, cannot be fully aware of all of the complexities associated with the Second Chance Products or Services, your computer, or all of the related or associated infrastructure that may affect the performance of your systems or the encryption and backup of your files. You agree and understand that certain programs, files, information or data you restore may require that you have access to or retain license keys that Second Chance may not have backed up and that you will retain any needed copies of such information. You agree and understand that certain programs, applications or utilities will require configuration in order to access data restored from your Second Chance Products or Services and that Second Chance has no obligation to assist, and may not be able to assist, you with such configurations.

12. Restrictions on Access to Second Chance Products or Services

You may access Second Chance Products or Services only through the interfaces and protocols provided or authorized by Second Chance. You agree that you will not access Second Chance Products through unauthorized means, such as unlicensed software clients. Certain Second Chance Products or Services backup only certain types of files. You agree not to circumvent these limitations in any way, including but not limited to, changing file extensions or header information.

13. Communications

You are responsible for obtaining and maintaining all of the hardware, software, and services that you may need to access and Use Second Chance Products or Services. Without limiting the foregoing, you must pay all charges, taxes, and other costs and fees related to obtaining your own Internet access, telephone, computer, and other equipment, and any communications or other charges incurred by you to access Second Chance Products or Services.

14a. Termination and Fair Use Policy

SECOND CHANCE SHALL HAVE THE ABSOLUTE AND UNILATERAL RIGHT IN ITS SOLE DISCRETION TO DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF SECOND CHANCE PRODUCTS OR SERVICES TO USERS WHO ARE DEEMED BY SECOND CHANCE TO BE USING THE SECOND CHANCE PRODUCTS OR SERVICES IN A MANNER NOT REASONABLY INTENDED BY SECOND CHANCE OR IN VIOLATION OF LAW, INCLUDING BUT NOT LIMITED TO SUSPENDING OR TERMINATING A USER'S ACCOUNT WITH SECOND CHANCE AND THE LICENSE TO USE THE SECOND CHANCE PRODUCTS OR SERVICES.

Second Chance Products or Services are designed to serve the needs of particular types of users, such as small businesses. If you have purchased a Second Chance Product or Service that is inappropriate for your actual usage, Second Chance may require you to switch to an appropriate Second Chance Product or Service which may result in your having to pay Second Chance additional fees for use of the appropriate product or to terminate your purchased Second Chance Products or Services and refund, on a prorated basis, any fees paid you may have paid on the unused portion of your Second Chance subscription.

Second Chance may, in our sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of Second Chance Products or Services and to prevent abuses. As part of these practices, we reserve the right to monitor our system to identify excessive consumption of network resources and to take such technical and other remedies as we deem appropriate. Your consumption of Second Chance Products or Services may be deemed excessive if, within any month, your usage greatly exceeds the average level of monthly usage of Second Chance's customers, generally. In the event you are deemed to have violated this policy, we reserve the right to offer an alternative pricing plan or Second Chance Product or Service that will permit you to continue to use Second Chance Products or Services. Although violations of this policy have been infrequent, we reserve the right to terminate or suspend your license to Use Second Chance Products or Services and any license to use the Second Chance Software, without prior notice in the event of a violation of this policy.

14b. Fair Use – Plan Usage Caps

The Current Second Chance Plan Usage Caps;

Essentials Plan – 250Gb total storage with upto 100 daily backups retained

Premium Plan – 500Gb total storage with upto 365 daily backups retained

Ultimate Plan – 1000Gb total storage with upto 365 daily backups retained along with a total of 7 annual backups.

Each additional Gigabyte of storage used – above the plan rate chosen, will be charged at \$1/Gb per month. Each additional 10 days of daily backups requested to be retained – above the plan rate chosen, will be charged at \$1/month.

15. Data Collection, Encryption, Privacy, and Disclosure

Second Chance will collect and use Personal Information in accord with the terms of our Second Chance Privacy Policy, which is incorporated into and made a part of these Terms and Conditions of Use. You hereby consent to Second Chance's use of your Personal Information under the terms of the Second Chance Privacy Policy, as it may be amended from time to time.

To provide its services, Second Chance Software routinely scans your computer in order to detect new, modified, or deleted data files that require further action to complete backup and restore operations. Second Chance Software also catalogs the number and total storage size of various file types on your computer. Second Chance Software inspects file headers and related information in order to confirm that each file's type is properly represented by its file extension.

The contents of your files are encrypted before they are transmitted to Second Chance's data centre. Second Chance may have the ability to decrypt your data files. However, Second Chance will not decrypt your files unless i) it reasonably believes that it must do so to troubleshoot problems with the Second Chance Services or ii) it reasonably believes it must do so in order to comply with a law, subpoena, warrant, order, or regulation, including, without limitation, the requirement of a certification that complies with Australian Federal or state law. Second Chance may also provide access to your data to government authorities if Second Chance suspects or believes that the data contains child pornography or other prohibited data or that the data is being used for illegal purposes. You acknowledge that Second Chance or Second Chance Affiliates may use servers and other equipment to provide the Second Chance Products or Services that are located in Australia or in other countries where litigants, law enforcement, courts, and other agencies of the government may have the right to access data stored within their jurisdictions upon terms and conditions provided by local law, and that as a result, they may gain access to your Backup Data as provided by applicable local law.

You may elect to Use Second Chance Products or Service that permit you to decrypt and download Backup Data from any Internet enabled computer. You understand that by electing to access your files from a computer other than the one you used to create the Backup Data, that your Backup Data will be decrypted by Second Chance in its data centre and sent to you in a decrypted format via public infrastructure. You acknowledge that this may cause the contents of these files to become accessible to individuals other than you and that you accept this risk. You further acknowledge that depending upon the Second Chance Product or Service you use or the features of the Second Chance Product or Service you use, accessing your Backup Data from any Internet enabled computer may not be possible.

16. Warranties

(a) **WARRANTY.** Second Chance warrants that the Second Chance Products or Services will perform substantially as specified in the applicable Second Chance documentation for a period of thirty (30) days from the date of registration or payment. If you satisfactorily demonstrate to Second Chance within such thirty (30) day period that a Second Chance Product or Service contains errors, then as Second Chance's sole and exclusive liability and as your sole and exclusive remedy, Second Chance shall at its sole option either use commercially reasonable efforts to correct the errors reported by you, replace the Second Chance Product or Services affected with a substantially conforming product or service, or refund the fee you paid for the Second Chance Product or Service and terminate your license under the Terms and Conditions of Use. Second Chance does not warrant the results of its correction or replacement Second Chance Products or Services. Correction or replacement under this Section 16 (Warranties), and the issuance of any corrections, patches, bug fixes, workarounds, upgrades, enhancements, or updates by Second Chance to you, shall not be deemed to begin a new, extended, or additional license, Subscription Period, or warranty period.

(b) **DISCLAIMER OF OTHER WARRANTIES.** THE LIMITED WARRANTY IN THE PRECEDING PARAGRAPH IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. Second Chance and the Second Chance Affiliates do not warrant that the functions contained in the Second Chance Products or Services will meet your requirements, that the operation of the Second Chance Products or Services will be

uninterrupted or error-free, or that defects in the Second Chance Products or Services will be corrected. Second Chance and Second Chance Affiliates do not warrant or make any representations regarding the use or the results of the use of the Second Chance Products or Services in terms of their correctness, accuracy, reliability or otherwise. Second Chance and Second Chance Affiliates do not represent or warrant that users will be able to access or use the Second Chance Products or Services at times or locations of their choosing, or that Second Chance and Second Chance Affiliates will have adequate capacity for any user's requirements. No oral or written statement, information or advice given by Second Chance, Second Chance Affiliates, or their respective employees, distributors, dealers, or agents shall create any warranties in addition to those express warranties set forth in this Section 16 (Warranties). You may have other statutory rights. However, to the full extent permitted by law, the duration of statutorily required warranties, if any, shall be limited to the warranty period.

17. Limitation of Liability

With respect to defects or deficiencies in the Second Chance Products or Services, the liability of Second Chance and Second Chance Affiliates will be limited to performance of its responsibilities under Section 16 (Warranties) above. With respect to other breaches of contract, the liability of Second Chance and Second Chance Affiliates shall be limited to your actual damages with respect to the computer affected by the breach, and in no event will such liability exceed the total amount received by Second Chance from you under these Terms and Conditions of Use for your current Subscription Period. IN NO EVENT WILL SECOND CHANCE, THE SECOND CHANCE CONTRACTORS, SECOND CHANCE DISTRIBUTORS OR SECOND CHANCE SUPPLIERS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE SECOND CHANCE PRODUCTS OR SERVICES OR TO USE OR RETRIEVE ANY BACKUP DATA, WHETHER FOR BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT, OR ON ANY STRICT LIABILITY THEORY, EVEN IF SECOND CHANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR A REMEDY SET FORTH IN THESE TERMS OF USE IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE.

Neither Second Chance nor any Second Chance Affiliate assumes any liability to any party other than you arising out of your Use or inability to Use the Second Chance Products or Services. The limitations of damages set forth above are fundamental elements of the bargain between Second Chance and you. Second Chance would not be able to provide the Second Chance Products or Services to you without such limitations.

18. Indemnification

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS SECOND CHANCE, SECOND CHANCE AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, AND EXPENSES,

INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, ARISING OUT OF YOUR USE OF THE SECOND CHANCE PRODUCTS OR SERVICES AND/OR YOUR VIOLATION OF ANY TERM OF THESE TERMS AND CONDITIONS OF USE.

Should you bear financial responsibility for payment to Second Chance for Second Chance Products or Services or have otherwise made payment for Second Chance Products or Services, you agree to indemnify any Users of Second Chance Products or Services that you have paid for with respect to any and all matters. If you are a beneficiary of another party having paid for said Second Chance Products or Services, whether or not the paying party(s) is a user of Second Chance Products and Services, your sole source of recourse, for any and all claims, is to the party that bears financial responsibility to Second Chance for Second Chance Products and Services.

SECOND CHANCE RESERVES THE RIGHT, AT ITS OWN EXPENSE AND IN ITS SOLE DISCRETION, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU. IN THAT EVENT, AND ONLY IN SUCH EVENT, YOU SHALL HAVE NO FURTHER OBLIGATION TO PROVIDE A DEFENSE FOR SECOND CHANCE IN THAT MATTER. If Second Chance chooses to provide its own defense in connection with any matter subject to indemnification under these Terms and Conditions of Use, you shall participate and cooperate in the defense of Second Chance and Second Chance Affiliates, at your own expense, to the full extent requested by Second Chance.

19. Trademarks, Service Marks, and Other Intellectual Property

All trademarks, service marks or other similar items appearing on the Second Chance Products or Service are the property of their respective owners, including, without limitation, Second Chance.

The Second Chance Products or Services are protected by copyright and other intellectual property laws, title, ownership rights, and intellectual property rights in the Second Chance Products or Services and shall remain with Second Chance and its licensors. You agree not to take any action to jeopardize, limit, or interfere in any manner with Second Chance's or its licensor's ownership of or rights with respect to the Second Chance Products or Services.

20. High Risk Activity

You acknowledge and agree that the Second Chance Products or Services are not intended for use with any high risk or strict liability activity, including, without limitation, air or space travel, technical building or structural design, power plant design or operation, life support or emergency medical operations or uses, and that Second Chance makes no warranty and shall have no liability arising from any Use of the Second Chance Products or Services in any high risk or strict liability activities.

21. Dispute Resolution, Arbitration, Governing Law, and Venue

All provisions of this Agreement shall be governed by and construed and interpreted in accordance with the internal laws of Western Australia, without regard to conflict of

laws provisions. The United Nations Convention on Contracts for the International Sale of Goods as well as any other similar law, regulation or statute in effect in any other jurisdiction shall not apply.

22. Termination, Expiration, Cancellation

(a) Trial and Evaluation Licenses. If this Agreement pertains to a trial, beta, or evaluation license (such as a license that provides a limited amount or an unlimited amount of back-up for free, for which you have not paid a fee and/or for which you do not pay a fee and associated taxes on or prior to expiration), the license granted under these Terms and Conditions of Use will terminate upon the expiration or cancellation of the trial or evaluation period, when the Second Chance Product or Service you are using is no longer made available, six (6) months from the date you first installed the Second Chance Product and Service, or when Second Chance cancels or terminates the license, whichever is shorter. You agree to Use the Second Chance Products or Services for no longer than the trial or evaluation period unless you enter into another license and pay a license fee and associated taxes as applicable, or Second Chance allows your license to roll over for another six (6) month period which Second Chance may elect to do at its sole discretion and without notice to you.

(b) All Other Licenses; Limited Term. Your license will end upon the sooner to occur of (i) expiration of your Subscription Period, (ii) upon your non-renewal of the license, (iii) upon your cancellation of the license, (iv) when Second Chance elects to discontinue the product, (v) upon your breach of these Terms and Conditions of Use (if such breach is not cured within the time indicated below in this Section 22 (Termination, Expiration, Cancellation), or (vi) when Second Chance cancels or terminates your license, (any such expiration, cancellation, discontinuation, or termination are referred to hereafter as “termination”).

(c) Termination for Unlawful or Abusive Use, Other Breach. Second Chance may block your access to your Backup Data and/or terminate your Use of the Second Chance Products or Services if Second Chance reasonably believes that the Backup Data may contain child pornography or is being used to support other types of illegal activities, if providing Second Chance Products or Services to a person located in a particular country would violate Australia or other applicable law, or if your continued Use of Second Chance Products or Services may damage, disable, overburden, or impair our servers or networks.

If you breach these Terms and Conditions of Use, your right to Use the Second Chance Products or Services shall automatically terminate if you fail to cure the breach within seven (7) days after notice from Second Chance or any of the Second Chance Affiliates, unless your breach is due to violations of Section 4 (Lawful Use), Section 8 (No Transfers or Modifications by You), Section 18 (Indemnification), Section 19 (Trademarks), Section 20 (Australian Government Restrictions), in which case termination will be without notice and without any right to cure.

Upon termination: i) you shall immediately cease any and all Use of the Second Chance Products or Services and delete all copies of them; ii) the Second Chance Software may be disabled by Second Chance without notice to you; and iii) you will no longer have the right to access or retrieve your Backup Data; you hereby grant Second Chance at its sole discretion the unrestricted right to delete or retain all such Personal Information and Backup Data at any time after termination, without notice.

23. Survival

In the event of any termination, expiration, or cancellation, the restrictions on your Use of the Software and the other applicable restrictions as set forth in Section 4 (Lawful Use), Section 6 (Second Chance License), Section 8 (No Transfers or Modifications by You), Section 16 (Warranties), Section 17 (Limitation of Liability), Section 18 (Indemnification), Section 19 (Trademarks, Service Marks, and Other Intellectual Property), Section 20 (Australian Government Restricted Right), Section 21 (High Risk Activity), Section 21 (Dispute Resolution, Governing Law, Venue), Section 23 (Survival), Section 24 (Notice), Section 27 (Limitation on Actions), Section 29 (Miscellaneous) and Section 30 (Severability) shall survive such termination, expiration, or cancellation, and you agree to remain bound by those terms.

24. Notice

Any notice that may or must be given by Second Chance in connection with this Agreement or in connection with the Use of the Second Chance Products or Services, may be given by sending it to the email address provided by you upon registering for the Second Chance Products or Services or as you may provide from time to time thereafter by modifying your user profile at www.secondchance.net.au. You are responsible for ensuring that your accurate email address is available to Second Chance and provide any needed updates. Second Chance may, in its sole discretion, use other means of providing notice, such as: desktop notification; regular, certified, or registered mail; fax; commercial delivery service; or messenger. All such notices shall be deemed given when dispatched with payment of delivery charges made or arranged. You hereby consent to receiving notice by any such means. Notwithstanding the foregoing, Second Chance has no obligation to provide notice or attempt to locate a customer other than through the email address provided.

25. English Language

These Terms and Conditions of Use were negotiated and written in English. Any inconsistency between the Terms and Conditions of Use as expressed in English and any other language shall, to the full extent permitted by applicable law, be resolved by reference to the English version.

26. Entire Agreement; Applicability of Terms; Construction; Limit to Modifications; Conflicts in Terms

These Terms and Conditions of Use (including the items incorporated by reference and modifications that may be made from time to time), constitute the entire agreement between Second Chance and you regarding Second Chance Products or Services, and supersedes all prior agreements between you and Second Chance regarding the subject matters hereof.

Any item or service furnished by Second Chance in furtherance of these Terms and Conditions of Use, although not specifically identified in them, shall nevertheless be

covered by these Terms and Conditions of Use unless specifically covered by some other agreement entered into in written or electronic form between you and us.

Any modification or change in these Terms and Conditions of Use proposed or offered by you shall not become a part of these Terms and Conditions of Use unless accepted in a writing dated after the effective date of the applicable Terms and Conditions of Use and signed by an authorized officer of Second Chance.

Should there be any conflict in terms between this Agreement and any other document, the terms and conditions set forth in this Agreement shall govern.

Any references that are singular or plural and any references that are masculine, feminine, or neuter in gender, are meant to be used interchangeably as the context of the sentence might imply.

27. Limitation on Actions

Unless otherwise required by law, an action or proceeding by you to enforce an obligation, duty, or right arising under this Agreement or by law must be commenced within one year after the cause of action accrues.

28. Copyright Infringement Notification

As provided in the Digital Millennium Copyright Act of 1998, we have designated the following individual for notification of potential copyright infringement regarding Web sites hosted by Second Chance: service@SecondChance.net.au If you believe content hosted by Second Chance infringes a copyright, please provide the following information to the person identified above: (i) A physical or electronic signature of the copyright owner or authorized agent; (ii) Identification of the copyrighted work(s) claimed to have been infringed; (iii) Identification of the material that is claimed to be infringing or to be the subject of the infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) Information regarding how we may contact you (e.g., mailing address, telephone number, e-mail address); (v) A statement that the copyright owner or its authorized agent has a good faith belief that use of the material in the manner complained of is not authorised by the copyright owner, its agent, or the law; and (vi) A statement that the information in the notification is accurate, and made under penalty of perjury, and, if an agent is providing the notification, a statement that the agent is authorised to act on behalf of the owner of an exclusive right that is allegedly infringed.

29. Miscellaneous

You agree to reimburse Second Chance for any costs or fees related to its enforcement of this Agreement, including without limitation the expert fees and attorney fees regularly charged by the experts and legal counsel chosen by Second Chance.

Second Chance is not responsible for misprints, errors or omissions in its advertising and promotional materials.

If you have designated a person (whether by email, orally, by registering such person with Second Chance, by granting such person access to your username and password or by having your computer registered for Second Chance Products or Services where another party is paying for the backup of your files) to have access to your Backup Data, you hereby authorize Second Chance to give such designated person access to your Backup Data, including without limitation in the event of your death or incapacity.

30. Severability

This Agreement will be enforced to the fullest extent permitted by applicable law. If for any reason any provision of this Agreement is held to be invalid or unenforceable under applicable law to any extent, then (i) such provision will be interpreted, construed, or reformed to the extent reasonably required to render it valid, enforceable, and consistent with the original intent underlying such provision and ii) such invalidity or unenforceability will not affect the validity or enforceability of any other provision of this Agreement and all such provisions shall remain in full force and effect.

31. No Waiver

The Company reserves its right to take all legal steps available to enforce these Terms and Conditions of Use. The Company's failure to enforce these Terms and Conditions of Use in every instance in which they might apply, or the failure to require at any time performance of any provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions or of the Company's rights to enforce such provisions. No waiver of any provisions of this or any other Agreement with the Company shall be effective unless expressly stated to be such in writing and signed by both parties.

32. Billing Process

Some licenses for Second Chance Products or Services are based on the number of computers registered, the volume of storage used, or both, as well as for ancillary or related services. Where your license fees are based in full or in part upon the amount of storage you use, your bill for Second Chance Products or Services will be based upon the greater of the storage amount shown on your computer or the storage amount maintained by Second Chance, excluding the benefits of any data compression, file duplication or similar techniques performed by Second Chance. The calculation of a storage bill will be based upon the price(s) for the Second Chance Products or Service licensed and may be based upon the average storage used during the Subscription Period, the storage as of the end of the Subscription Period, or another storage measure taken during the Subscription Period, depending on which services you have selected at the time of registration or renewal.

Should Second Chance bill you for your Second Chance Product or Service on a monthly or periodic basis you agree that Second Chance will bill you exclusively in full month or periodic increments and that there will be no billing for partial months or periods for any reason. Any amounts billed are fully due and payable at the time the bill is rendered to you.

33. Billing Issues

You must notify us about any billing problems or discrepancies within sixty (60) days after they first appear on the statement you receive from your bank or credit card company or other billing company. Send such notification to us at the Second Chance Contact Information indicated in Section 35 (Second Chance Contact Information) below. If you do not bring such problems or discrepancies to our attention within that sixty (60) day period, you agree that you waive the right to dispute such problems or discrepancies.

34. Managing Your Second Chance Product or Service

You acknowledge and agree that where Second Chance licenses Second Chance Products or Services to an entity or organisation, or where an entity or organisation makes the Second Chance Products or Services available to you, the entity or organisation so licensed or giving you access may grant multiple individuals rights related to the management and Use of the Second Chance Products or Services and the Backup Data, without any notice to you. These rights may enable one or more persons to: view, access or change Backup Data or Personal Information; determine who can access the account, Backup Data, and Personal Information; determine who is responsible financially for the account; and other similar actions.

35. Second Chance Contact information

If you have any questions or comments, please contact us at helpdesk@SecondChance.net.au.

Although we strongly prefer email communication, you may also send regular postal mail to:

Second Chance c/o
PO Box 1863, Canning Vale, DC WA 6970