

FAIRWINDS INSIGHTS CUSTOMER AGREEMENT

Last Updated: This Agreement was last updated on March 13, 2020.

This Customer Agreement (“**Agreement**”) governs all uses of Insights (defined below), provided by Fairwinds Ops, Inc., a Delaware corporation (“**Fairwinds**”), by the individual or organization using Insights (“**Customer**”). By using Insights or any part of it, including by registering for Insights, Customer agrees to this Agreement effective on the date that Customer first uses Insights or registers for it (“**Effective Date**”).

From time to time, Fairwinds may update this online Agreement with or without prior written notice to Customer. Customer’s continued use of Insights after any such update or amendment to this Agreement means that Customer agrees to this Agreement in its updated form.

1. Definitions.

“**Agent**” means the software made available to Customer on an optional basis through Insights and deployed into one or more Kubernetes clusters or other environments controlled by Customer.

“**Commercial Agreement**” means a written agreement (whether a Master Services Agreement or otherwise) between Fairwinds and Customer.

“**Commercial Customer**” means an organization that is party to a Commercial Agreement with Fairwinds that includes a subscription to Insights or any of the following Fairwinds offerings:

- ClusterOps Express Managed Service
- ClusterOps Pro Managed Service
- ClusterOps Advisory
- DevOps-as-a-Service (DaaS)

“**Customer**” means the individual, company or other legal entity agreeing to this Agreement.

“**Customer Data**” means electronic data and information submitted by or for Customer to Insights.

“**Customer Systems**” means hardware, software or other systems that Customer owns, leases or controls.

“**Documentation**” means the document(s) that Fairwinds makes available to Customer from time to time that provide instructions for using Insights.

“**Fairwinds Marks**” means any and all trademarks, service marks, logos or other branding owned or controlled by Fairwinds relating to Insights or Fairwinds. “Fairwinds Marks” does not include any Intellectual Property of any third party.

“**Fairwinds Content**” means information created by Fairwinds and made available to Customer through Insights, including any information that Fairwinds may communicate to Customer through Insights, by email and by other means of communication.

“**Insights Local**” means a downloadable software application that Fairwinds makes available to Customer for self-hosting the product in the Customer environment.

“**Instance**” means a single production copy of Insights Local, connected to a single database or datastore, running on a single physical or virtual server.

“**Intellectual Property**” means copyrights, patents, trademarks, trade secrets, and trade dress.

“Local Customer” has the meaning given in section 2.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Master Services Agreement” or **“MSA”** means a written agreement that Customer may, but need not, enter into with Fairwinds for compensated services.

“Open-Source Software” means software developed by or made available for use by the open source community, and may include including software that requires as a condition of use, modification and/or distribution of such software that other software incorporated into, derived from or distributed with such software be disclosed or distributed in source code form, licensed for the purpose of making derivative works, or redistributable at no charge.

“Platform” means the Software-as-a-Service product developed by and made available to Customer by Fairwinds and accessible at <https://insights.fairwinds.com>.

“SaaS Customer” has the meaning given in section 2.

“Third-Party Tools” means unmodified software or services provided by third parties and which is provided to Customer as part of or in connection with Insights. Third-Party Tools include Open-Source Software as well as proprietary software made available by third parties.

2. Insights.

Insights is a suite of products made available by Fairwinds consisting of the Platform, Insights Local, the Agent, Third-Party Tools and the Documentation. Individuals and organizations can use Insights in the following ways, depending on whether they are party to a Commercial Contract and, if so, the terms of such Commercial Contract:

- **SaaS Customers** are customers who access and use Insights through the Platform.
- **Local Customers** are customers who self-host Insights Local on their own systems.

If Customer is a Commercial Customer whose Commercial Contract includes a Sales Order Form that expressly authorizes Customer to use Insights Local, then Customer is a “Local Customer” for purposes of this Agreement.

If Customer (a) is not a Commercial Customer or (b) is a Commercial Customer that has not executed a Sales Order Form that expressly authorizes Customer to use Insights Local, then Customer is a “SaaS Customer” for purposes of this Agreement.

If Customer is a SaaS Customer who is a Commercial Customer but ceases during the Term of this Agreement to be a Commercial Customer, then Fairwinds reserves the right to alter and/or remove Insights functionality that Fairwinds makes available to Commercial Customers.

To the extent this Agreement contains provisions expressly stating that they apply only to SaaS Customers, they will apply only to the extent Customer may use the Platform. To the extent this Agreement contains provisions expressly stating that they apply only to Local Customers, they will apply only to the extent Customer may use Insights Local. All other provisions of this Agreement apply to Customer in all cases.

The Agent is deployed in Customer's Kubernetes cluster(s) if and when Customer manually authorizes that deployment via the interface in the Platform or Insights Local. All other components of Insights are delivered to Customer through the Platform, which is hosted on servers under the control or direction of Fairwinds, and Insights Local, which is hosted locally by Customer on servers of its choice and under its control or direction.

3. Intellectual Property.

3.1. SaaS Customer Access. Subject to Customer's compliance with this Agreement, Fairwinds hereby grants Customer (a) a limited, revocable, non-exclusive, non-transferable, worldwide, royalty-free, fully paid up right during the Term to access and use the Platform consistent with the Documentation; and (b) a limited, non-exclusive, non-transferable, worldwide, royalty-free, fully paid up license during the Term to deploy the Agent in a Kubernetes cluster or clusters owned or controlled by Customer.

3.2. Local Customer License. Subject to Customer's compliance with this Agreement, Fairwinds hereby grants Customer (a) a limited, revocable, non-exclusive, non-transferable, royalty-free, fully paid up license during the Term to download, store and use a single Instance of Insights Local consistent with the Documentation; and (b) a limited, non-exclusive, non-transferable, royalty-free, fully paid up license during the Term to deploy the Agent in Customer's Kubernetes cluster(s), provided that such environment is owned or controlled by Customer. The licenses in this Section 3.2 may be exercised only within North America.

3.3. Use Restrictions. Customer will not at any time during or after the Term, directly or indirectly: (a) sell, resell, license, sublicense, distribute, rent or lease any part of Insights or any Fairwinds Content, or disclose any of them to any third parties without compensation; (b) use Insights to store, use or transmit material in violation of third-party privacy or Intellectual Property rights; (c) use Insights to store or transmit Malicious Code, or disable, impair or conduct penetration tests or scans of any hardware, software or other systems that Fairwinds owns, leases or controls; (d) interfere with or disrupt Insights's integrity or performance; (e) gain unauthorized access to Insights; (f) access or use any Fairwinds Intellectual Property except as this Agreement allows; (g) modify, copy, or create derivative works based on Insights or Fairwinds Content or any part of either of them; (h) frame or mirror any part of Insights or any Fairwinds Content, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes or as permitted in the Documentation; (i) remove or modify any attributions, proprietary marks or notices that Fairwinds may include in Insights or Fairwinds Content, including Fairwinds Marks or any other attributions, property marks or notices relating to Third-Party Tools; (j) use Insights in a way not expressly authorized by this Agreement; or (k) disassemble, reverse engineer, or decompile any part of Insights or any Fairwinds Content, or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of Insights, (3) copy any ideas, features, functions or graphics of Insights or (4) determine whether Insights is within the scope of any patent.

3.4. Suspension. Fairwinds may temporarily suspend Customer's access to any part or all of Insights: (i) if Fairwinds reasonably determines that (A) there is a threat or attack on Insights; (B) Customer's use of Insights disrupts or poses a security risk to Insights or to any other customer or vendor of Fairwinds; (C) Customer uses Insights for fraudulent or illegal activities; or (D) Fairwinds's provision of Insights to Customer is or becomes prohibited by applicable law; (ii) if any provider of a Third-Party Tool has suspended or terminated Fairwinds's access to or use of that Third-Party Tool, rendering Fairwinds unable to provide Insights; or (iii) on receipt of a court order or law enforcement request directing such suspension (any such suspension described in subclause (i), (ii) or (iii), a "**Service Suspension**"). Fairwinds will have no

liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer may incur as a result of a Service Suspension.

3.5. Modification and Discontinuance. Fairwinds may modify Insights at any time, with or without prior notice to or liability to Customer. It may be necessary for Fairwinds to perform repairs or maintenance or remotely patch or upgrade Insights, which may temporarily degrade the quality of Insights or result in a partial or complete outage of Insights. Fairwinds may also discontinue the inclusion of some or all Third-Party Tools in Insights to the extent that their respective owners or publishers discontinue them or stop making them available to Fairwinds.

3.6. Aggregated Statistics. Fairwinds may monitor Customer's use of Insights (except to the extent that Customer may use Insights Local) and collect and compile Aggregated Statistics. During and permanently after the Term, Fairwinds may (a) make Aggregated Statistics publicly available (for advertising purposes or otherwise) in compliance with applicable law and subject to the confidentiality and data protection provisions of this Agreement and any other agreement between the parties and (b) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information. Fairwinds will have and retain all right, title, and interest in Aggregated Statistics and all Intellectual Property rights therein, and Fairwinds may use Customer Data that is input into Insights to compile Aggregated Statistics. **"Aggregated Statistics"** means data and information related to Customer's use of Insights that is used by Fairwinds in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of Insights.

4. Fairwinds's Responsibilities.

4.1. Availability. During the Term, the Platform may be unavailable from time to time for planned downtime or other maintenance.

4.2. Safeguards.

4.2.1. Fairwinds will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Fairwinds will not disclose Customer Data to any third party or use it for any other purpose not necessary for Fairwinds to provide Insights or not permitted by Fairwinds's Privacy Policy. Fairwinds's obligations under this section will not apply to the extent that any Customer Data is (a) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of Fairwinds, (b) subsequently disclosed to Fairwinds on a non-confidential basis by a third party not having a confidential relationship with Customer that rightfully acquired such information, (c) communicated by Fairwinds to a third party with Customer's prior written consent, or (d) disclosed by Fairwinds pursuant to a subpoena, court order or request by law enforcement or otherwise required by law.

4.2.2. To the extent that Customer may be party to a Commercial Agreement that conflicts with Section 4.2.1 above, the terms of that Commercial Agreement will prevail over Section 4.2.1.

4.3. Customer Service. Except for providing the Documentation, Fairwinds will not provide training, onboarding or other customer services to Customer or any third party.

4.4. Updates. Fairwinds may from time to time in its sole discretion develop and provide updates to Insights, which may include upgrades, bug fixes, patches, other error corrections, and/or new features

(collectively, including related Documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. Customer agrees that Fairwinds has no obligation to provide any Updates, to fix bugs or to continue to provide or enable any particular features or functionality. If Customer is a Local Customer, Customer agrees promptly to install Updates after receiving notice of them from Fairwinds.

5. Intellectual Property.

5.1. Feedback. Fairwinds may allow Customer to provide Fairwinds with comments or suggestions about Fairwinds or Insights ("**Feedback**"). Customer hereby grants Fairwinds a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license to copy and store any Feedback and use it to develop new products, improve or modify Insights or as Fairwinds may otherwise deem appropriate, without separate notice to, consent from or attribution to Customer.

5.2. Reservation. Customer will have no rights in Insights except as this Agreement expressly grants and no rights to Third-Party Tools except as the relevant owners, licensors or publishers may provide.

6. Customer's Responsibilities and Use of Insights. During the Term, Customer will use Insights consistent with this Agreement, with the Documentation and with applicable laws and use commercially reasonable efforts to prevent unauthorized access to or use of Insights, and notify Fairwinds promptly of any such unauthorized access or use.

7. Term and Termination.

7.1. Term. The Term of this Agreement begins on the Effective Date and terminates one year later (the "**Initial Term**") unless terminated earlier or extended in the ways described here. This Agreement will automatically renew for successive one-year periods ("**Renewal Terms**") after the Initial Term's end. The "**Term**" means the Initial Term and all Renewal Terms together.

7.2. Termination.

If Customer is not an Commercial Customer, then Fairwinds may terminate this Agreement at any time with or without prior notice to Customer, either by written notice to Customer or by making Insights unavailable to Customer. If Customer is an Commercial Customer, then this Agreement terminates at the end of the subscription term set forth in Customer's Commercial Agreement.

Customer may terminate this Agreement at any time by deleting Customer's Insights account.

If Customer is a Local Customer, then Customer immediately after termination of this Agreement by either party and for any reason will delete any and all copies of the Local Software.

7.3. Effect of Termination. Any termination of this Agreement will also contemporaneously terminate all licenses and access authorizations that it grants except for those set forth in Sections 3.6 and 5.1.

8. Future Fees and Functionality. If Customer is using a version of Insights that is made available at no cost, then Customer acknowledges that Fairwinds in its sole discretion at any time in the future may discontinue or modify Insights or portions of it, charge fees for its usage or restrict some or all portions of Insights to paying customers. If Fairwinds in the future asks Customer to affirmatively opt-in to a new

agreement relating to Insights, then Customer's use of Insights may be suspended until Customer does so. Customer's entry into this Agreement and use of Insights are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Fairwinds regarding future functionality or features.

9. Representations and Warranties.

Each party represents to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement.

Customer represents and warrants that (a) Customer's deployment and use of the Agent (and download and use of Insights Local, if Customer is a Local Customer) will not violate any data protection policies or other obligations or agreements to which Customer is a party; (b) Customer has all necessary authorizations and permissions to deploy the Agent (and download and use of Insights Local, if Customer is a Local Customer) in the environment(s) in which Customer authorizes that deployment; and (c) Customer is not an agency, department, or other unit of any federal, state, county, municipal or other governmental entity in the United States of America or in any other country.

10. DISCLAIMERS.

Insights is provided "as is" without warranty of any kind. Fairwinds disclaims all warranties to Customer and to any third party, whether express, implied or statutory, regarding Insights, including without limitation any implied warranties of merchantability, accuracy, results of use, reliability, fitness for a particular purpose, title, non-infringement of third-party rights and any warranties or conditions arising out of course of dealing or usage of trade. Fairwinds also disclaims any warranty that Insights will be uninterrupted, error-free, virus-free, or secure and that Customer's use of Insights will produce any particular business result or protect Customer Systems will be protected from attack.

Fairwinds does not provide any warranties regarding any Third-Party Tools. Any warranty on Third-Party Tools will only be provided by their respective providers. Customer assumes the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such errors or viruses are the direct result of Fairwinds's gross negligence or willful misconduct.

The Third-Party Tools may vary during the Term if Fairwinds from time to time chooses to remove individual Third-Party Tools from Insights or if suppliers of Third-Party Tools discontinue them, discontinue Fairwinds's access to them or make them available to Fairwinds on terms that Fairwinds deems commercially impracticable. Accordingly, Fairwinds does not warrant or guarantee that any or all Third-Party Tools accessible via Insights at the time of execution of this Agreement will remain accessible to Customer throughout the Term.

The disclaimers in this section apply to the greatest extent permitted by applicable law and notwithstanding anything else in this Agreement.

11. LIMITATION OF LIABILITY.

Except with respect to either party's confidentiality or indemnification obligations hereunder or damages arising from either party's violation of the other party's Intellectual Property rights, (a) neither party will be liable to the other party or to any third party for any incidental, indirect, punitive, special or consequential damages relating to this Agreement and (b) Fairwinds's aggregate liability for any and all

claims relating to or arising from this Agreement under any theory will not exceed the total fees (if any) paid by Customer to Fairwinds solely for access to Insights in the three months before the event giving rise to the claim or \$5,000, whichever is more.

Fairwinds will have no liability to any third party for any losses or damages under any theory of liability.

The limitations in this Section 11 will apply to all claims for damages, whether based in contract, warranty, strict liability, negligence, tort, or otherwise, and regardless of the person bringing the claim.

This Section 11 (“Limitation of Liability”) is intended to be as inclusive as Delaware law and any other applicable law permit. Customer’s agreement to this Agreement confirms that Customer has read this Section 11, fully understands it, has had the opportunity to discuss it with legal counsel of Customer’s choice, understands that through it Customer is giving up substantial rights, and intends to completely and unconditionally release liability to the greatest extent allowed by law.

12. INDEMNIFICATION.

Customer will indemnify, defend and hold harmless (collectively “indemnify” or “indemnification”) Fairwinds and Fairwinds’s officers, employees, directors, agents, independent contractors, licensors and suppliers (“Fairwinds Indemnitees”) from and against any third party claims, demands, actions and proceedings, and any resulting liabilities, damages, costs and expenses (including reasonable legal fees and expenses), brought against any Fairwinds Indemnitee relating to actions that Customer or any Customer officer, employee, director, agent or independent contractor takes or fails to take in connection with Insights.

13. General.

13.1. Reservation. Nothing in this Agreement will preclude or limit Fairwinds’s rights to market, make available or license any product that Fairwinds now offers or may in the future offer.

13.2. Nature of Relationship. Each party will act as an independent contractor with respect to this Agreement, and personnel of one party will not be considered to be Personnel of the other. This Agreement creates no agency, partnership, joint venture, other joint relationship or fiduciary relationship. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other.

13.3. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement except as this Agreement may expressly provide.

13.4. Assignment. Customer may not assign or transfer any of Customer’s obligations, licenses or rights under this Agreement without Fairwinds’s prior written consent. Fairwinds may assign this Agreement without Customer’s prior notice or consent.

13.5. Force Majeure. Neither party will be held liable for failure to perform any obligation of or delay in performance resulting from or contributing to any cause beyond that party’s reasonable control, including without limitation any act of God, act of civil or military authority, act of war or terrorism, act (including delay, failure to act, or priority) of any governmental authority, power outages, civil disturbance, insurrection or riot, sabotage, fire, severe weather conditions, earthquake, flood, strike, work stoppage or other labor difficulty, outbreak of a virus or other public health crisis, embargo, delay in transportation or

embargoes. The affected party's obligations will be suspended solely to the extent caused by the force majeure and so long as it lasts, and the time for performance of the affected obligation will be extended by the time of the delay that the force majeure causes.

13.6. Export Regulations. Each party warrants that it will comply in all respects with any export and re-export restrictions imposed by any U.S. or foreign law to Insights. Each party represents that it is not named on any U.S. government denied-party list.

13.7. Agreement Binding on Successors. This Agreement will bind and inure to the benefit of the parties and their heirs, administrators, successors, and permitted assigns.

13.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

13.9. Waiver. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

13.10. Entire Agreement. This Agreement is the entire understanding of the parties and supersedes all prior agreements between them concerning its subject matter. Any amendment must be in writing and expressly state that it is amending this Agreement.

13.11. Governing Law. The laws of Delaware, except for conflict-of-law rules, will apply to any dispute related to Insights and to this Agreement.

13.12. Dispute Resolution. The parties will attempt to settle any dispute or claim by either of them relating to this Agreement by good-faith consultation. If such consultation yields no satisfactory resolution of the dispute or claim, then either party may submit it to arbitration by Judicial Arbitration and Mediation Services (JAMS) in Boston, Massachusetts. The award will be final and binding on the parties as from the date rendered, and will be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered in any court having jurisdiction thereof. In the case of any dispute, the prevailing party to this Agreement will be entitled to recover reasonable attorneys' fees and costs, including expert witness fees, from the other party.

13.13. Time Limitation on Disputes. Customer will bring any claim, action or proceeding that Customer may have against Fairwinds (or against any of Fairwinds's Personnel, directors or officers) within one year after the cause of action has accrued or within one year after the termination of this Agreement, whichever is earlier.

13.14. Notices. Notices to Fairwinds under this Agreement are accepted only when sent by email to support@fairwinds.com.

13.15. Relationship to Other Agreements and Obligations. If Customer is party to a Commercial Agreement, or if either Customer or Fairwinds has legal obligations to the other party for other reasons, then this Agreement has no effect on such Commercial Agreement or other legal obligations.

13.16. Survival. The following sections of this Agreement will survive their termination: sections 10 (disclaimers); 11 (limitation of liability); 12 (indemnification); 13.4 (assignment); 13.6 (export regulations); 13.7 (successors); 13.10 (entire agreement); 13.11 (governing law); 13.12 (dispute resolution); 13.3 (time limitation on disputes).

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