

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING ACCESSING OR CONSUMING THE SOFTWARE OR SERVICES. BY CLICKING YOUR ASSENT OR USING, ACCESSING OR CONSUMING SOFTWARE OR SERVICES, YOU SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGE YOU HAVE READ AND UNDERSTAND THE TERMS. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT THEY HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN DO NOT USE THE SOFTWARE OR SERVICES.

This End User Subscription Agreement, including exhibits (“Agreement”) is entered into by and between Mirantis, Inc., a Delaware corporation, with offices at 900 E. Hamilton Ave., Suite 650, Campbell, CA 95008, USA (“Mirantis”), and the purchaser of Mirantis Subscription Services who has accepted the Agreement by either the earlier of a) signature or b) assent or clicking assent c) using, accessing or consuming the Software or Subscription Services (“Customer”). The effective date of the Agreement shall be the earlier of the date Customer uses the Software or Subscription Services, or date of the assent to this Agreement (“Effective Date”).

**1. Purpose.** This Agreement enables Mirantis, and its Affiliates, to provide Customer with Subscription Services. The Subscription Services purchased by Customer will be described in an Order Form signed by the parties, using an online store accessible through the Mirantis website, or purchased from an authorized Mirantis partner. “**Order Form(s)**” means each written order form(s) executed by Customer and Mirantis, or Customer and a Mirantis authorized business partner, incorporating this Agreement and is subject to the terms and conditions herein.

**1.1 Subscription Services.** Subscription Services are purchased on a per unit basis or as described by Mirantis in an Order Form (“**Unit**”). “**Subscription Services**” means the subscription services described in the Agreement applicable exhibits at <https://www.mirantis.com/company/agreements/> or an exhibit to an Order Form (each an “**Exhibit**”). A “**Unit**” is the measurement of Software or Service, defined in an Exhibit and identified in the applicable Order Form. “**Software**” means the software, which includes third party open-source software, made available by Mirantis and modifications, additions, updates, upgrades, or further enhancements, provided if or when available, through the Subscription Services. “**Mirantis Portal(s)**” means the Mirantis websites for the download of all components of the Software and Documentation and access to the support and ticketing system, as made available by Mirantis. “**Documentation**” means Mirantis’ user guide(s) for the Mirantis Portal and/or Software, as may be

updated from time to time, and any other guides, reference materials or other similar documentation made available to Customer in connection with the Mirantis Portal or Software.

**1.2 Partners and Affiliates.** Except as otherwise provided, this Agreement governs all purchases and use of the Subscription Services, which includes Mirantis Software, by Customer. If Customer purchases Subscription Services through an authorized Mirantis business partner, Mirantis is solely responsible for providing such Subscription Services and Software pursuant to the terms of this Agreement. Mirantis is not responsible for any additional obligations, conditions, or warranties agreed to between Customer and the partner. The parties agree that Customer Affiliate(s) may acquire Subscription Services and Software from Mirantis or Mirantis Affiliates under the terms of this Agreement by entering into an Order Form with Mirantis or Mirantis Affiliate(s) referencing to this Agreement. “Affiliate” means an entity that owns or controls (has the direct or indirect power to direct or cause the direction of management and policies of an entity), is owned or controlled by, or is under the common control or ownership with a party.

**2. Fees and Expenses, Payment, & Taxes.** Payment, and Taxes apply only if Customer is purchasing directly from Mirantis.

**2.1 Fees and Expenses.** The fees for Subscription Services are set forth in the applicable Order Form (“Fees”). Customer agrees to pay Fee(s) for Subscription Services based on the total number of Units of Software deployed, installed; and/or Subscription Services used, as described in an Exhibit. Customer agrees to pay the applicable Fee for each Unit. Customer will reimburse Mirantis for all reasonable travel and related expenses, including transportation, lodging and meal expenses for Subscription Services provided at Customer’s site. Expenses will be determined based on Mirantis’ standard travel policy. All Fees paid are non-refundable.

**2.2 Payment.** Fees are due and payable by Customer within thirty (30) days from the date of invoice. All Fees for Subscription Services are due and payable by Customer annually and in advance of the performance or provision of the Subscription Services or access to the Software. Unless otherwise specified in an Order Form, all payments must be made in U.S. dollars, and by credit card, wire transfer, or other prearranged payment method acceptable to Mirantis. Mirantis reserves the right to charge a late payment interest of 1.5% per month against overdue amounts, or the maximum rate permitted by law, whichever is less. In addition, Mirantis may suspend any of the Subscription Services or terminate this Agreement or the applicable Order Form if (a) Customer is delinquent on its payment obligations for thirty (30) days or more or otherwise breaches the Agreement; (b) Mirantis is no longer licensed or permitted to make the Mirantis Portal or Software available due to a change in law, expiration or revocation of applicable licenses, or otherwise; or (c) Customer declares bankruptcy, is adjudicated

bankrupt, or a receiver or trustee is appointed for Customer or substantially all of its assets. Without limitation of Mirantis' other remedies, Mirantis may suspend any Subscription Services if Customer fails to pay any applicable Fees when due or otherwise breaches this Agreement. Customer will reimburse Mirantis for all costs and expenses incurred by Mirantis in connection with the collection of overdue amounts, including without limitation reasonable attorneys' or legal fees.

**2.3 Taxes.** All Fees and expenses under this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government, and Customer agrees to pay for all federal, state, or local sales, use, excise, privilege, or other taxes, duties or assessments, however designated or levied, relating to this Agreement, exclusive of taxes based on Mirantis' net income. Customer agrees to gross up payments made to Mirantis such that Mirantis receives sums due in full and free of any withholding tax(es) or deductions Customer is required to pay.

**3. Records, Reporting, and Inspections.** During the term of the Agreement and for at least two (2) years thereafter, Customer will keep and maintain commercially reasonable written records and accounts regarding Customer's use of the Subscription Services ("Records"). Customer will promptly notify Mirantis if the actual number of Units or Subscription Services used exceeds the number of Units for which Customer has paid. The notification will include the number of additional Units and the first date(s) on which either the additional Units were created, or Subscription Services were first used. Customer shall pay for such additional Units in accordance with the Agreement. Upon request, Customer shall provide written certification that (i) the number of Units equals the Fees paid by Customer, and (ii) after the end of Subscription Services term, Customer has discontinued use of all Units of Software, for which the license has terminated and confirms its compliance with any limits on Units. During the Agreement term and for two (2) years thereafter, Mirantis may inspect Customer's records and facilities to verify Customer's compliance with the Agreement during normal business hours and with at least fifteen (15) days' notice. Any noncompliance, including unpaid Units, will be reported in writing to Customer. If the number of Units exceeds the Units for which Customer has paid the applicable Fees, Mirantis will invoice and Customer will pay for any unpaid Units within fifteen (15) days of the date of invoice. The initial term for additional Units will begin on the first date(s) on the additional Units were created or Subscription Services were first used and prorated to co-terminate with Customers then existing Units of Subscription Services.

**4. Customer Responsibilities.** In addition to any other Customer obligations set forth in this Agreement, where any information, cooperation or action, including obtaining or maintaining third party consents or licenses for Mirantis to use software, information, and systems, on the part of Customer or its representatives is necessary or useful to provide any of the Subscription Services, Customer or its

representatives will, at Customer's own expense, provide such information or cooperation or provide such action in a timely and professional manner. For the avoidance of doubt, Mirantis will be entitled to relief for any deficiency in providing any of the Subscription Services if such deficiency results from Customer's failure to provide the required access, information, cooperation, or action. Customer will be responsible for the back-up of all data and software, and Mirantis will not be liable for any loss of data or software or corruption to or damage of data or software. Customer must use the most recent version of their Covered Software.

**5. License and Ownership.** (a) The Software provided by Mirantis as part of the Subscription Services are governed by license(s) contained or referenced in the Exhibit(s); (b) neither party has the right to use the other party's marks provided that Mirantis may use Customer's name and logo for the sole purpose of identifying Customer as a Mirantis customer; and (c) notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Subscription Services may be used by Mirantis, without an obligation to account (financially or otherwise), in any way Mirantis deems appropriate, including by or for itself or its customers or partners.

## **6. Term and Termination**

**6.1. Term.** This Agreement commences on the Effective Date and will continue until terminated as set forth herein. If all Subscription Services have ended and there are no active Order Forms under this Agreement, either party may terminate this Agreement for convenience by providing 60 days' written notice to the other party. Each Order Form begins on the date the Order Form is executed ("Order Form Effective Date") and continues for the term stated in the Order Form. After the initial term, the term for Subscription Services will renew for successive terms of one (1) year each unless either party provides notice to the other party at least thirty (30) days prior to end of the applicable term. Customer must use Subscription Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date; if unused, such Subscription Services will be forfeited.

**6.2 Termination.** Either party may terminate this Agreement or an Order Form immediately upon notice to the other party if the other party materially breaches an obligation hereunder that has not been cured within thirty (30) days after receipt of written notice from the non-defaulting party provided, except that such notice and cure will not be required for a breach of Section 7 (Confidentiality) or 15 (Export). The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any

other right or remedy of Mirantis, in the event either party terminates an Order Form, Customer will pay for all Subscription Services provided up to the effective date of termination.

**6.3 End of Life.** Mirantis reserves the right to end the life of a Service (or any part thereof) during the Term, and if Mirantis does so, Mirantis will provide a pro-rata refund of any associated Fees paid in advance by the Customer. Customer acknowledges that the Services are subject to technical progress and development and that Mirantis may update or modify such from time to time provided that such updates and modifications do not result in a material decrease in the overall level of service provided during the Term.

**7. Effect of Termination.** Sections 2, 3, 5, 6.3, 7, 8, 9, 10 through 23 will survive the termination or expiration of this Agreement. Termination of this Agreement by either party will not act as a waiver of any breach of this Agreement and will not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party will be liable to the other for damages of any kind solely because of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party will be without prejudice to any other right or remedy of such party under this Agreement or applicable law. Customer will discontinue use of all the Software for which the license has terminated and will return to Mirantis all copies of such Software provided by Mirantis to Customer. Upon request, Customer will sign a certification that it has complied with the previous sentence.

**8. Confidentiality.** Each party receiving Confidential Information ("Recipient") from the party disclosing such information ("Discloser") shall use Confidential Information solely for the purpose of providing and receiving Software and Subscription Services under this Agreement. All Confidential Information is provided "AS IS" and without any warranty (express or implied). "Confidential Information" means information provided by the Discloser that is reasonably marked as "confidential", identified as confidential at the time of disclosure, or reasonably known by Recipient to be confidential or should reasonably be expected to be known as confidential. Recipient acknowledges and agrees that the disclosure of the Confidential Information does not confer any license, interest, or rights of any kind in or to the Confidential Information except as provided herein. For two (2) years after the termination of this Agreement Recipient shall hold Confidential Information in confidence and not disclose or use the Confidential Information, directly or indirectly, in any form, by any means, or for any purpose. Recipient shall only disclose the Confidential Information to its employees, contractors, and Affiliates to the extent such persons have a need to know such information for the purposes described in this Agreement, and provided such parties shall be obligated in writing to comply with terms and conditions no less protective than those set forth in this Section. Recipient shall protect the Confidential

Information using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use or disclosure of the Confidential Information as Recipient uses to protect its own confidential information. Recipient shall notify the Discloser in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of these confidentiality obligations and shall reasonably cooperate with the Discloser to regain possession of such Confidential Information and prevent further unauthorized use and disclosure. Confidential Information does not include information that: (a) is or becomes generally publicly available through no fault of Recipient, (b) was known to Recipient, free of any confidentiality obligations, before its disclosure, (c) becomes known to Recipient, free of any confidentiality obligations, from a source other than Discloser, (d) is independently developed by Recipient without use of Confidential Information, (e) is licensed under an open source license, or (f) is disclosed by Recipient pursuant to a requirement of a governmental agency or by operation of law, provided that Recipient shall notify Discloser prior to disclosure (if it can do so without (i) violating any law or rule; (ii) obstruct a governmental investigation; or (iii) lead to death or serious physical harm to an individual) to permit Discloser to seek an appropriate protective order or similar protection(s).

**9. Limited Warranty.** Mirantis represents and warrants to Customer that (a) Mirantis has the legal power to enter into this Agreement; and (b) Mirantis will perform the Subscription Services in a workmanlike manner and with diligence and skills consistent with industry standards.

## **10. Disclaimers**

**10.1 Disclaimer of Warranty.** WITHOUT LIMITATION TO MIRANTIS OBLIGATION UNDER THE RESPECTIVE EXHIBIT(S) AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8, THE SUBSCRIPTION SERVICES AND SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MIRANTIS DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT MIRANTIS WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN THIS SECTION CUSTOMER'S EXCLUSIVE REMEDY, AND MIRANTIS' ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SUBSCRIPTION SERVICES, OR IF MIRANTIS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY TERMINATE THE RELEVANT SUBSCRIPTION SERVICES AND RECEIVE A PRO-RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SUBSCRIPTION SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. *Without limiting the generality of the foregoing disclaimer,*

*Customer acknowledges that the Software and Subscription Services are not specifically designed, manufactured or intended for use in any hazardous environments requiring failsafe controls, life support systems; planning, construction, maintenance, control, or direct operation of nuclear facilities; or navigation, control or communication systems, or weapons systems.*

**10.2 Disclaimer of Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RELATING TO THIS AGREEMENT, SOFTWARE, SUBSCRIPTION SERVICES OR THE USE THEREOF, INCLUDING, WITHOUT LIMITATION, ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, WHETHER OR NOT FORESEEABLE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.3 No Liability for Third Parties, App Stores, or Marketplaces.** The operator of any application store, marketplace, or similar service through which Customer obtains access to all or any portion of the Subscription Services or Software, including, but not limited to, Microsoft Corporation, AWS, Google Marketplace and their respective affiliates, suppliers, and licensors (collectively, the "Third Parties") are not parties to this Agreement and they do not own and are not responsible for the Subscription Services or Software, including, but not limited to claims for: (i) product liability or other product or service defects or failure, including unavailability of the Subscription Service or Software; (ii) any claim that they fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation. Customer is responsible for complying with all application store and other applicable Third Party terms and conditions. CUSTOMER AGREES (I) THE THIRD PARTIES DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SERVICES AND SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE; (II) IN NO EVENT WILL THE THIRD PARTIES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) ARISING OUT OF THIS AGREEMENT, SUBSCRIPTION SERVICES, OR SOFTWARE, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (III) IN ANY EVENT, THE MAXIMUM LIABILITY OF ANY THIRD PARTY FOR ALL CLAIMS (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) OF EVERY KIND WILL IN NOT EXCEED FIVE DOLLARS (\$5.00);

AND (IV) CUSTOMER WAIVES ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT IT MAY HAVE AGAINST THE THIRD PARTIES ARISING OUT OF THIS AGREEMENT, THE SUBSCRIPTION SERVICES, AND SOFTWARE. THE THIRD PARTIES ARE INTENDED THIRD PARTY BENEFICIARIES OF THIS AGREEMENT, CAPABLE OF DIRECTLY ENFORCING ITS TERMS. NOTHING CONTAINED IN THIS AGREEMENT WILL BE CONSTRUED AS MODIFYING OR AMENDING ANY AGREEMENTS OR OTHER TERMS BETWEEN CUSTOMER AND THE THIRD PARTIES WITH REGARD TO THEIR SUBJECT MATTER. In the event of any claim that the Subscription Services or Software or the possession and use thereof infringes a third party's intellectual property rights, the Third Parties are not responsible for the investigation, defense, settlement, or discharge of the infringement claim.

**11. Limitation of Liability.** EXCEPT (i) TO THE EXTENT PROHIBITED BY LAW AND (ii) FOR CUSTOMER'S PAYMENT OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE ORDER.

**12. SuperCap.** MIRANTIS' AGGREGATE LIABILITY FOR INDEMNIFICATION CLAIMS AS A RESULT OF BREACHES OF SECTION 7, CONFIDENTIALITY, OR SECTION 13, MIRANTIS ASSURANCE, SHALL NOT EXCEED TWO TIMES THE AGGREGATE FEES PAID OR OWED BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY UNDER THE APPLICABLE ORDER FORM. THE LIMITATIONS HEREIN WILL REMAIN IN FULL FORCE AND EFFECT, REGARDLESS OF WHETHER EITHER PARTY'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

### **13. Mirantis Assurance**

**13.1 Terms of Eligibility.** As conditions precedent to Mirantis' obligations under this Section, Customer must: (i) be current in the payment of all fees at the time the Claim (as defined below) is brought; (ii) not be in litigation with, or in receipt of alleged infringement from, a party against whom relief is sought when purchasing Subscription Services; (iii) notify Mirantis of the nature of the claim in sufficient detail promptly after, but no later than ten (10) days of receipt of any Claim for which relief is sought under this Section; (iv) allow Mirantis to solely control and conduct the defense of the Claim with counsel of its choice and to settle any such Claim at Mirantis' sole discretion; (v) provide reasonable cooperation with Mirantis in the defense of the Claim; ; (vi) acts to mitigate Mirantis' risk and exposure as a result of the Claim; and (vii) has complied with the terms of the Agreement and this Section. For the purposes of this Section 13, "**Covered Software**" means the Mirantis Hardened Packages and Licensed Software

(excluding Open Source Software), as defined in an Exhibit and available for download through the Mirantis Portal.

**13.2 Assurances.** If an unaffiliated third party initiates a legal action against Customer alleging that Customer's use of Covered Software during the term of active fully-paid Subscription Service(s) (other than any Open Source Software) directly infringes a third party US, UK, Canadian, Australian or European Union member state's trademark, copyright or patent in the country designated for delivery of the Covered Software ("Third Party Rights") (such action, a "Claim"), then: (a) subject to the terms of this Section, Mirantis will (i) defend Customer from such Claim, and (ii) pay all costs, damages and expenses (including reasonable attorneys' fees and court costs) that are finally awarded or paid as part of a settlement that are attributable to Customer's use of the Covered Software; and (b) if Customer's use of Covered Software is found by a court to infringe Third Party Rights (or if Mirantis reasonably believes that such a finding is likely), then Mirantis may, in its sole discretion, as Mirantis' entire liability and Customer's sole and exclusive remedy under this Section 13, (i) obtain the rights necessary for Customer to continue to use the Covered Software; (ii) modify the Covered Software so that it is non-infringing; or (iii) replace the allegedly infringing portion of the Covered Software with non-infringing code of similar functionality; provided that if none of the foregoing options (i-iii) is commercially reasonable in Mirantis' discretion, then Mirantis may terminate the Agreement upon thirty (30) days' written notice without further liability, and refund Customer all pro-rata unused, pre-paid Fees received by Mirantis related to Subscription Services. Mirantis will have no obligation to Customer under this Agreement with respect to any Claims based upon: (i) a modification of Covered Software made by Customer (other than at Mirantis' written direction); (ii) Mirantis' compliance with any designs, specifications or instructions provided by Customer; (iii) use of the Covered Software in combination with products, data, or services not provided by Mirantis, if the infringement or misappropriation would not have occurred without such combination unless such Covered Software has no substantial non-infringing use except in such combination; (iv) use of any release of the Covered Software if, as of the date of a Claim or threatened Claim, the infringement or misappropriation would not have occurred through use of a more recent release of the Covered Software; (v) use by Customer after notice by Mirantis to discontinue use of all or a portion of the Covered Software; (vi) distribution of the Covered Software not authorized by Mirantis in writing, or (v) a counter-claim brought against Customer in response to litigation initiated by Customer.

**14. Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld; provided that either party may assign this Agreement or rights granted hereunder without the consent of the other party (i) to its Affiliate, and (ii) the transfer of this Agreement or rights granted hereunder

to a successor entity in the event of a merger, corporate reorganization, or acquisition of all or substantially all the assets of a party. In no event shall the Agreement be transferred or assigned to a direct competitor of the other party. Any attempted assignment or transfer in violation of this Section 14 shall be null and void.

## **15. Arbitration.**

**15.1** The arbitration provisions in this section 15 applies only to those customers located outside of any of the United States, the United Kingdom, Switzerland, the European Union (other than Italy and Spain), New Zealand, Australia, Singapore, or Japan (“Excluded Countries”).

**15.2** Unless Customer is in an Excluded County, all disputes arising from this Agreement and any Exhibits thereto shall be resolved by binding arbitration by the American Arbitration Association’s International Centre for Dispute Resolution in accordance with its Expedited Commercial Rules in force as of the date of this Agreement (“Rules”). The arbitral award will be final and binding on the parties judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties will mutually select one arbitrator. The arbitration will be conducted in English in Santa Clara County, California, USA.

**15.3** Either party may apply to any competent court for injunctive relief necessary to protect its rights pending resolution of the arbitration. The arbitrator may order equitable or injunctive relief consistent with the remedies and limitations in the Agreement. Subject to the confidentiality requirements in Section 15.4, either party may petition any competent court to issue any order necessary to protect that party’s rights or property; this petition will not be considered a violation or waiver of this governing law and arbitration section and will not affect the arbitrator’s powers, including the power to review the judicial decision. The parties stipulate that the courts of Santa Clara County, California, USA, are competent to grant any order under this Section 15.3. The parties will pay the arbitrator’s fees, the arbitrator’s appointed experts’ fees and expenses, and the arbitration center’s administrative expenses in accordance with the Rules. In its final decision, the arbitrator will determine the non-prevailing party’s obligation to reimburse the amount paid in advance by the prevailing party for these fees. Each party will bear its own lawyers’ and experts’ fees and expenses, regardless of the arbitrator’s final decision regarding the Dispute.

**15.4** Any arbitration proceeding conducted in accordance with this Section 14 (Governing Law; Arbitration) will be considered Confidential Information under Section 7 (Confidentiality), including: (i) the existence of, (ii) any information disclosed during, and (iii) any oral communications or documents related to, the arbitration proceedings. In addition to the disclosure rights under Section 7

(Confidentiality), the parties may disclose the information described in this Section 15.4 to a competent court as may be necessary to file any order under Section 15.3 or execute any arbitral decision, but the parties must request that those judicial proceedings be conducted in camera (in private).

## **16. Governing Law.**

**16.1 For U.S. City, County, and State Government Entities.** If Customer is a U.S. city, county, or state government entity, then the Agreement will be silent regarding governing law and venue.

**16.2 For U.S. Federal Government Entities.** If Customer is a U.S. federal government entity, then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA, EXCLUDING ITS CONFLICT OF LAWS RULES. SOLELY TO THE EXTENT PERMITTED BY FEDERAL LAW, (I) THE LAWS OF THE STATE OF CALIFORNIA (EXCLUDING CALIFORNIA'S CONFLICT OF LAWS RULES) WILL APPLY IN THE ABSENCE OF APPLICABLE FEDERAL LAW; AND (II) FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

**16.3 For All Other Customers.** If Customer is any entity not identified in Section 16.1 (U.S. Governing Law for U.S. City, County, and State Government Entities) or 16.2 (U.S. Governing Law for Federal Government Entities), then the following applies: ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING THAT STATE'S CONFLICT OF LAWS RULES, AND, EXCEPT AS OTHERWISE PROVIDED BY SECTION 14 (ARBITRATION), WILL BE LITIGATED EXCLUSIVELY IN THE STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA, (OR, IF THERE IS FEDERAL JURISDICTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA) USA; THE PARTIES CONSENT TO PERSONAL JURISDICTION IN THOSE COURTS. THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, THE APPLICATION OF WHICH IS HEREBY EXPRESSLY EXCLUDED. THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA) OR ANY SIMILAR LAWS OR REGULATIONS DO NOT APPLY TO THIS AGREEMENT. ANY CLAIM OR ACTION REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR AN ORDER FORM WILL BE MADE AGAINST MIRANTIS, INC, ALONE.

**17. Export.** Any and all materials provided to Customer under this Agreement, including technical data relating thereto, may be subject to U.S. export control laws, including the U.S. Export Administration Act

and its associated regulations, and sanctions control regimes of the United States and may be subject to export or import laws or regulations in other countries. Customer represents, warrants and covenants that it (i) is not a prohibited party identified on any government export exclusion lists or a member of a government of any other export-prohibited countries pursuant to applicable export and import laws and regulations, (ii) will not transfer software, technology, and other technical data to export-prohibited parties or countries otherwise in violation of U.S. or other applicable export or import laws, or use the Mirantis Portal, Software or any other Mirantis products or documentation for military, nuclear, missile, chemical or biological weaponry end uses in violation of U.S. export laws. Additionally, each Party agrees that it will not engage in any illegal, unfair, deceptive, or unethical business practices whatsoever, including, but not limited to, any act that would constitute a violation of the U.S. Foreign Corrupt Practices Act, U.K. Bribery Act, or other similar anti-corruption laws. Customer will defend, indemnify, and hold harmless Mirantis and its suppliers and licensors from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees.

**18. Global Coverage.** Customer agrees to allow Mirantis and its Affiliates to store and use information provided by Customer, including names, business phone numbers, and business e-mail addresses anywhere Mirantis does business that will be used only in connection with Mirantis' business relationship with Customer, and may be transferred worldwide between Mirantis, its Affiliates, subcontractors, partners, and assignees for uses consistent with Mirantis' business relationship with Customer. Except for the foregoing, Customer's use of, and Mirantis providing the Services does not require Customer to provide, disclose or give access to Mirantis any personal information (e.g. Personally Identifiable Information) or similarly protected sensitive data or personal data to Mirantis (collectively, "Customer Information"). Customer agrees to take all reasonable steps to avoid disclosure of Customer Information to Mirantis which may include preventing access to Customer Information; and that it is solely liable for all Customer Information obligations, including without limitation, confidentiality and data protection and privacy obligations and restrictions, imposed by applicable law, regulation or court order. If disclosed, Customer warrants that it has obtained all the relevant consents to disclose Customer Information. If disclosed, Customer will promptly notify Mirantis of any disclosure of Customer Information to Mirantis and, excepted from the limitations of Sections 9 and 10, will defend, indemnify and hold Mirantis harmless from and against any claims arising out of Customer's breach of this Section 18.

**19. Waiver.** The waiver or failure of Mirantis to exercise in any respect any right provided for in this Agreement will not be deemed a waiver of any further right under this Agreement.

**20. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular provisions held to be unenforceable.

**21. Integration; Amendment.** This Agreement, including Exhibits and each Order Form, sets forth the entire agreement between Customer and Mirantis relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, and representations relating to the subject matter hereof. In the event of any conflict or inconsistency between the provisions in the body of this Agreement, any Order Form and the Exhibits, the terms will be interpreted in the following order: (a) Order Form, (b) Exhibit, and (c) the Agreement which prevails over any conflicting or additional terms of any quote, order, purchase order, acknowledgment or similar communication between the parties prior to or during the term of this Agreement. This Agreement may not be modified except pursuant to a written agreement signed by a duly authorized representative of each party.

**22. Notices.** Notices to Mirantis will be sent to the address set forth at the top of this Agreement (or as later designated in writing by Mirantis) to Mirantis Finance with a copy to Mirantis Legal, and notices to Customer will be sent to the address provided below or to such other addresses as it may give Mirantis in accordance with this Section.

**23. Independent Contractor Relationship.** The parties are independent contractors. No provision of this Agreement creates an association, trust, partnership, or joint venture or imposes fiduciary duties, obligations, or liability between Customer and Mirantis. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement.

**24. Force Majeure.** Neither party will be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which the performance is delayed by circumstances beyond its reasonable control, such as widespread pandemic flu, systemic, electrical, telecommunications, or other utility failures, earthquake, storms, fire, flood or other elements of nature, embargo, strike, riot, terrorism, sabotage, or third-party criminal conduct, change in law or policy, or the intervention of any governmental authority.

**25. U.S. Government End Users.** The Services, Software, and Documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS").

Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Services, Software, and Documentation to the terms of this Agreement. Should the US Government acquire the Software and Documentation otherwise pursuant to FAR or DFARS, the terms contained in the Software License Addendum located at [mirantis.com/agreements](http://mirantis.com/agreements) shall apply.

**26. Counterparts.** If this Agreement is accepted by execution by the Parties, this Agreement may be executed (including, without limitation, by e-signature) in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

**Mirantis, Inc.**

By:

Name:

Title:

Date:

**Customer**

By:

Name:

Title:

Date:

**Customer Name & Address**

**Customer Point of Contact:**

Name:

Phone:

Email:

