

**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 HE OR SHE HAS 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 Master Subscription Agreement, including exhibits (“**Agreement**”) is entered into by and between Mirantis, Inc., a Delaware corporation, with offices at 615 National Avenue, Mountain View, CA 94043, USA (“**Mirantis**”), and the purchaser of Mirantis Software or Services who has accepted the Agreement or is identified in the signature block below (“**Customer**”). The effective date of the Agreement shall be the date of acceptance or the last signature, as applicable (“**Effective Date**”).

**1. Purpose.** This Agreement enables Mirantis to provide Customer with Software and Services. The specific Software and Services purchased by Customer will be described in an Order Form signed by the parties, a Customer order placed through the online store accessible through the Mirantis website, or from an authorized Mirantis partner. Except as otherwise provided, this Agreement governs all purchases and use of Mirantis Software and Services by Customer. “**Software**” means Mirantis OpenStack Software and other software provided by Mirantis and/or third parties including all modifications, additions, or further enhancements provided if or when available. “**Services**” means services to be provided by Mirantis as set out in this Agreement or Order Form, which include, Mirantis Subscription Services, Training Services, and Consulting Services. “**Order Form(s)**” means each written order forms executed by Customer and Mirantis incorporating this Agreement and is subject to the terms and conditions herein. “**Mirantis OpenStack Software**” means the FUEL ® Software and Mirantis OpenStack Hardened Packages, including any updates (if or when available during a Mirantis Subscription Services term). “**Mirantis OpenStack Hardened Packages**” means a set of packages that include the upstream OpenStack projects with defect fixes, open source high availability components and other provided projects made available by Mirantis through the Mirantis Portal. “**FUEL Software**” means Mirantis’ software application for deployment and management of OpenStack software. Fuel Software does not include OpenStack software packages. “**Mirantis Portal**” means the website located at [fuel.mirantis.com](https://fuel.mirantis.com) which contains links to download all components of the Mirantis OpenStack Software and Documentation and access to the support and ticketing system, as made available by Mirantis. “**Documentation**” means Mirantis’ user guide for the Mirantis Portal and/or Mirantis OpenStack 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 Mirantis OpenStack Software.

**1.1. Mirantis Subscription Services.** Customer may purchase Mirantis Subscription Services on a per Node basis. “**Mirantis Subscription Services**” means access

to the Software, subject to the applicable license, and Mirantis OpenStack Support, both as provided pursuant to this Agreement and [Exhibit A, Subscription Services](#) (<https://www.mirantis.com/company/agreements/>). “**Node**” means a computer system with a single motherboard.

**1.2. Consulting Services.** Customer and Mirantis may execute an Order Form(s) with a statement of work (“**SOW**”) for consulting services (“**Consulting Services**”). Mirantis will use commercially reasonable efforts to provide the Consulting Services as set forth in the applicable SOW(s).

**1.3. Training Services.** Customer may purchase “**Training Services**” consisting of Public BootCamp, Private BootCamp, and other training sold and delivered by Mirantis or its authorized partners. Training Services may be purchased directly from Mirantis, online, or from authorized Mirantis partners. If purchased directly from Mirantis the parties will agree in an Order Form as to the curriculum, timing and duration (i.e., number of sessions) of any private Training Services course. General Training Services Terms and Conditions can be found in Exhibit B, Training Services.

## **2. Fees and Expenses, Payment, & Taxes**

**2.1. Fees.** The fees applicable to the Mirantis Subscription Services, Training Services or Consulting Services are set forth in the applicable Order Form (“**Fees**”). Customer will reimburse Mirantis for all reasonable travel and related expenses, including transportation, lodging and meal expenses for Services performed 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 the applicable invoice. All Fees for Mirantis Subscription Services are due and payable by Customer annually and in advance of the performance or provision of the Software and/or Services. Fees for Consulting Services and Training Services are due and payable by Customer as specified in the applicable Order Form or SOW. All payments must be made in U.S. dollars 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 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 Mirantis' existing 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 Services if Customer fails to pay any applicable Fees when due or otherwise breaches this Agreement.

**2.3. Taxes.** The Fees are exclusive of any applicable taxes. All taxes and duties attributable to this Agreement (except taxes relating to Mirantis' income), including sales, use, and any other tax assessed by local, state, federal or foreign authorities, will be borne by Customer, and Customer will reimburse Mirantis for any such taxes and duties paid by Mirantis.

**3. Inspect and Report.** During the Agreement term and for six (6) months 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 Nodes, will be reported in writing to Customer. If the number of Nodes exceeds the Nodes for which Customer has paid the applicable Fees, Mirantis will invoice and Customer will pay for any unpaid Nodes within fifteen (15) days of the date of invoice.

**4. Customer Responsibilities.** In addition to any of Customer's other obligations set forth in this Agreement:

a. 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 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 Services if such deficiency results from Customer's failure to provide the required information, cooperation or action. Customer acknowledges and agrees that to provide the Services, it may be necessary for Customer Information, systems, and software ("**Customer Information**") to be transferred between Mirantis, its subsidiaries, and/or subcontractors, which may be located worldwide.

b. 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.

## **5. Mirantis Software and Mirantis Portal Ownership**

a. Except for Client Confidential Information, Mirantis owns and will retain all rights, title and interest, including all

applicable rights in patents, copyrights, trademarks, trade secrets, and other intellectual property rights, in and to the Mirantis Portal and its contents, Software, Mirantis' Confidential Information, Mirantis tools, open source, and any derivatives thereof.

b. Customer will not, and will not permit any person to remove or alter any copyright, trademark or other proprietary notices, legends, symbol or labels appearing on or in any materials or the Mirantis OpenStack Hardened Packages or FUEL Software.

c. Suggestions, enhancement requests, recommendation or other feedback provided by Customer relating to the Mirantis Portal, Mirantis OpenStack Software, open source, the Services or any other services or materials made available by Mirantis ("**Feedback**") may be used by Mirantis under a royalty-free, fully paid-up, worldwide, transferable, sublicensable, irrevocable and perpetual license to use or incorporate the Feedback into the Mirantis Portal, the Mirantis OpenStack Software or its other products or services.

## **6. Term and Termination**

**6.1. Term.** This Agreement commences on the Effective Date and ends when Mirantis is no longer obligated to provide Customer with Services under this Agreement. 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 products or services will renew for successive terms of one (1) year each upon mutual written agreement between the parties. Customer must use 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, whichever is shorter; if unused, such Services will expire.

**6.2. Termination.** Either party may terminate this Agreement or an Order Form immediately upon notice to the other party if the other party breaches or is in default of any obligation hereunder, which breach or default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of written notice from the non-defaulting party provided that such notice and cure will not be required for a breach of Section 7.1, Confidentiality of the Agreement. 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 Services provided up to the effective date of termination.

**6.3. Effect of Termination.** Sections 2, 3, 5, 6.3, 7, 9, 10, & 12 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 as a result 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.

## 7. Confidentiality and Publicity

**7.1. 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 Services under this Agreement. "Confidential Information" means information 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 and independent contractors, to the extent such persons have a need to know such information for the purposes described in this Agreement, and provided such employees and independent contractors shall be obligated in writing to comply with terms and conditions no less protective than those set forth in this Section. Recipient will not reverse, engineer or modify the Confidential Information for any purpose whatsoever. 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. All Confidential Information is provided "AS IS" and without any warranty (express or implied). 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, or (e) 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 violating any law or rule) in order to give Discloser a reasonable opportunity to seek an appropriate protective order or similar protection(s).

**7.2. Publicity.** Customer agrees that Mirantis may use Customer's name in customer lists, marketing materials, presentations, press releases and other public relations materials, in connection with disclosing that Customer is a customer of Mirantis. Customer agrees that it may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes without the prior written consent of Mirantis.

**8. 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 Services in a workmanlike manner and with diligence and skills consistent with industry standards.

## 9. Disclaimers.

**9.1. Disclaimer of Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8, THE 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 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 SERVICES, OR IF MIRANTIS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO-RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. *Without limiting the generality of the foregoing disclaimer, Customer acknowledges that the Software and Services are not specifically designed, manufactured or intended for use in any life support systems; planning, construction, maintenance, control, or direct operation of nuclear facilities; or navigation, control or communication systems, or weapons systems.*

**9.2. 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, 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. Limitation of Liability.** EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATION, 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 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.

#### **11. Mirantis Assurance.**

**11.1. Terms of Eligibility.** As conditions precedent to Mirantis' obligations to Customer for use of the Covered Software under this Section, Customer: (i) must be a current and paying Mirantis Subscription Services customer with an account in good standing at the time the Claim (as defined below) is brought; (ii) must not be in litigation with, or have received of alleged infringement from, a party against whom relief is sought when purchasing Mirantis Subscription Services; (iii) notify Mirantis promptly, but in no event 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; and (v) provide reasonable cooperation with Mirantis in the defense of the Claim; and (vi) has complied with the terms of the Agreement and this Section. For the purposes of this Section 11, "**Covered Software**" means the Mirantis OpenStack Hardened Packages and FUEL® Software that is available for download through the Mirantis Portal.

**11.2. Assurances.** If an unaffiliated third party initiates a legal action against Customer alleging that Customer's use of Covered Software during the term of an active fully-paid Mirantis Subscription Service(s) directly infringes a third party's copyrights, patents or trademarks, or misappropriates a third party's trade secret rights ("**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 will, at its expense and option: (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 without further liability, and Mirantis will refund Customer all fees paid by Customer related to Mirantis Subscription Services during the twelve (12) month period prior to the Claim is brought. 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.

#### **12. General Provisions**

**12.1. Assignment.** This Agreement and any rights or licenses granted hereunder may not be assigned or otherwise transferred by Customer without the prior written consent from Mirantis. For purposes of the foregoing sentence, a merger, acquisition or change of control of Customer will be deemed an assignment. Any attempted assignment made in violation of the foregoing will be void and deemed a material breach of the Agreement. This Agreement will be binding upon the parties and their respective legal successors and permitted assigns. Mirantis will have the right to freely assign this Agreement.

**12.2. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without reference to its conflicts of law

provisions. Any dispute regarding this Agreement will be subject to the exclusive jurisdiction of the state courts in and for Santa Clara County, California, U.S.A. (or, if there is federal jurisdiction, the United States District Court for the Northern District of California), and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such 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 and the governing law will remain as if such law or regulation had not been enacted.

**12.3. 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 agrees to comply with all such law and regulations. 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.

**12.4. 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.

**12.5. 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.

**12.6. Integration; Amendment.** This Agreement is the entire agreement between Customer and Mirantis relating to the subject matter hereof and (a) supersedes all prior or contemporaneous oral or written communications, proposals and representations relating to the subject matter hereof, and (b) prevails over any conflicting or additional terms of any quote, order, Customer 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.

**12.7. 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 VP of 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.

**12.8. 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.

**12.9. 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 systemic, electrical, telecommunications, or other utility failures, earthquake, storms, fire, flood or other elements of nature, embargo, strike, riot, terrorism, change in law or policy, or the intervention of any governmental authority.

**12.10. Counterparts.** This Agreement may be executed (including, without limitation, by facsimile 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.