



PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING ACCESSING OR CONSUMING THE TRAINING SERVICES. BY CLICKING YOUR ASSENT OR USING, ACCESSING OR CONSUMING TRAINING SERVICES, OR SIGNING OR ASSENTING TO AN ORDER FORM YOU SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGE YOU HAVE READ AND UNDERSTAND THE TERMS (“EFFECTIVE DATE”). 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 TRAINING SERVICES.

- 1. Purpose.** These Training Services Terms and Conditions (“**Agreement**”) enable Mirantis to provide Customer with Training Services. The specific Training 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 Training Services by Customer. “**Training Services**” means Mirantis provided courses, and other training sold and delivery by Mirantis or its authorized partners as set out in this Agreement or Order Form, “**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. Customer may purchase Training Services 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 at <https://www.mirantis.com/company/agreements/>.
- 2. Fees, Payment, & Taxes**

 - 2.1. Fees.** The fees applicable to the Training Services are set forth in the applicable Order Form (“Fees”). Except as provided in Exhibit, B, Training Services, 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. Fees for 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 Training 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; or (b) 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 Training Services if Customer fails to pay any applicable Fees when due or otherwise breaches this Agreement.
 - 2.3. Taxes.** All Fees under this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government, and Customer agrees to pay for any and 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. If Customer is required to pay any withholding tax or deduct any part of payments due to Mirantis, Customer agrees to gross up payments actually made to Mirantis such that Mirantis receives sums due in full and free of any such withholding tax(es) or deductions.
- 3. Inspect.** 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 will be reported in writing to Customer.
- 4. Customer Responsibilities.** 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 Training 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 Training 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 Training 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.

5. Mirantis Ownership

- a) Except for Customer 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, Training Services, and any derivatives thereof.
- b) Suggestions, enhancement requests, recommendation or other feedback provided by Customer relating to the Mirantis Portal, Mirantis OpenStack Software, open source, the Training 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 Training 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 Training 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 Training 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 Training Services provided up to the effective date of termination.
- 6.3. **Effect of Termination.** Sections 2, 3, 5, 6.3, 7, 9, 10, & 11 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.** 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 Training 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).

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 Training 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 Training 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. **General Provisions**
 - 11.1. **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, except that (i) either party may assign this Agreement or rights granted hereunder to its affiliate without the consent of the other party, 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 shall not constitute an assignment for purposes of this Section 11.1; provided that, in both cases (i) and (ii), the entity to which the Agreement is being assigned or transferred: (a) is not a direct competitor of the other party, and (b) agrees in writing to be bound by the terms and conditions of this Agreement. Any attempted assignment or transfer in violation of this Section 11.1 shall be null and void.
 - 11.2. **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.

- 11.3. 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.
- 11.4. 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.
- 11.5. 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.
- 11.6. 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) unless otherwise expressly provided in an Order Form, 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.
- 11.7. 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.
- 11.8. 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.
- 11.9. 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.