



## DOCKER SOFTWARE END USER SUBSCRIPTION AGREEMENT

Updated: November 2019

THIS DOCKER SOFTWARE END USER SUBSCRIPTION AGREEMENT (THE "AGREEMENT") IS BETWEEN MIRANTIS, INC., A DELAWARE CORPORATION, WITH OFFICES AT 900 E. HAMILTON AVE., SUITE 650, CAMPBELL, CA 95008, USA ("MIRANTIS") AND THE INDIVIDUAL OR LEGAL ENTITY WHO HAS EXECUTED AN ORDER FORM (OR OTHER ORDERING OR PURCHASING DOCUMENT) REFERENCING THIS AGREEMENT OR IS USING THE APPLICABLE SOFTWARE MADE AVAILABLE BY MIRANTIS ("CUSTOMER") AND GOVERNS ALL USE BY CUSTOMER OF THE MIRANTIS DOCKER SOFTWARE REFERENCED IN SUCH ORDER FORM.

BY EXECUTING AN ORDER FORM, CUSTOMER EXPRESSLY ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF AN ENTITY, SUCH AS YOUR EMPLOYER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ENTITY AND "CUSTOMER" SHALL REFER HEREIN TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST NOT EXECUTE THE ORDER FORM AND MAY NOT USE THE LICENSED SOFTWARE OR THE SUBSCRIPTION SERVICES (EACH AS DEFINED BELOW).

### 1. Definitions

The following capitalized terms shall have the meanings set forth below:

**"Add-On Subscription Service"** shall have the meaning set forth in Section 3.1.2.

**"Mirantis Authorized Business Partner"** shall have the meaning ascribed to that term in Section 3.3.

**"Feedback"** means any comments or other feedback Customer may provide to Mirantis concerning the functionality and performance of the Supported Software, including identification of potential errors and improvements.

**"Instance"** means a single deployment of Licensed Software or Supported Software, as applicable.

**"Key"** means the license key or similar control mechanism to help ensure compliance with the use and time limitations with respect to the Licensed Software.

**"Licensed Software"** means the Mirantis Docker software identified on an Order Form (other than Open Source Software) and licensed to Customer pursuant to the terms of this Agreement or other licensed software from Mirantis that is identified on the Order Form (excluding any Open Source Software included therein).

**“Open Source Software”** means Mirantis or third party software that is distributed or otherwise made available as “free software”, “open source software” or under a similar licensing or distribution model.

**“Order Form”** means an ordering document referencing this Agreement between Customer and Mirantis, or between Customer and a Mirantis Authorized Business Partner.

**“Software Subscription Service”** shall have the meaning set forth in Section 3.1.1.

**“Subscription Fee”** means the fee for Subscription Services purchased by the Customer. With respect to the Software Subscription Service, the amount of the Subscription Fee is based on the number of Instances and, as applicable, the level (e.g., 24X7 or Defined Business Hours) of Software Subscription Service specified in the Order Form.

**“Subscription Term”** means the applicable initial and/or renewal subscription term as set forth in the applicable Order Form.

**“Supported Software”** means the Mirantis or third party software identified on the Order Form as software for which Mirantis or its authorized resellers agree to provide Subscription Services to Customer. For purposes of clarity, Supported Software may include Licensed Software and/or identified versions of Open Source Software with respect to which Mirantis agrees to provide updates, patches and hotfixes to the customer.

**“Subscription Services”** means the standard support and maintenance services and software updates provided by Mirantis for the Supported Software (“Software Subscription Service”) or any Add-On Subscription Service, each set forth at: <https://www.docker.com/legal/subscription-services>.

## 2. License

**2.1 Licensed Software.** Subject to Customer's timely payment of the Subscription Fee and compliance with the terms and conditions of this Agreement, Mirantis hereby grants Customer a limited, non-exclusive, non-transferable, non-sub-licensable license during the applicable Subscription Term to install, copy and use the Licensed Software for Customer's internal business purposes, in connection with the deployment of no more than the number of Instances as are set forth in the Order Form.

**2.2 Open Source Software.** If applicable, Open Source Software is distributed or made available under the terms of the open source license agreements referenced in the applicable distribution or the applicable help, notices, about or source files. Copyrights and other proprietary rights to the Open Source Software are held by the copyright holders identified in the applicable distribution or the applicable help, notices, about or source files.

**2.3 License Keys.** Customer shall not destroy, disable or circumvent, or attempt to destroy, disable or circumvent in any way the Key and/or the use and time limitations set by the Key or the Licensed Software. Customer acknowledges and agrees that any attempt to exceed the use of the Licensed Software beyond the limits configured into the Key will automatically and immediately terminate the licenses granted under this Agreement.

## 3. Subscription

**3.1 Subscription Services.** References to “Subscription Services” in this Agreement shall mean either of, or both of (as applicable) the subscription services defined below:

**3.1.1 Software Subscription Service.** Subject to Customer's timely payment of the applicable Subscription Fee and compliance with the terms and conditions of this Agreement, Mirantis shall provide to Customer the Software Subscription Service during the Subscription Term. Customer must purchase Software Subscription Service corresponding to the number of Instances specified in the Order Form. Customer may purchase different levels of Software

Subscription Service with respect to each such Instance; provided, however, that Customer may not use the Software Subscription Service with a higher support level in connection with an Instance for which Customer had purchased the Software Subscription Service with a lower support level. In addition, the Customer may not use Instances of Open Source Software that has not been identified on an Order Form, on computers and or servers that are part of the environment in which Subscription Services are provided. Unless renewed, the Software Subscription Service will expire at the end of the applicable Subscription Term. This means that while the Customer is free to use the Open Source Software after the expiration of the applicable Subscription Term, Mirantis will not provide the Software Subscription Service after the end of the applicable Subscription Term.

**3.1.2 Add-On Subscription Service.** In addition to the Software Subscription Service set forth in Section 3.1.1, Customer may purchase the following additional subscription services: Mirantis Premium Support Subscriptions Service and/or Mirantis Enterprise Architect Subscription Service, set forth in the applicable Order Form or SOW and as further described at: <https://www.docker.com/legal/subscription-services> (each, an “Add-On Subscription Service”). An Add-On Subscription Service may not be purchased without first, or concurrently purchasing an underlying Software Subscription Service. For the avoidance doubt, purchase of the Software Subscription Service, in and of itself, does not entitle the Customer to any Add-On Subscription Service, and vice-versa.

**3.2 Subscription Fee Payment.** Payment of the Subscription Fee shall be made by Customer as set forth in the applicable Order Form. All payments by Customer to Mirantis hereunder shall be made free and clear of and without reduction for all applicable sales or use, goods and services, value added, consumption or other similar fees or taxes imposed by any government (other than taxes on the net income of Mirantis), which shall be paid by Customer. Accordingly, if Customer is required to withhold any taxes on the amounts payable to Mirantis hereunder, Customer shall pay Mirantis such additional amounts as are necessary to ensure receipt by Mirantis of the full amount which Mirantis would have received but for the deduction on account of such withholding. Customer shall provide Mirantis with official receipts issued by the appropriate governmental agency or such other evidence as is reasonably requested by Mirantis to establish that such taxes have been paid. Where applicable law requires Customer to self-assess or reverse-charge any taxes, Customer shall be responsible for complying with such law. In such a case, Customer undertakes to provide Mirantis with Customer’s valid VAT registration number that is relevant to the software and service provided under the terms of this Agreement. The amounts of any taxes required to be paid by Mirantis will be added to Mirantis’ invoice, and Customer shall promptly remit such amounts to Mirantis, as the collection agent, upon invoice.

**3.3 Support from Mirantis’ Business Partners.** In some cases, Customers may also receive support services, as part of the purchased Subscription Services, from a Mirantis authorized business partner (each, a “Mirantis Authorized Business Partner”). Notwithstanding anything to the contrary in Section 3.1, if Customer purchases support services from a Mirantis Authorized Business Partner, Mirantis shall have no obligation to provide any support services to the Customer and Customer should work with that Mirantis Authorized Business Partner to obtain all support services for the Supported Software.

#### **4. Restricted Activities**

Customer shall not, and shall not encourage any third party to: (a) modify, adapt, alter, translate, or create derivative works of the Licensed Software; (b) reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Licensed Software, in whole or in part, except to the extent that such activities are permitted under applicable law; (c) distribute, license, sublicense, lease, rent, loan, or otherwise transfer the Licensed Software to any third party; (d) remove, alter, or obscure in any way the proprietary rights notices (including copyright,

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patent, and trademark notices and symbols) of Mirantis or its suppliers contained on or within any copies of the Licensed Software; (e) use the Licensed Software for the purpose of creating a product or service competitive with the Licensed Software; (f) use the Licensed Software with any unsupported software or hardware (as described in the applicable documentation provided by Mirantis); (g) use the Licensed Software for any time-sharing, outsourcing, service bureau, hosting, application service provider or like purposes; (h) disclose the results of any benchmark tests on the Licensed Software without Mirantis' prior written consent; or (i) use the Licensed Software other than as described in the documentation provided therewith, or for any unlawful purpose.

## **5. Ownership of Licensed Software**

Mirantis and its licensors own and retain all right, title, and interest, including all intellectual property rights, in and to the Licensed Software, including any improvements, modifications, and enhancements to it. Except for the rights expressly granted in this Agreement, Customer shall acquire no other rights, express or implied, in or to the Licensed Software, and all rights not expressly provided to Customer hereunder are reserved by Mirantis and its licensors. All the copies of the Licensed Software provided or made available hereunder are licensed, not sold.

## **6. Records and Audit**

Customer shall establish and maintain complete and accurate records related to the location, access and use of the Supported Software by Customer, its employees or its agents, and any such other information as reasonably necessary for Mirantis to verify compliance with the terms of this Agreement. Such records shall be kept for at least 3 years following the end of the quarter to which they pertain. Upon prior notice, Mirantis or its representative may inspect such records to confirm Customer's compliance with the terms of this Agreement. Prompt adjustments shall be made by Customer as directed by Mirantis to compensate for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee, with the applicable late payment interest. Additionally, if Customer has underpaid Mirantis or its authorized reseller by more than 5% of the total amount owed hereunder, the cost of the audit shall be borne by Customer.

## **7. Term**

Unless otherwise terminated in accordance with this section, this Agreement will remain in effect until all Subscription Services granted under this Agreement have expired. Either party may terminate this Agreement and any Order Form incorporating the terms of this Agreement (if Mirantis is a party to such Order Form) if the other party materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice thereof. Unless otherwise agreed by the parties, upon the expiration or termination of this Agreement or any Order Form all Subscription Services granted herein or therein will automatically terminate and Customer will discontinue all use of the applicable Licensed Software and Supported Software and will return to Mirantis any materials (including any copies of Licensed Software) provided by Mirantis to Customer. Sections 1, 2.2, 5, 6, 7, 9, 11, 12 and 14 shall survive any termination or expiration of this Agreement or any Order Form.

## **8. Feedback.**

Customer may submit to Mirantis bug reports, comments, feedback or ideas about the Supported Software, including without limitation about how to improve the Supported Software. By submitting any Feedback, Customer hereby assigns to Mirantis all right, title, and interest in and to the Feedback, if any.

## **9. Confidentiality**

**9.1 Definition.** “Confidential Information” means any information disclosed by one party (“Discloser”) to the other (“Recipient”), directly or indirectly, in writing, orally or by inspection of tangible objects, which is designated as “Confidential,” “Proprietary” or some similar designation, or learned by Recipient under circumstances in which such information would reasonably be understood to be confidential. Confidential Information may include information disclosed in confidence to Discloser by third parties. For the purposes of this Agreement, the Licensed Software, and the results of any performance, functional or other evaluation of the Licensed Software, shall be deemed Confidential Information of Mirantis.

**9.2 Exceptions.** The confidentiality obligations in this Section 9 shall not apply with respect to any of the Discloser's Confidential information which Recipient can demonstrate: (a) was in the public domain at the time it was disclosed to Recipient or has become in the public domain through no act or omission of Recipient; (b) was known to Recipient, without restriction, at the time of disclosure as shown by the files of Recipient in existence at the time of disclosure; (c) was disclosed by Recipient with the prior written approval of Discloser; (d) was independently developed by Recipient without any use of Discloser's Confidential Information by affiliates, employees or other agents of (or contractors hired by) Recipient who had no access to or did not rely on Discloser's Confidential Information; or (e) became known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser's rights.

**9.3 Restrictions on Use and Disclosure.** Recipient agrees not to use Discloser's Confidential Information or disclose, distribute or disseminate Discloser's Confidential Information except in furtherance of the performance of its obligations or enforcement of its rights hereunder or as otherwise expressly agreed by Discloser in writing. Recipient agrees to restrict access to such Confidential Information to those affiliates, agents, employees or consultants of Recipient who need to know such Confidential Information for performing as contemplated hereunder and have agreed in writing to be bound by a confidentiality obligation no less protective than that contained in this Agreement. Recipient shall exercise the same degree of care to prevent unauthorized use or disclosure of Discloser's Confidential Information to others as it takes to preserve and safeguard its own information of like importance, but in no event less than reasonable care.

**9.4 Compelled Disclosure.** If Recipient is compelled by a court or other competent authority or applicable law to disclose Confidential Information of Discloser, it shall give Discloser prompt written notice and shall provide Discloser with reasonable cooperation at Discloser's expense so that Discloser may take steps to oppose such disclosure or obtain a restraining order. Recipient shall not be in breach of its obligations in this Section 9 if it makes any legally compelled disclosure provided that Recipient meets the foregoing notice and cooperation requirements.

**9.5 Injunctive Relief.** Recipient acknowledges that breach of the confidentiality obligations would cause irreparable harm to Discloser, the extent of which may be difficult to ascertain. Accordingly, Recipient agrees that Discloser is entitled to immediate injunctive relief in the event of breach of an obligation of confidentiality by Recipient, and that Discloser shall not be required to post a bond or show irreparable harm in order to obtain such injunctive relief.

**9.6 Return of Confidential Information.** As between the parties, Confidential Information shall remain the property of the Discloser. At any time, upon Discloser's reasonable request, Recipient shall promptly (and in any event within 30 days) return to Discloser or destroy, at the election of the Discloser, any Confidential Information of the Discloser. In addition, within 30 days after termination of this Agreement, Recipient shall (i) promptly return all tangible materials containing such Confidential Information to Discloser, (ii) remove all Confidential Information (and any copies thereof) from any computer systems of the Recipient, its contractors and its distributors, and confirm in writing that all materials containing Confidential Information have

been destroyed or returned to Discloser, as applicable, by Recipient. Recipient shall cause its affiliates, agents, contractors, and employees to strictly comply with the foregoing.

## **10. No Warranties**

CUSTOMER EXPRESSLY UNDERSTAND AND AGREE THAT ALL USE OF THE SUPPORTED SOFTWARE IS AT CUSTOMER'S SOLE RISK AND THAT THE SUPPORTED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." MIRANTIS, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SUPPORTED SOFTWARE OR SUPPORT SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, TOGETHER WITH ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM MIRANTIS OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MIRANTIS, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) CUSTOMER'S USE OF THE SUPPORTED SOFTWARE OR SUPPORT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR (B) CUSTOMER'S USE OF THE SUPPORTED SOFTWARE OR SUPPORT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL EXCLUDE OR LIMIT MIRANTIS' WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE SUPPORTED SOFTWARE IS NOT DESIGNED, INTENDED OR WARRANTED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS.

## **11. Indemnification**

**11.1 By Mirantis.** Mirantis shall defend at its own expense any legal action brought against Customer to the extent that it is based on a claim or allegation that the Licensed Software infringes a U.S. patent or copyright of a third party, and Mirantis will pay any costs and damages awarded against Customer in any such action, or agreed to under a settlement signed by Mirantis, that are attributable to any such claim but shall not be responsible for any compromise made or expense incurred without Mirantis' consent. Such defense and payments are subject to the conditions that (a) Customer gives Mirantis prompt written notice of such claim, (b) tenders to Mirantis sole control of the defense and settlement of the claim, and (c) reasonably cooperates with Mirantis when requested in connection with the defense and settlement of the claim. Mirantis will have no liability to so defend and pay for any infringement claim to the extent it (i) is based on modification of the Licensed Software other than by Mirantis, with or without authorization; (ii) results from failure of Customer to use an updated version of the Licensed Software; or (iii) is based on the combination or use of the Licensed Software with any software (including, without limitation, Open Source Software), program or device not provided by Mirantis if such infringement would not have arisen but for such use or combination; or (iv) results from use of the Licensed Software by Customer after the license was terminated.

**11.2 Limitation of IP Damages.** Should any Licensed Software, or the operation thereof, become or in Mirantis' opinion be likely to become, the subject of such claim described in Section 11.1, Mirantis may, at Mirantis' option and expense, procure for Customer the right to continue using the Licensed Software, replace or modify the Licensed Software so that it becomes non-infringing, or terminate the license granted hereunder for such Licensed Software. THIS SECTION 11 STATES MIRANTIS' SOLE AND EXCLUSIVE LIABILITY, AND

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CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**11.3 By Customer.** Customer agrees to hold harmless and indemnify Mirantis and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners from and against any third party claim arising from or in any way related to Customer's breach of this Agreement, use of the Supported Software, or violation of applicable laws, rules or regulations in connection with the Supported Software, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, Mirantis will provide Customer with written notice of such claim, suit or action.

## **12. Limitation of Liability.**

**12.1 Exclusion of Damages.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT MIRANTIS, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES INCURRED BY CUSTOMER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS. THE FOREGOING LIMITATIONS ON MIRANTIS' LIABILITY SHALL APPLY WHETHER OR NOT MIRANTIS HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL EXCLUDE OR LIMIT MIRANTIS' LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.

**12.2 Liability Cap.** THE TOTAL LIABILITY OF MIRANTIS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE RELEVANT SUPPORTED SOFTWARE UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

## **13. Export Restrictions.**

Customer understands that Supported Software is subject to United States export controls administered by the U.S. Department of Commerce and the United States Department of Treasury Office of Foreign Assets Control. Customer acknowledges and agrees that the Supported Software shall not be used, transferred or otherwise exported or re-exported to countries as to which the United States, maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Entity List, Denied Persons List, or Unverified List, or the U.S. Department of State's Nonproliferation Sanctions list (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Supported Software, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining United States government export licenses to export or re-export as may be required. 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.

#### **14. Miscellaneous**

The Supported Software and any other software covered under this Agreement are “commercial items” as that term is defined at 48 C.F.R. 2.101; consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Supported Software and any other software and documentation covered under this Agreement with only those rights set forth herein. This Agreement will be governed by the laws of the State of California without reference to conflict of law principles. Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Mirantis may assign the entirety of its rights and obligations under this Agreement, without consent of the Customer, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. The application of the UN Convention of International Sale of Goods to this Agreement is disclaimed in its entirety. Together with any Order Forms, this is the entire agreement between the parties relating to the subject matter hereof. This Agreement (including applicable Order Forms) shall control over any additional or different terms of any correspondence, order, confirmation, invoice or similar document, even if accepted in writing by both parties, and waivers and amendments of any provision of this Agreement shall be effective only if made by non-preprinted agreements indicating specifically what sections of this Agreement are affected, signed by both parties and clearly understood by both parties to be an amendment or waiver. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the invalid or unenforceable provision shall be reformed to the extent necessary to make it valid and enforceable. When a new Subscription Term begins the most current version of this Agreement made available by Mirantis shall be applicable to Customer's use of the Software.