



## Mirantis Launchpad Software Evaluation License Agreement

**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 Mirantis Launchpad Software Evaluation License Agreement (“**Agreement**”) is entered into by and between Mirantis, Inc., a Delaware corporation, with offices at 900 E. Hamilton Ave., Ste. 650, Campbell, CA 95008, USA (“**Mirantis**”) and the person or entity downloading or using the software or services (“**Customer**”).

### 1. License

**1.1. Mirantis Launchpad Software License.** Subject to Customer’s compliance with the terms and conditions of the Agreement, Mirantis hereby grants Customer a limited, non-exclusive, non-sublicensable, revocable license to use Mirantis Launchpad Software solely for Evaluation Use. “**Mirantis Launchpad Software**” means the Mirantis Launchpad Software command line interface tool made available by Mirantis, primarily from [www.mirantis.com/launchpad](http://www.mirantis.com/launchpad), for the deployment and upgrade of Mirantis Container Cloud Software. “**Evaluation Use**” means Customer’s non-production and internal evaluation purposes. Please note that “non-production” purposes does not include development if for production purposes. “**Mirantis Container Cloud Software**” means the Licensed Software and Open Source Software provided under the Mirantis Software Evaluation Agreement at [https://www.mirantis.com/wp-content/uploads/2020/11/Mirantis-Software-Evaluation-Agreement\\_November-2020.pdf](https://www.mirantis.com/wp-content/uploads/2020/11/Mirantis-Software-Evaluation-Agreement_November-2020.pdf) (“**Mirantis Software Evaluation Agreement**”) and deployed by Mirantis Launchpad Software.

**1.2. Mirantis Container Cloud Software License.** Mirantis Container Cloud Software deployed and upgraded using Mirantis Launchpad Software is subject to the terms and conditions of the separate Mirantis Software Evaluation Agreement. Customer agrees to the terms and conditions of the [Mirantis Software Evaluation Agreement](#). IF YOU DO NOT AGREE TO THE MIRANTIS SOFTWARE EVALUATION AGREEMENT FOR MIRANTIS CONTAINER CLOUD SOFTWARE, DO NOT DOWNLOAD OR USE MIRANTIS LAUNCHPAD SOFTWARE.

**2. Usage Data and Health Metrics.** Mirantis Launchpad Software monitors and collects usage data and health metrics to support Mirantis product improvement and enhance the Customer experience. By using the software you acknowledge and agree that Mirantis will process your personal data according to the Privacy Policy at <https://www.mirantis.com/company/privacy-policy/>. IF YOU DO NOT AGREE OR “OPT-OUT”, DO NOT DOWNLOAD OR USE MIRANTIS LAUNCHPAD SOFTWARE.

**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 Mirantis Launchpad Software (“Records”). During the Agreement term and for 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 15 days’ notice. Mirantis may charge fees to Customer for any noncompliance.

### 4. Term and Termination

**4.1. Term.** This Agreement commences on the day Customer assents to this Agreement or uses, access, or consumes the software or services (“**Effective Date**”) and ends the first of (i) Termination under Section 4.2, or (ii) Customer’s non-compliance with Section 1 (“**Term**”).

**4.2. Termination.** Mirantis may terminate this Agreement with 10 days’ notice to Customer. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches an obligation hereunder that has not been cured within 15 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 5 (Mirantis Launchpad Software License), 5 (Confidentiality) or 8.3 (Export).

- 4.3. Effect of Termination.** Sections 3, 4.3, & 5 through 7 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. Upon the expiration or termination of the Agreement all licenses granted herein will automatically terminate and Customer will discontinue all use of the software and will return to Mirantis any materials (including any copies of software) provided by Mirantis to Customer
- 5. 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 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 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. "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 part. 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 violating any law or rule) in order to give Discloser a reasonable opportunity to seek an appropriate protective order or similar protection(s).
- 6. Disclaimers**
- 6.1. Disclaimer of Warranty.** 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 COMMERCIALLY 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.*
- 6.2. 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.

**7. Limitation of Liability.** IN NO EVENT WILL MIRANTIS CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF \$1,000.00 OR THE AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. 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.

## **8. General Provisions**

**8.1. 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; 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 8.1 shall be null and void.

**8.2. 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). 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.

**8.3. 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 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.

**8.4. 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.

**8.5. 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.

**8.6. Integration; Amendment.** This Agreement 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. The Agreement 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.

- 8.7. 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 Finance with a copy to Mirantis Legal, and notices to Customer will be sent to the address provided below or to such other addresses (including via electronic communications) as it may give Mirantis.
- 8.8. 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, pandemic, embargo, strike, riot, terrorism, change in law or policy, or the intervention of any governmental authority.
- 8.9. 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.