Cornerstone Technical Solutions, LLC

TruStacks

TruStacks Terms & Conditions
09/03/2021

1. DEFINITIONS.

1.1 **"Affiliate"** means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).

1.2 **"Appliance"** means a Product composed of Virtual Hardware and Software installed on that Virtual machine.

1.3 **"Authorized Reseller"** means a reseller, distributor or partner authorized and approved by TruStacks to resell the Products, Cloud Services and related services.

1.4 **"Cloud Provider"** means the Cloud Resources needed to deploy the TruStacks Software Factory components are deployed. The Cloud Provider also provides DNS, bucket storage, persistent storage and other cloud features in support of Customer TruStacks Instances.

1.5 **"Cloud Services**" means a software as a service or other cloud-based offering that TruStacks provides using the Software.

1.6 **"Cloud Service Subscription"** means a right to access and use the TruStacks Cloud Services for the duration specified in the applicable Order.

1.7 **"Customer Data"** means Information (as defined in Section 11) that is (a) disclosed or provided to TruStacks by or on behalf of Customer, or (b) collected or received from Customer by TruStacks.

1.8 **"Documentation"** means the user manuals provided to Customer with the Software, Hardware or Cloud Services upon delivery or activation, in either electronic, online help files or hard copy format. All Documentation is provided in English.

1.9 **"Effective Date"** means the date the Order was signed by TruStacks or, if there is no signed Order, the date the Order was accepted by TruStacks.

1.10 **"Error"** means a reproducible defect in a Product, which causes the Product not to operate substantially in accordance with the Documentation.

1.11 **"Hardware"** means the hardware supplied from TruStacks as set forth on an Order.

1.12 **"Intellectual Property Rights"** means all intellectual and industrial property rights throughout the world, including but not limited to copyright and related rights, trademarks,

service marks, rights to preserve the confidentiality of information (including know-how and trade secrets), trade names, domain names, rights in get-up, goodwill and right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, patents, patent applications, moral rights, contract rights and other intellectual proprietary rights, including all applications for (and right to apply for and be granted) renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, or in any part of the world.

1.13 **"Order"** means ordering documentation between Customer and TruStacks or an Authorized Reseller and may include a signed quotation from TruStacks or a Customer purchase order accepted by TruStacks.

1.14 **"Perpetual"** means the license right to use the Software indefinitely.

1.15 **"Product(s)"** means the Software, and/or Virtual machines.

1.16 **"Protected System"** means the network attached device generating network traffic.

1.17 **"SCM"** means Source Control Management. An SCM solution is where code is stored and accessed by developers and Customer teams. Examples of SCM include git based SCM systems such as GitHub and GitLab, mercurial, BitBucket or other bit based products on the market. TruStacks installs GitLab into the Secure Software Factory by default and can be utilized at the Customer Discretion.

1.18 **"Software"** means the TruStacks software programs identified in an Order, including Third Party Software, and any Upgrade, Update or Maintenance Release (as defined in the Support Services Addendum) that TruStacks provides to Customer pursuant to the Support Services.

1.19 **"Subscription"** means a term license right to use the Software the duration which is specified in the applicable Order.

1.20 **"Support Services"** means TruStacks's technical support and maintenance services set forth in the Support Services Addendum.

1.21 **"Support Services Fees"** has the meaning given in Section 6.1.

1.22 **"Third Party Software"** means any software that is provided with the Software but that is not owned by TruStacks.

1.23 **"User"** means individuals or a unique entry in Customer's directory of record for Customer's employees, which includes but is not limited to employees, contractors or agents of Customer actively utilizing Customer's IT infrastructure and any end customers monitored by Customer. End Customers can include unique active directory entries of Customer's customers for example, a payment, billing, or authentication system used by the Customer to conduct business with the end customers.

1.24 "**TruStacks"** is a product delivered as a DevSecOps platform that is comprised of pre-built pipelines, secure software factory services and PLOIGOS step implementers. TruStacks is a product of Cornerstone Technical Solutions LLC. This agreement applies to both TruStacks and Cornerstone and can be considered synonymous in regards to any services or products provided by Cornerstone that enhance the functionality of the TruStacks platform for a Customer.

1.25 "**TruStacks AddOns"** means any additional feature or function that can be part of a Customer Order. Additional features and premium features of TruStacks may be considered an AddOn at an additional cost. AddOns cannot be arbitrarily added to an existing TruStacks Instance without Customer Consent and subsequent order received from the customer.

1.26 **"TruStacks Instance Manager "** means the installation of the management software for TruStacks instances. The Instance Manager can be consumed and installed by a customer free of charge or soon downloaded as an appliance from the Azure, IBM and Red Hat Marketplaces and is built to deploy a TruStacks instance in the Customer's own cloud environment. The Instance Manager has the ability to deploy and manage cloud resources specific only to the installation of the TruStacks product. The instance manager also has the ability to track the Core Count needed for licensing as explained in SECTION 2.2

2. LICENSE GRANT AND OTHER RIGHTS.

2.1 **Software License Grant.** Subject to the terms and conditions of this Agreement and payment by Customer of all license fees due for the Software, TruStacks grants to Customer during the term, (either a Perpetual license or Subscription license as specified in the Order), a non-exclusive, non-transferable (except as set forth in Section 13.3) license to use the Software solely for Customer's internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. If Customer elects to deploy the Software for use in another host environment or another virtual environment (including any copy of the Software for backup and disaster recovery purposes), each instance requires its own license for which Customer will need a license key which shall be provided by TruStacks upon request of Customer. Although the SoftwareThe Software shall be deemed delivered when a license key which unlocks the Software is provided by TruStacks to the Customer.

2.2 **License Metrics.** If Customer's Product is licensed by: (a) core count ("CC") as specified in the Order, the CC use limitation of the license refers to the number of cores in the target kubernetes cluster that the Customer application is running on. The Kubernetes Cluster can be any one of the following (not an exhaustive list), Kubernetes, OpenShift, Azure Kubernetes Service (AKS), Google Kubernetes Engine (GKE), AWS Elastic Kubernetes Service (EKS); (b) bundled node count (specified in the Order as a 3, 6, 9, 12 or 15-node cluster with CC already bundled in, CC use limitation of the bundled node count refers to a prepaid node-count assuming each worker node of the target cluster has 4vCPU configured. License/Subscriptions can be purchased for up to one year (annual) or a monthly basis.

2.3 **Affiliate Usage.** Customers may utilize this Software on behalf of Customer Affiliates, provided Customer's Affiliates are included in the appropriate license metrics count. If Customer's Affiliates are not included in the license metric count, Customer is the only entity that may use the Software under this Agreement and the rights granted to Customer under this Agreement do not extend to any Customer Affiliate. Customer shall not permit any Customer Affiliates to use the Software on behalf of Customer or on behalf of such Affiliates. Any Customer Affiliate that desires to license the Software may enter into a separate Order with TruStacks utilizing this Agreement, which shall be a separate agreement between TruStacks and such Customer Affiliate.

2.4 **System Files.** TruStacks does not store or process customer data or system files outside of the Factory components inside of the TruStacks instance or supporting Cloud Provider storage . Access to Customer code, if GitLab is installed and utilized as the SCM solution, should be restricted by the Customer after delivery. If remote access is required for troubleshooting purposes, access can be granted by the customer. TruStacks support will not have a need to pull customer data outside of the SCM in the factory.

2.5 **Restrictions on Use.** Except as expressly permitted by this Agreement, Customer shall not: (a) modify, adapt, alter, translate, or create derivative works from TruStacks, Software, Cloud Services or Documentation; (b) rent, lease, loan, sublicense, distribute, sell or otherwise transfer the Software, Cloud Services or Documentation to any third party without prior consent from TruStacks; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the

source code for the Software or Cloud Services; (d) otherwise use or copy the Software, Cloud Services or Documentation except as expressly permitted in this Agreement.

3. TruStacks ADDONS

If Customer orders and pays for TruStacks ADDONS, the terms and conditions set forth in this agreement or attached as an addendum to this Agreement shall apply to such ADDONSs in addition to the terms of this Agreement.

4. HARDWARE.

There is no hardware component associated with TruStacks. If deploying the software on bare-metal, this will be obtained by the Customer through other means and not directly from TruStacks or Cornerstone.

5. FREEMIUM WITH SELF-SUPPORT

Freemium is a business model in which a company offers basic or limited features to users at no cost and then charges a premium for supplemental or advanced features. Freemium models are especially popular among software applications and Internet-based businesses.

The TruStacks Instance Manager is available for free to download and use to deploy their own TruStacks instances in their cloud. Premium add-ons/plugins will require an Enterprise License as outlined in SECTION 2.

The freemium TruStacks is provided "AS IS" and no warranty obligations of TruStacks will apply and Support Services obligations do not apply to any freemium Products.

6. SUPPORT SERVICES; DEPLOYMENT; TRAINING.

6.1 Support Services. Support Services shall be subject to terms and conditions set forth in a separate agreement to include terms, SLAs and Statements of Work (SOWs) where applicable. SLA's can be customized for the individual Customer's needs. However; The initial Support Services term for Software licensed on a Perpetual basis and/or Appliance/Software is one year beginning on the Effective Date unless otherwise specified in the Order ("Initial Support Term"). Thereafter, Support Services for Perpetual licenses and/or Appliance/Software may be renewed for additional one-year or monthly terms by both parties exercising an option to extend or a new purchase order. Support Services for Subscriptions are included in the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Customer may continue to use the Software in accordance with this Agreement without Support Services. TruStacks may increase Support Services Fees for Perpetual licenses and/or Software for a Support Services renewal term up to ten percent over the prior year's Support Services Fees. Support Services for Subscriptions are included in

the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Appliances and/or Software, Customer may continue to use the Software in accordance with this Agreement without the benefits provided under SECTION 2 and SECTION 5. Support Services Fees for the Initial Term are set forth in the applicable Order and are invoiced on the Effective Date. Under no circumstances are the Support Services transferable or assignable by the Customer to any third party. The Support Services term for Subscription Licenses is concurrent with the Subscription License term.

6.2 **Professional Services**. Certain AddOns may require a level of integration only possible through professional services. Subject to payment of the professional service fees set forth in an Order, TruStacks shall provide to Customer the professional services specified in the Order and in accordance with a Professional Services Statement of Work (SOW) from Cornerstone Technical Solutions. Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. Upon Customer's request, TruStacks shall submit written evidence of each such expenditure to Customer prior to receiving reimbursement of such costs and expenses.

6.3 **Training**. A one week engagement is built-in to the onboarding process when deploying a TruStacks instance with a customer. By the time an order is placed, most Customer's will have already experienced a Proof of Concept. TruStacks does not yet provide 'official' training of the product. Workshops and working sessions are provided free of charge for Customers and the OpenMarket. If additional training is required beyond this, training can be purchased from TruStacks Professional Services at the Customer's request.

7. FEES AND PAYMENT.

7.1 **Payment.** Customer shall pay TruStacks or the Authorized Reseller the applicable fees specified in the Order. Unless otherwise expressly provided in this Agreement, TruStacks or the Authorized Reseller as applicable shall invoice Customer on the Delivery Date and Customer shall pay all invoices within thirty (30) days from the receipt date of the invoice. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3 when required. TruStacks may charge interest on all late payments at a rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. If Customer purchases Product or services through an Authorized Reseller, price and payment terms are between Customer and the Authorized Reseller.

7.2 **Reports; Audit Rights.** TruStacks may periodically run a report to determine the number of CC Customer is utilizing with the Products. TruStacks may also audit or appoint an independent audit firm selected by TruStacks to audit Customer's records relating to Customer's use of the Products pursuant to this Agreement to verify that Customer has complied with the terms of this Agreement and to verify Customer's compliance with the license Products. Any audit shall be conducted no more than once in any period of twelve consecutive months during Customer's

normal business hours, subject to Government security requirements, and upon at least fifteen days' prior written notice. The audit shall be conducted at TruStacks's expense. Customer shall promptly pay to TruStacks any amounts owed plus interest as provided in Section 7.1. 8.

8. WARRANTY.

8.1 **Product Warranty.** For a period of sixty (60) days after the Effective Date ("Warranty Period"), TruStacks warrants that the Products, when used in accordance with the instructions in the applicable Documentation, will operate as described in the Documentation in all material respects. TruStacks does not warrant that Customer's use of the Products will be error-free or uninterrupted. TruStacks will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, correct any reproducible Error in the Products provided that such Error is reported to TruStacks by Customer in writing during the Warranty Period and that Customer provides all information that may be necessary to assist TruStacks in resolving the Error, or sufficient information to enable TruStacks to recreate the Error. If TruStacks determines that it is unable to correct the Error or update the Product, Customer may terminate this Agreement and TruStacks shall refund to Customer all Product and Support Services fees actually paid for the defective Product, in which case Customer's right to use the Product shall terminate.

8.2 **Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 8.1 ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS. TruStacks AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WHICH ARE HEREBY DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 8.1, THE PRODUCTS ARE PROVIDED "AS IS" WITH ALL FAULTS. 9. INFRINGEMENT CLAIMS.

9. LIMITATION OF LIABILITY.

IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, SECURITY BREACH REMMEDIATIONS OR ASSOCIATED LOSSES, LOST PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOTAL CUMULATIVE LIABILITY OF TruStacks AND ITS THIRD-PARTY SUPPLIERS IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO TruStacks FOR THE CURRENT PURCHASE ORDER

GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING FROM A BREACH OF SECTIONS 2.5 OR 11.

10. CONFIDENTIALITY.

10.1 **Confidential Information**. For purposes of this Section 111, ("Information") means information that is disclosed by a party ("Discloser") to the other party ("Recipient"), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Information includes, without limitation, information of or relating to the Discloser's present or future products, knowhow, formulas, designs, processes, ideas, inventions and other technical, business and financial plans, processing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, marketing plans, strategies, financial matters, personnel matters, investors or business operations of the Discloser, as well as the terms of this Agreement.

10.2 **Protection of Information**. Recipient shall not use any Information of Discloser for any purpose not expressly permitted by this Agreement and shall disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient shall protect Discloser's Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

10.3 **Exceptions**. Recipient's obligations under Section 10.2 with respect to any Information of Discloser shall terminate if such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient shall be allowed to disclose Information of Discloser to the extent that such disclosure is: (i) approved in writing by Discloser; (ii) necessary for Recipient to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure. TruStacks recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

10.4 **Return of Information**. Except as otherwise expressly provided in this Agreement, Recipient shall return to Discloser or destroy all Information of Discloser in Recipient's

possession or control and permanently erase all electronic copies of such Information promptly upon the written request of Discloser. Recipient shall certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 11.4.

11. TERMINATION

11.1 **Term**. The "Term" of a Perpetual license continues until terminated as provided in Section 11.2. The "Term" of a Subscription Term Agreement expires at the end of the Subscription specified in the applicable Order unless the parties enter into a new Subscription.

11.2 **Termination**. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, TruStacks shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.3 **Refund or Payment upon Termination**. If this Agreement is terminated in accordance with Section 11.2, TruStacks will refund Customer: (a) any prepaid, unused Fees for services after the effective date of termination. In no event will termination relieve the Customer of its obligation to pay any Fees payable to TruStacks prior to the effective date of termination.

11.4 **Effects of Termination**. Upon termination of this Agreement: (i) all license and use rights granted in this Agreement shall immediately terminate; and (ii) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers, return to TruStacks or destroy all copies of the Software, Documentation and other TruStacks Information in Customer's possession or control. Sections 1, 2.5, 7, 9, 10, 11, 13 and Sections 3 and 7 of the Cloud Services Addendum together with any accrued payment obligations, shall survive expiration or termination of this Agreement for any reason, together with any accrued payment obligations and any other sections of this Agreement which expressly or by their nature survive expiry or termination.

12. GENERAL.

12.1 **Proprietary Rights**. The Products and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of TruStacks and its licensors. All rights in and to the Products and Documentation not expressly granted to Customer in this Agreement are reserved by TruStacks and its licensors.

12.2 **Compliance with Laws**. Each party shall comply with all laws, rules, and regulations, applicable to that party in connection with this Agreement, including all applicable export and import control laws and regulations in its use of the Products and, in particular, neither party shall export or re-export Products without all required government licenses and each party

agrees to comply with the export laws, restrictions, national security controls and regulations of all the applicable foreign agencies or authorities. Customer shall not export, reexport, or transfer, directly or indirectly, any information, process, product, technology, funds or services to countries or territories specified as prohibited destinations under U.S. trade controls laws or as otherwise prohibited by U.S. trade control laws, including the economic sanctions and export control laws and regulations administered by the U.S. Department of Commerce, U.S. Department of the Treasury, and U.S. Department of State.

12.3 **Assignment**. Neither party shall have the right to assign, novate or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any attempted assignment, novation or transfer in violation of the foregoing will be null and void. This Agreement is binding upon and inures to the benefit of the parties, and to their permitted successors and assigns.

12.4 **Force Majeure**. Excusable delays shall be governed by FAR 52.212-4(f).

12.5 **U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Cloud Services are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of agencies, consistent with the policy set forth in 48 C.F.R. 12.212.

12.6 **Notices**. Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and delivered by one of the following methods: (a) personal delivery; (b) registered or certified mail, in each case, return receipt requested and postage prepaid; or (c) nationally recognized overnight courier specifying next day delivery and notification of receipt. Operational approvals and consents required under this Agreement may be delivered by e-mail. A notice meeting all requirements of this Section 13.6 will be deemed effectively received: (i) upon personal delivery to the party to be notified; (ii) three (3) business days after having been sent by registered or certified mail; (iii) one business day after deposit with a nationally recognized overnight courier; or (iv) on the date on which such notice is delivered by email transmission. A party shall deliver notices to the address, e-mail address number set forth on the applicable Order or to such other address, e-mail address or facsimile number as a party may designate by ten (10) days' advance written notice to the other parties.

12.7 **Governing Law**. The Federal laws of the United States shall govern this Agreement, without regard to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The U.N. Convention for the International Sale of Goods is expressly excluded from, and does not apply to, this Agreement.

12.8 **Waivers.** No delay or failure of a party to exercise any of its rights, powers or remedies or to require satisfaction of a condition under this Agreement will impair any such right, power, remedy, or condition, nor will any delay or omission be construed to be a waiver of any breach, default or noncompliance under this Agreement. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of the

same provision on any other occasion. To be effective, a waiver must be in writing signed by the party granting the waiver, and will be effective only to the extent specifically set forth in such writing.

12.9 **Third Party Software.** Certain Third-Party Software may be provided with the Products or used in the Cloud Services that is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Products or Cloud Services are subject to open source licenses obligating TruStacks to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Library General Public License ("LGPL")), TruStacks will make such source code portions (including TruStacks modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to 1776 Heritage Center Drive, Suite 204, Wake Forest NC 27587. 1: Attn: Legal Department. Customers may obtain a copy of the GPL at http://www.gnu.org/licenses/gpl.html, and a copy of the LGPL at http://www.gnu.org/licenses/lgpl.html. Subject to the terms of any applicable open source license(s), Third Party Software is licensed solely for use as embedded or integrated with the Product or Cloud Services.

12.10 **Severability.** If a provision of this Agreement is unenforceable, invalid, or illegal, then the intent of the parties is that (a) the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impacted in any way and the remainder of this Agreement is enforceable between the parties, and (b) the unenforceable, invalid, or illegal provision will be modified and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law.

12.11 **Construction.** The headings of sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to.

12.12 **Counterparts.** The parties may execute this Agreement in several counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement.

12.13 **Entire Agreement.** This Agreement, together with all addenda, exhibits, attachments, Orders and Statements of Work made hereunder, constitutes the final agreement between the parties and is the complete and exclusive expression of the parties' agreement to the matters contained in the Agreement. Customer may order more Products under this Agreement by executing the TruStacks or Authorized Reseller's Order. All Orders by Customer are non-cancellable. This Agreement supersedes and merges all prior and contemporaneous understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof. This Agreement may be amended only by a written instrument signed by each of the parties. Customer may issue a purchase order to TruStacks to confirm the Order, but no terms of any purchase order or similar document submitted by Customer (whether additional or contradictory) shall apply to this Agreement and all such terms are hereby rejected. Unless otherwise specified in a future Order (which must be signed by both parties), and services, this Agreement governs all future transactions for TruStacks products between the parties.