

# Tart License Subscription

This Subscription Agreement (the "Agreement") is made as of between Cirrus Labs, Inc. with its principal place of business located a 2035 Sunset Lake Rd, Newark, DE 19702 ("Cirrus Labs" or the "Company") and [Client.Company] with a billing address [Client.Address] ("you" or "your").

- Individual Signing on Behalf of Company. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF AN ENTERPRISE OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTERPRISE AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTERPRISE AND ITS AFFILIATES.
- Individual Not Authorized to Sign on Behalf of Company. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES OR SOFTWARE.

READ THE TERMS OF THIS AGREEMENT CAREFULLY.

1. Grant of License. During the Initial Term and any Renewal Term of this Agreement, as defined in Section 4, Cirrus Labs will grant to you a limited, nonexclusive and nontransferable licenses to Tart Virtualization and Orchard Orchestration products. The licenses include rights to install Orchard on [Agreement.OrchardDevicesAmount] devices and/or simultaneously utilize up to [Agreement.LicenseAmount] cores of a central processing units (CPUs) with as many installations of Tart as necessary.
  - 1.1. **License Management.** It is your responsibility to make sure usage of the products is within this agreement. Please check *Use Limitation* clause in the license file of a corresponding product for the usage exceptions.
  - 1.2. **Audit.** During the term hereof and for a period of three years thereafter, Cirrus Labs may, directly or through an independent auditor, receive and review relevant documents and/or records or data as required to confirm Licensee's compliance with this Agreement. In the event that such inspection and audit reveals noncompliance with

this Agreement or the applicable Order Form, then Cirrus Labs may charge Licensee for any unauthorized use at Cirrus Labs' then-current list price for such Licensed Software.

1.3. **Feedback.** If Licensee provides any suggestions, ideas, enhancement requests, recommendations or feedback regarding the Licensed Software, the Support or Documentation (“Feedback”), Cirrus Labs may use and incorporate Feedback in Cirrus Labs' products and services without any rights retained by the Licensee or compensation . Licensee will have no obligation to provide Feedback, and all Feedback is provided by Licensee “as is” and without warranty of any kind.

2. **Support Services.** During the Initial Term and any Renewal Term of this Agreement, as defined in Section 4, Cirrus Labs will provide to you the services set forth in this Section 2 (the “Support Services”):

**2.1. General Description of Support Services:**

Cirrus Labs will provide you the Support Services, as further defined in <https://tart.run/licensing/#priority-support> that you subscribed to in a professional and workmanlike manner in accordance with industry standards. Support Services, in connection with Cases (as hereinafter defined) shall include direct response to you with respect to specific questions and issues (“Issues”) related to the following described service: Tart Virtualization and Orchard Orchestration.

**2.2. Cases**

Each instance in which you contact Cirrus Labs for Support Services shall be considered a “Case” and shall be assigned a unique Case number. You must have an active Priority Support Subscription as provided in this Agreement to be eligible to register a Case with Cirrus Labs and receive Support Services. For future references, a unique Case number for a given question or issue is the same as the thread id in [support@cirruslabs.org](mailto:support@cirruslabs.org) Google Group.

**2.3. Issue Response**

Cirrus Labs shall use its reasonable commercial efforts to respond to Cases reported by you. The terms and conditions of Cirrus Labs' Service Level Commitment for responding to reported Issues are published on the Cirrus Labs Support Portal under [“Priority Support” section](#). Notwithstanding anything herein to the contrary, Cirrus Labs makes no guarantee that: (i) all Issues will be resolved, (ii) that any version of the Software will be error free, or (iii) it will correct or attempt to correct all Issues. The

decision whether to correct any particular Issue shall be made in Cirrus Labs' sole discretion, but Cirrus Labs will discuss with Client when it has taken such decision and the Client can raise reasonable objections and provide further evidence why an Issue should be resolved. The Software is designed to work with certain third party software/services and in cases where Cirrus Labs has isolated an Issue as being caused by a certain third party product, Cirrus Labs may require that you work with the support personnel of such third party software vendor. In the resolution of certain Cases, you may be reasonably required to: (i) provide Cirrus Labs a listing of output and other data, that Cirrus Labs may need in order to reproduce operating conditions similar to those present when the Issue occurred; (ii) assist by eliminating any hardware, operating system software, and application software deficiencies or conflicts; (iii) provide any requested diagnostic information to allow Cirrus Labs to further diagnose the Issue; and (iv) implement recommended corrective or workaround procedure(s).

#### **2.4. Methods of Assistance**

Priority support customers will have access to Support Services by and through the Cirrus Labs Support emails during priority support hours as published on the Tart Support Portal under [“Priority Support” section](#).

**2.4.1.** To submit an urgent issue (severity 1) use [support+urgent@cirruslabs.org](mailto:support+urgent@cirruslabs.org) email address.

**2.4.2.** To submit a priority issue (severity 2-3) use [support+priority@cirruslabs.org](mailto:support+priority@cirruslabs.org) email address.

**2.4.3.** To submit a low priority issue (severity 4) use [support@cirruslabs.org](mailto:support@cirruslabs.org) email address from your corporate email domain(s): [Client.EmailDomain].

#### **2.5. Service Limitations**

Cirrus Labs promotes mutually respectful dialog between our employees and our clients. Repeated verbal abuse of Cirrus Labs employees and contractors may be deemed as cause to immediately terminate this Agreement and deny you any future Support Services.

### **3. Disclaimers; Limitation of Liability.**

#### **3.1. Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1.1. AND 1.2., CIRRUS LABS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 3.2. **Limitation of Liability.**

3.2.1. **Limitation on Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, OR WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

3.2.2. **Limitation on Cumulative Liability.** THE CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO CIRRUS LABS BY YOU UNDER THIS AGREEMENT FOR THE PAST 12 MONTHS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS.

## 4. **Term; Termination.**

4.1. The Agreement commences on the [Agreement.EffectiveDate] and continues until it is terminated in accordance with this Section 3.2.

### 4.2. **Termination**

Subscriptions shall renew for successive terms (of the same duration) as the original Subscription Term provided that Customer gives Cirrus Labs notice of its desire to renew at least thirty (30) days prior to the expiration of the current Subscription Term. Subscriptions must be used during the Subscription Term and any unused Subscriptions will expire.

4.3. Either party may terminate this Agreement and any Order Form executed between the parties if:

- 4.3.1. the other party materially breaches this Agreement and does not cure the breach within thirty (30) days after written notice; or
- 4.3.2. the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

## 5. Fees and Billings.

### 5.1. Charges for Services:

The fee for the Initial Term and any Renewal Terms shall be governed by [Cirrus Labs' standard published price list](#) as at the Agreement Signing Date and shall increase by no more than 10% for any Renewal Term and amount invoiced to you by Cirrus Labs.

### 5.2. Payment

Cirrus Labs will invoice you at [Client.InvoiceEmail] for fees as set forth in Section 4.1 upon the commencement of the Initial Term and each Renewal Term. All invoices are due within thirty (30) days of receipt. You shall be responsible for all taxes (including sales taxes) imposed as a result of the Support Services, excluding only taxes based on the net income of Cirrus Labs. Any amount not paid within sixty (60) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by you in good faith within ten (10) days of the receipt of an invoice will be deemed approved and accepted by you.

## 6. Confidentiality:

The receiving party will: (a) protect the confidentiality of the disclosing party's confidential information (which includes all information that is marked as confidential or is information that the receiving party knows or should have known is confidential) using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care; (b) not use any of the disclosing party's confidential information for any purpose outside the scope of the Agreement; and (c) not disclose the disclosing party's confidential information to any party other than its employees, contractors, advisors and agents who are bound by obligations of confidentiality at least as restrictive as those set forth in the Agreement. Upon the written request of the disclosing party, the receiving party will promptly return or destroy all confidential information, except for Confidential Information stored in routine back-up media and not accessible in the ordinary course of business.

## 7. **Additional Terms.**

### 7.1. **Governing Law and Dispute Resolution::**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York as applied to contracts made and performed entirely within New York, without giving effect to any conflicts of law statutes. Any controversy, dispute or claim arising out of or related to this Agreement shall be settled by final and binding arbitration to be conducted by an arbitration tribunal in the State of New York and the County of New York, pursuant to the rules of the American Arbitration Association. Any and all disputes that you may have with Cirrus Labs shall be resolved individually, without resort to any form of class action.

### 7.2. **Survival:**

Sections 2 and 4 of this Agreement shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

### 7.3. **No Waiver:**

The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach of this Agreement shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

7.4. **Assignment:** Neither party may assign, subcontract or otherwise transfer the Agreement, in whole or in part, without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may, upon written notice to the other party, assign the Agreement to a parent, subsidiary, an acquirer of all or substantially all of the party's assets or a successor pursuant to a merger or other business combination. Any assignment prohibited by the Agreement will be deemed void and ineffective. Subject to the foregoing, the Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Company and you have each executed and delivered this Agreement as of the [Agreement.EffectiveDate].

