



ENTERPRISE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. BY USING RANCHER SOFTWARE OR SERVICES, YOU'RE STATING YOU UNDERSTAND AND ACCEPT THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF SOMEONE ELSE, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON THEIR BEHALF. IF YOU DON'T ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT USE RANCHER SOFTWARE OR SERVICES.

This Rancher Enterprise Agreement is between you (the Client) and Rancher Labs, Inc. ("Rancher") and governs your relationship with Rancher Labs and your use of Rancher Products, open source software, and our subscription business model.

1. The Mechanics of the Agreement

- 1.1 Ordering.** The Agreement applies to Rancher Products that you purchase or use. These might include: Subscriptions, Professional Services, Training Services and other Rancher offerings, whether you receive them directly from Rancher or from a Rancher Business Partner. You may order Rancher Products directly from Rancher by submitting an Order Form or from a Rancher Business Partner using the Business Partner's ordering procedure. Affiliates of either party may conduct business under this Agreement by signing an Order Form or other document that references these General Terms and may include additional terms relating to local requirements or other transaction details.
- 1.2 Structure.** The Agreement consists of three components: (1) the General Terms; (2) the Product Appendices (which may include end user license agreements) applicable to Your Products; and (3) if applicable, all Order Forms. Certain terms are defined in the General Terms or in the Definitions section at the end of the General Terms. If you order Rancher Products from a Business Partner, then any agreement that you enter into with the Business Partner is solely between you and the Business Partner and will not be binding on Rancher.

2. Term

- 2.1 Agreement Term.** The Agreement begins on the Effective Date and continues until it is terminated as set forth below.
- 2.2 Services Term.** Unless otherwise agreed in writing, the Service that you order will start on the Effective Date and end at the expiration of the Services Term unless sooner terminated according to this agreement. Subscriptions automatically renew for successive terms of the same duration as the original Services Term, unless either party gives written notice to the other party of its intention not to renew. Notice of non-renewal must be given at least thirty (30) days before the expiration of the applicable Services Term. Any Services that you order must be consumed during the applicable Services Term and any unused Services will expire.

3. Fees and Payment

- 3.1 Payment of Fees.** Section 3.1 applies only to Rancher Products ordered directly from Rancher. Unless otherwise set forth in an Order Form, you agree to pay Fees (1) for Professional Services and Training Services at the time of your order; and (2) for Subscriptions no later than 30 days after the date of Rancher's invoice. Credit is subject to Rancher's approval and Rancher may change credit terms. Fees do not include reasonable out-of-pocket expenses, shipping costs, Taxes, or service provider fees (such as payment processor or vendor management) and you agree to pay such amounts or reimburse Rancher for such amounts paid or payable by Rancher. You must pay the Fees and expenses without withholding or deduction. If you are required to withhold or deduct any Taxes from the Fees or expenses, then you agree to increase the amount payable to Rancher by the amount of such Taxes so that Rancher receives the full amount of all Fees and expenses. All Fees, expenses and other amounts paid under the Agreement are non-refundable.
- 3.2 Basis of Fees.** Fees are determined by counting the Units associated with the applicable Rancher Product. For example, Subscriptions may be priced based on the number of servers or hosts. You agree to order and pay for the appropriate type and quantity of Rancher Products based on the Units you use or deploy. If during the term of the Agreement, the actual number of Units you use or deploy exceeds the number of Units you have ordered and paid for, you must promptly report to Rancher or a Business Partner the number of additional Units used or deployed and the date(s) on which they were used or deployed. Rancher (or the Business Partner) will invoice you and you agree to pay for the additional Units in accordance with your approved payment terms.

4. Termination

- 4.1 Termination for Cause.** Either party may terminate this Agreement (in whole or with respect to any Order Form or Rancher Product obtained from Rancher or a Business Partner) by notice to the other party if (a) the other party materially breaches this Agreement, and does not cure the breach within thirty (30) days after written notice (except in the case of a breach of Section 6 in which case no cure period will apply), or (b) 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. In addition, Rancher may, at its option and without limiting its other remedies, suspend (rather than terminate) any Services if you breach the Agreement (including with respect to payment of Fees) until the breach is remedied.
- 4.2 Termination for Convenience.** Either party may terminate the Agreement by notice to the other party at any time if all Services Terms have expired.
- 4.3 Effect of Termination; Survival.** The termination or suspension of an individual Order Form, Business Partner order or any Rancher Products purchased from Rancher or a Business Partner will not terminate or suspend any other Order Form, Business Partner order, Rancher Product or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order Form(s), Business Partner orders and Services will terminate. If this



ENTERPRISE AGREEMENT

Agreement, any Order Form or Business Partner order is terminated, you agree to pay for all Units that you used or deployed or that were provided by Rancher up to the effective date of termination. Sections 1.2, 3, 4.3, 5.2, 5.3, 6 (to the extent set forth therein), 7, and 8-11 will survive the termination of this Agreement.

5. Representations and Warranties

- 5.1 Rancher represents and warrants that (a) it has the authority to enter into this Agreement, (b) the Services will be performed in a professional and workmanlike manner by qualified personnel, (c) to its knowledge, the Software does not, at the time of delivery to you, include malicious mechanisms or code for the purpose of damaging or corrupting the Software and (d) the Services will comply in all material respects with laws applicable to Rancher as the provider of the Services. Client represents and warrants that (a) it has the authority to enter into this Agreement, and (b) its use of Rancher Products will comply with all applicable laws, and it will not use the Rancher Products for any illegal activity.
- 5.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE RANCHER PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, AND RANCHER DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY THE COURSE OF DEALING OR USAGE OF TRADE. RANCHER AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE RANCHER PRODUCTS WILL BE UNINTERRUPTED, SECURE, ERROR FREE, ACCURATE OR COMPLETE OR COMPLY WITH REGULATORY REQUIREMENTS, OR THAT RANCHER WILL CORRECT ALL ERRORS. IN THE EVENT OF A BREACH OF THE WARRANTIES SET FORTH IN SECTION 5.1, YOUR EXCLUSIVE REMEDY, AND RANCHER'S ENTIRE LIABILITY, WILL BE THE RE-PERFORMANCE OR REDELIVERY OF THE DEFICIENT RANCHER PRODUCT, OR IF RANCHER CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, TERMINATION OF THE RELEVANT RANCHER PRODUCT, IN WHICH CASE YOU MAY RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT RANCHER PRODUCT AS OF THE EFFECTIVE DATE OF TERMINATION.
- 5.3 The Rancher Products have not been tested in all situations under which they may be used. Rancher will not be liable for the results obtained through use of the Rancher Products and you are solely responsible for determining appropriate uses for the Rancher Products and for all results of such use. In particular, Rancher Products are not specifically designed, manufactured or intended for use in (a) the design, planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft control, navigation, or communication systems (c) weapons systems, (d) direct life support systems (e) or other similar hazardous environments.

6. Confidentiality

- 6.1 Recipient (a) may not disclose Confidential Information of a Discloser to any third party unless Discloser approves the disclosure in writing or the disclosure is otherwise permitted under this Section 6; (b) will use the same degree of care to protect Confidential Information of Discloser as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; and (c) may disclose Confidential Information of the Discloser only to its employees, Affiliates, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation (or other professional obligation) to keep such information confidential using standards of confidentiality no less restrictive than those required by this Section 6. These obligations will continue for a period of two (2) years following initial disclosure of the particular Confidential Information. A Recipient may disclose Confidential Information if it is required to do so by applicable law, regulation or court order but, where legally permissible, will provide advance notice to the Discloser to enable the Discloser to seek a protective order or other similar protection if feasible. "Recipient" is the party receiving Confidential Information under this Agreement. "Discloser" is a party disclosing Confidential Information under this Agreement.
- 6.2 Information is not Confidential Information, if: (a) the information is or becomes publicly available other than as a result of the Recipient's breach of this Agreement, (b) the Recipient, at the time of disclosure, knows or possesses the information without obligation of confidentiality or thereafter obtains the information from a third party not under an obligation of confidentiality; (c) the Recipient independently develops the information without use of the Discloser's Confidential Information, (d) the information is generally known or easily developed by someone with ordinary skills in the business of the Recipient, or (e) the information is licensed under an Open Source License (as defined by the Open Source Initiative (<https://opensource.org/>)).
- 6.3 Confidential Information that is disclosed prior to termination of this Agreement will remain subject to this Agreement for the period set forth above. Upon written request of the Discloser, the Recipient will promptly return or destroy all Confidential Information, except for Confidential Information stored in routine back-up media not accessible during the ordinary course of business.

7. Client Information, Feedback, Reservation of Rights, & Review

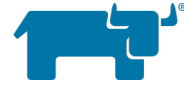
- 7.1 **Client Information.** If you provide Client Information in connection with your use of or access to Rancher Products, you agree that, subject to Section 6, Rancher, its Affiliates, and Suppliers may use such Client Information in connection with providing the Rancher Products. You agree that your provision (and Rancher's use) of Client Information under this Agreement does not require any additional consents or licenses, will be in compliance with applicable law, and will not violate any intellectual property, proprietary, privacy, or other right of any third party. As between Rancher and you, you retain all other rights in and to Client Information.
- 7.2 **Feedback.** You may be asked to voluntarily provide Rancher with Feedback in connection with Rancher Products, but you have no obligation to do so. If you choose to do so, Rancher may use Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve Rancher Products and other Rancher offerings without attribution or compensation.



ENTERPRISE AGREEMENT

You grant Rancher a perpetual and irrevocable license to use all Feedback for any purpose. You agree to provide Feedback to Rancher only in compliance with applicable laws and you represent that you have the authority to provide the Feedback and that Feedback will not include proprietary information of a third party.

- 7.3 Reservation of Rights.** Rancher grants to you only those rights expressly granted in the Agreement with respect to the Rancher Products and reserves all other rights in and to the Rancher Products (including all intellectual property rights). Rancher may collect and use for any purpose aggregate anonymous benchmark data about your use of the Rancher Products. Nothing in this Agreement will limit Rancher from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to you. The terms of Section 6 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.
- 8. Limitations**
- 8.1 DISCLAIMER OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR ITS AFFILIATES, WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY DAMAGES FOR LOST OR DAMAGED DATA, LOST PROFITS, LOST SAVINGS OR BUSINESS OR SERVICE INTERRUPTION, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 8.2 LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RANCHER'S AND ITS AFFILIATES' TOTAL AND AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY RANCHER WITH RESPECT TO THE PARTICULAR RANCHER PRODUCT GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM; PROVIDED THAT IN NO EVENT WILL RANCHER'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES RECEIVED BY RANCHER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THIS LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHER LEGAL THEORY. THESE LIMITATIONS DO NOT LIMIT CLAIMS OF BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF RANCHER OR ITS AFFILIATES.
- 9. Governing Law and Claims.** The Agreement, and any claim, controversy or dispute related to the Agreement, are governed by and construed in accordance with the laws of the State of California without giving effect to any conflicts of laws provisions. To the extent permissible, the United Nations Convention on Contracts for the International Sale of Goods will not apply, even if adopted as part of the laws of the State of California. Any claim, suit, action or proceeding arising out of or relating to this Agreement or its subject matter will be brought exclusively in the state or federal courts of Santa Clara County, California, and each party irrevocably submits to the exclusive jurisdiction and venue. No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the party first became aware, or reasonably should have been aware, of the basis for the claim. To the fullest extent permitted, each party waives the right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.
- 10. Miscellaneous**
- 10.1 Export.** Rancher may supply you with Controlled Materials. You agree to comply with all applicable export and import laws or regulations, including any local laws in your jurisdiction concerning your right to import, export or use Controlled Materials and agree that Rancher is not responsible for your compliance. Without limiting the foregoing, you agree that you will not export, disclose, re-export or transfer the Controlled Materials, directly or indirectly, to: (a) any U.S. embargoed destination; (b) any party who you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets, unmanned air vehicle systems, or any other restricted end-use; or (c) anyone on (or controlled by a person or entity on) a U.S. government restricted persons list, including those who have been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. You will not provide to Rancher any data or engage Rancher in any activity, in each case, that could constitute the development of a "defense article" or provision of a "defense service" to you, as these terms are defined in Section 120 of the International Traffic in Arms Regulations (ITAR). In addition, you will not, and will not allow third parties under your control, (i) to provide Rancher with Client Information that requires an export license under applicable export control laws or (ii) to process or store any Client Information that is subject to the ITAR. If you breach (or Rancher believes you have breached) this paragraph or the export provisions of an end user license agreement for any Software or Rancher is prohibited by law or otherwise restricted from providing Rancher Products to you, Rancher may terminate this Agreement and/or the applicable Order Form without liability to you. You acknowledge that to provide the Services, it may be necessary for Client Information to be transferred between Rancher, its Affiliates, Business Partners, vendors and/or subcontractors, which may be located worldwide.
- 10.2 Notices.** Notices must be in English, in writing, and will be deemed given upon receipt, after being sent using a method that provides for positive confirmation of delivery to the address(es) or email address provided by you, including through an automated receipt or by electronic log. Any notice from you to Rancher must include a copy sent to: Rancher Labs, Inc., Attention: Legal Department, 10050 North Wolfe Road, Suite SW1-272, Cupertino, CA 95014; Email: legal@rancher.com. Billing notices to you will be addressed to the billing contact designated by you.



ENTERPRISE AGREEMENT

- 10.3 Assignment.** Either party may upon written notice: (a) assign this Agreement to an Affiliate if the Affiliate's financial condition and creditworthiness are sufficient to satisfy the assigning party's obligations under the Agreement and the assignment will not affect the non-assigning party's obligations under the Agreement; and (b) assign this Agreement to a successor or acquirer pursuant to a merger or sale of all or substantially all of such party's assets. Any other assignment will be deemed void and ineffective without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 10.4 Waiver.** A waiver by a party under this Agreement is only valid if in writing and signed by an authorized representative of such party. A delay or failure of a party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights.
- 10.5 Independent Contractors.** The parties are independent contractors and nothing in this Agreement creates an employment, partnership or agency relationship between the parties or any Affiliate. Each party is solely responsible for supervision, control and payment of its personnel. Rancher may subcontract Services to third parties or Affiliates as long as (a) subcontractors agree to protect Confidential Information and (b) Rancher remains responsible to you for performance of its obligations.
- 10.6 Third Party Beneficiaries.** This Agreement is binding on the parties to this Agreement and, other than as expressly provided in the Agreement, nothing in this Agreement grants any other person or entity any right, benefit or remedy.
- 10.7 Force Majeure.** Neither party is responsible for nonperformance or delay in performance of its obligations (other than payment of Fees) due to causes beyond its reasonable control.
- 10.8 Complete Agreement and Order of Precedence.** The Agreement represents the complete agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and proposals, whether written or oral, with respect to such subject matter. Any terms contained in any other documentation that you deliver to Rancher, including any purchase order or other order-related document (other than an Order Form), are void and will not become part of the Agreement or otherwise bind the parties. If there is a conflict between the General Terms, the Product Appendices and/or an Order Form, the General Terms will control unless otherwise expressly provided in the Product Appendices and/or Order Form.
- 10.9 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by email or electronic signature process and such signatures will be effective to bind the parties to the Agreement.
- 10.10 Severable.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect to the greatest extent permitted by law.
- 10.11 United States Government End Users.** The Software and its 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 Software and its documentation subject to the terms of this Agreement.
- 11. Definitions**
- 11.1 "Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 11.2 "Business Partner"** means a cloud provider, distributor, reseller, OEM or other third party authorized to resell or distribute Rancher Products.
- 11.3 "Business Partner order"** means an order for a Rancher Product placed through a Business Partner.
- 11.4 "Client" or "you"** means the person or entity acquiring the right to use or access the Rancher Products and which is a party to this Agreement.
- 11.5 "Client Information"** means any data, information, software or other materials that you provide to Rancher under the Agreement.
- 11.6 "Confidential Information"** means information disclosed by the Discloser to the Recipient during the term of the Agreement that (i) is marked confidential; (ii) if disclosed orally, is clearly described as confidential at the time of disclosure and is subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure; or (iii) is of a nature that the Recipient knows is confidential to the Discloser or should reasonably be expected to know is confidential.
- 11.7 "Controlled Materials"** mean software or technical information that is subject to the United States Export Administration Regulation.
- 11.8 "Effective Date"** means earliest of (a) the date of the last signature on this Agreement or an Order Form, (b) your online acceptance of the Agreement, and (c) when you first receive access to a Rancher Product.
- 11.9 "Fees"** are the amounts to be paid by Client to Rancher (directly or through a Business Partner) for the Rancher Products.



ENTERPRISE AGREEMENT

- 11.10 **“General Terms”** means the terms contained in Sections 1 – 11 of this document.
- 11.11 **“Order Form”** is Rancher’s standard ordering document or online purchasing form used to order Rancher Products.
- 11.12 **“Product Appendices”** means the Rancher End User License Agreement or (b) for Professional Services, that are incorporated into an applicable statement of work.
- 11.13 **“Professional Services”** means consulting services provided by Rancher.
- 11.14 **“Rancher Products”** means Software, Services, Subscriptions and other Rancher branded offerings made available by Rancher.
- 11.15 **“Service(s)”** means Rancher branded services offered as Subscriptions, Professional Services, Training Services or other services offered by Rancher.
- 11.16 **“Services Term”** means the period during which you are entitled by Rancher to use, receive access or consume a particular Rancher Product pursuant to an Order Form or Business Partner order.
- 11.17 **“Software”** means Rancher branded software that is included in Rancher Product offerings.
- 11.18 **“Subscription”** means a time bound Rancher Services offering, other than Professional Services.
- 11.19 **“Supplier”** means a third party that provides service(s) to Rancher in order for Rancher to offer Services to its customers and/or Business Partners.
- 11.20 **“Taxes”** means any form of taxation of whatever nature and by whatever authority imposed, including any interest, surcharges or penalties, arising from or relating to this Agreement or any Rancher Products, other than taxes based on the net income of Rancher.
- 11.21 **“Training Services”** means access to Rancher training courses, including online courses or courses provided at a site as may be agreed by the parties.
- 11.22 **“Unit”** means the basis upon which Fees are determined for Rancher Products as set forth in Product Appendices or an Order Form.
- 11.23 **“Your Products”** means the Rancher Products that you have purchased, licensed, or otherwise acquired the right to access or use.