



## PARTNER TERMS AND CONDITIONS CHINA

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING ACCESSING OR CONSUMING THE SOFTWARE OR SERVICES FROM RED HAT. BY CLICKING YOUR ASSENT OR USING, ACCESSING OR CONSUMING THE RED HAT 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 HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT USE, ACCESS OR CONSUME THE RED HAT SOFTWARE OR SERVICES.

These Partner Terms and Conditions, along with a duly executed Partner Acceptance Document, authorizes you to participate in a Red Hat Partner Program as set forth in the Partner Acceptance Document (or as otherwise agreed in writing) in the Territory authorized by Red Hat and sets forth the terms of your participation. If no Territory is identified above, the Territory will default to the country based on your address. The Red Hat Partner Terms and Conditions is comprised of the terms and conditions contained herein including the Program Appendix, any referenced documents or links, and any Red Hat transaction documents entered into pursuant to these terms (collectively, the "Agreement").

### 1. Purpose

Red Hat designs programs for its partners ("Programs") to promote Red Hat Products, enhance the satisfaction of Red Hat's End Users and augment the expertise and resources of partners. Partner's participation in a Program(s) is governed by (a) Partner Acceptance Document including these Partner Terms and Conditions; (b) the applicable Program Appendix(ices) which have been agreed to by the Parties; and (c) any transaction documents (subject to this Agreement) for Red Hat Products and/or Services (each, an "Order Form").

"Red Hat" means Red Hat Software (Beijing) Co., Ltd., with its principal place of business as set forth in the Partner Acceptance Document. The term "Red Hat Products" and "Services" mean the specific Red Hat branded offerings set forth in a Program Appendix. The "Software" means the Red Hat branded software contained in the Red Hat Products, including any Updates in any form (e.g. binary, source or recompiled), that are delivered by or obtained from Red Hat, directly or indirectly, provided that Software does not include optional third party software set forth at <https://www.redhat.com/licenses/thirdparty/eula.html>.

"Updates" mean software fixes, upgrades, enhancements, additions, corrections and modifications, if and when available. Red Hat and Partner are collectively referred to as the "Parties" and may be referred to individually as a "Party". "End User" is defined in the Program Appendices.

### 2. Programs, Application Process, and Acceptance

Program Appendices and Program Guides may be amended by Red Hat at the time of renewal of the applicable Program Appendix, provided if you do not agree with the terms of the new Program Guide, you may elect not to renew the applicable Program Appendix in accordance with the terms of such Program Appendix. Your election to renew a Program Appendix following Red Hat's notice to you of the amended

使用、访问或消费 RED HAT 软件或服务之前，请仔细阅读本协议。点击接受或使用、访问或消费 RED HAT 软件或服务，表示您同意接受本协议，并且确认您已阅读并理解这些条款。代表某实体行事的个人表示其有权代表该实体签署本协议。如果您不接受本协议条款，您不能使用、访问或消费 RED HAT 软件或服务。

这些合作伙伴条款与条件及正式签署的合作伙伴批准文件授权您在红帽授权地区参与“红帽合作伙伴计划”，该计划依据合作伙伴批准文（或其他书面文档）订立并规定了相应的参与条款。如果上文未明确指明地区范围，该地区范围将默认为您的当前所在的国家 and 地区。

本协议包括以下内容：合作伙伴条款与条件、合作伙伴批准文件、计划附约及按照这些条款订立的各种适用的参考文档或链接及交易文（统称为“协议”）。

### 1. 目的

红帽为其合作伙伴设计方案（“计划”）以推广红帽产品、提高红帽最终用户的满意度，同时提升合作伙伴的专业技术并扩增其资源。合作伙伴对“计划”的参与受下列文件的制约：(a) 合作伙伴批准文件，包括本“合作伙伴条款与条件”；(b) 各方约定的适用的计划附约；以及红帽产品和/或服务（每项为一个“订购表”）的任何（受本“协议”约束的）交易文件。

“红帽”指红帽软件（北京）有限公司，其主要营业地点在“合作伙伴批准文件”中规定。红帽“产品”和“服务”表示“计划附约”中所列的特定的红帽品牌产品。“软件”指红帽直接或间接交付，或直接或间接自红帽获取的红帽产品所包含的红帽品牌软件（包括任何形式（比如二进制代码、源代码、重新编译代码）的任何更新），但不包括 <https://www.redhat.com/licenses/thirdparty/eula.html> 规定的可选第三方软件。“更新”指可获得的软件修复、升级、增强、添加、纠正、修改。“红帽”与“合作伙伴”两者合称为“双方”，单独一方则称为“一方”。“最终用户”将在各适用的“计划附约”中定义。

### 2. 计划、申请流程与批准

续订适用计划附约时，红帽可对计划附约与计划指南进行修正，但如果您不同意计划指南的条款，则您可根据该等计划附约的相关条款选择不续订适用计划附约。若您在红帽作出修订的计划附约及计划指南后选择续订相关的计划附约，则视为您接受该等经修订的计划附约及计划指南。经修改的计划附约和计划指南将自相关的计划附约续订之日起适用。除非另外达成书面一致，否则，依据计划附约购买的产品或服务，其订购起算日期为以下较早日期：(a) 第一次

Program Appendices and Program Guides constitutes your acceptance of such amended Program Appendices and Program Guides. Any such amended Program Appendices and Program Guides will apply from and after the date of renewal of the applicable Program Appendix. Unless otherwise agreed in writing, any subscriptions for Red Hat Products or Services purchased under a Program Appendix will commence upon the earlier of (a) the first use of such Product or Service, (b) the purchase date of such Product or Service or (c) the commencement date set forth in the Order Form.

### 3. Affiliate Authorizations

Partner's Affiliate(s) may participate in a Program only upon (a) approval by Red Hat, including with regard to Program level and credit terms, and (b) execution of a written participation agreement with Red Hat or its Affiliate(s) to bind the Partner Affiliate to this Agreement. "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, directly or indirectly, 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.

### 4. Territory

Partner may participate in the Program(s) only in the Territory designated in this Agreement. Red Hat and Partner may elect to expand the Territory, add Affiliates and/or establish different terms and conditions (e.g. currency, taxes, entities, etc.) by mutual written agreement, which may take the form of a Partner Acceptance Document or written participation agreement subject to this Agreement.

### 5. Fees

Fees, if applicable, will be as indicated in each appropriate Program Appendix and/ or Order form, and will be due and payable as set forth in such Program Appendix or Order Form subject to this Agreement. All amounts owed under the Agreement are to be paid in Chinese Renminbi Yuan to Red Hat Software (Beijing) Co., Ltd.

### 6. Billing, Payment and Taxes

If Partner acquires Red Hat Products and/or Services directly from Red Hat, Red Hat will invoice Partner as set forth herein and may require receipt of a purchase order for any amounts due to Red Hat; provided, however, that any terms contained in a purchase order will not amend, supplement or modify the terms of this Agreement or be binding on Red Hat. Partner must pay all sums due to Red Hat either (a) net thirty (30) days from the date of invoice if Red Hat has approved Partner for such credit terms or (b) if Partner has not been approved for net thirty (30) day credit terms, then on a prepaid basis, in each case without regard to when or whether Partner collects payment from its customer(s). Partner will reimburse Red Hat for all costs and expenses incurred by Red Hat in connection with the collection of overdue amounts, including without limitation reasonable attorneys' and/or legal fees. All amounts payable shall be exclusive of any Taxes. Partner will pay to Red Hat, in addition to any amounts due to Red Hat for Red Hat Products or Services, an amount equal to any Taxes arising from or relating to this Agreement that are paid or are payable by Red Hat unless Partner presents Red Hat with a valid tax exemption or resale certificate. "Taxes" means any form of taxation of whatever nature and by whatever authority imposed, exclusive of any taxes based on the net income of Red Hat. In the event of a cross-border transaction, if Partner is required under any applicable law or regulation, domestic or foreign, to withhold or

使用该产品或服务之日, (b)该产品或服务的购买日期或(c)订单规定的起算日期。

### 3. 关联机构授权

合作伙伴的关联机构只有满足下列条件方可参与计划: (a) 经红帽批准, 包括计划级别和信用条款方面的批准, 且 (b) 与红帽或其关联机构签署了书面参与协议, 以根据本协议约束合作伙伴的关联机构。"关联机构"是指拥有或控制"一方", 由"一方"拥有或控制, 或者与"一方"共同受控制或被拥有的实体, 其中"控制"是指通过拥有投票权的证券方式, 或者依据合同或其它方式, 直接或间接拥有管理一个实体的权力或拥有决定一个实体管理方向和政策的权力。

### 4. 地区

合作伙伴仅能在本协议规定的地区范围参与项目。红帽和合作伙伴可选择通过双方签订书面协议扩展地区范围、增加关联机构并制订不同的条款与条件(例如, 货币、税率、实体等), 其中, 双方协议可以是"合作伙伴批准文件", 也可以是根据本协议签署的书面参与协议。

### 5. 费用

费用(如适用)将在各适用的"计划附约"中说明, 并且根据受本协议约束的此类"计划附约"或"订购表"的规定到期和支付。所有根据本协议所欠款项均应以中国的人民币(元)为单位支付给红帽软件(北京)有限公司。

### 6. 开具发票、付款与税款

如果合作伙伴直接从红帽购买红帽产品和服务, 则红帽将依据本协议规定向合作伙伴出具发票, 并且可要求提供采购单, 采购单应列明应向红帽支付的金额, 但是, 采购单的任一条款均不得对本协议条款进行修正、补充或修改, 亦不得约束红帽。合作伙伴必须按以下规定向红帽支付全部应付款项: (a)如果红帽批准了整三十(30)日的账期期限, 则应在发票出具日期后整三十(30)日内进行支付, 或(b)如果未批准合作伙伴整三十(30)日的账期期限, 则应支付预付款。前述两种情形均不考虑合作伙伴何时或是否能够自其客户收款。对于红帽因收取逾期未付金额而产生的全部费用与支出(包括但不限于合理律师费和/或诉讼费), 合作伙伴应对红帽进行补偿。所有应付款项都不含税。除了应当支付红帽的红帽产品或服务款项, 合作伙伴还应支付红帽由本协议引起或与之相关的红帽已付或应付税款, 包括但不限于销售、服务、使用或增值税, 或者向红帽提供有效的免税证。"税款"指任何税款、征收款、关税、费用、捐款或进口税等形式的, 行政部门征收的任何性质、任何种类的款项(包括但不限于罚款、罚金、附加费或利息), 不包括红帽净收入应缴的税款。在跨境交易情况下, 如果适用的法律或法规, 无论国内还是国外, 要求合作伙伴扣留或扣除部分应支付给红帽的款项, 则应增加支付给红帽的总额, 增加额度应保证红帽获得在没有扣留或扣除的情况下应得的金额。双方应本着真诚的态度共同努力, 减少跨境交易带来的税收方面的不利影响。任何逾期超过三十(30)日的款项都将按每月百分之一(1%)或法律许可的最高比例加收滞纳金, 以较低者为准。

deduct any portion of the payments due to Red Hat, then the sum payable to Red Hat will be increased by the amount necessary for Red Hat to receive an amount equal to the sum it would have received had no withholdings or deductions been made. The Parties will work together in good faith to minimize adverse tax consequences created by cross-border transactions. Any payments more than thirty (30) days past due will be subject to a late fee of one and one-half percent (1½%) per month, or the maximum rate allowable by law, whichever is less.

## 7. Verifications

If Partner acquires Red Hat Products and/or Services directly from Red Hat, during the Term and for at least two (2) years thereafter, Partner will keep and maintain commercially reasonable written records regarding Partner's use and distribution of the Red Hat Products and Services and business activities related to the Program(s) ("**Records**"). Red Hat may, at its own expense, verify the Records to determine Partner's compliance with this Agreement. This verification may take the form of requests for information, documents or records (to which Partner will respond promptly), on-site visits (for which Partner shall grant Red Hat the requisite access), or both. The Parties will act reasonably and cooperate with each other in respect of such verifications. Any on-site visit will occur during regular business hours and will not interfere unreasonably with Partner's business. For an on-site visit, Red Hat will give Partner at least thirty (30) day's prior written notice.

## 8. Trademarks

**8.1** The term "**Red Hat Marks**" means the trademarks owned by Red Hat or a Red Hat Affiliate that are set forth in each applicable Program Appendix. Red Hat grants Partner a non-exclusive, non-transferable, royalty-free, revocable license in the Territory and during the Term to use the Red Hat Marks solely in connection with the marketing and distribution of Red Hat Products and/or services as permitted in this Agreement, without the right to sublicense.

Partner agrees to use the Red Hat Marks only as stated in this Agreement, and in doing so, to follow the standards of quality established by Red Hat and to adhere to the trademark usage guidelines found at: <http://www.redhat.com/about/corporate/trademark/guidelines> as amended from time to time and any other trademark terms contained in a Program Appendix (the "**Red Hat Trademark Guidelines**"). Any other use of Red Hat Marks is not permitted. Partner will provide Red Hat with representative samples of the use of Red Hat Marks contained within any materials including web pages, marketing, advertising, promotional and collateral materials ("**Promotional Materials**").

**8.2** All goodwill created by the use of Red Hat Marks by Partner is for the sole benefit of, and accrues to Red Hat. Partner acquires no right, title or interest in Red Hat Marks or the goodwill associated with them, other than the right to use Red Hat Marks in accordance with this Agreement. Partner will not challenge the validity of Red Hat Marks, nor assist anyone in challenging their validity. Partner agrees not to make any application to register any Red Hat Mark or any domain names containing a Red Hat Mark, and not to use or register any trade name, trademark, service mark, slogan, logo or domain name that is confusingly similar to, or a reference to, any Red Hat trade name, trademark or service mark during or after the Term of this Agreement. Partner may not disparage Red Hat, Red Hat Marks or Red Hat Products and Services.

## 7. 核实

如果合作伙伴自红帽直接获取产品和/或服务，在协议期限（如第13.1章中的定义）内以及之后至少两（2）年内，合作伙伴必须保存和维护与以下内容相关且从商业角度看合理的书面记录和报告：合作伙伴使用和经销红帽产品；与计划相关的商业活动（以下简称为“记录”）。红帽将自付费用对此类记录进行验证，确定合作伙伴是否遵守本协议的规定。此项验证将采取索取信息、文档或记录（合作伙伴应立即对其作出响应），现场视察（因此合作伙伴应准许进行必需的相关访问），或者二者相结合的形式。合作伙伴同意采取适当措施，配合红帽开展此类核实活动。所有现场视察都将于正常工作时间在合作伙伴的办公室进行，不得合理地干扰合作伙伴的商业活动。每次现场视察，红帽都将在视察之日前至少三十（30）天向合作伙伴发出书面通知。

## 8. 商标

**8.1** 本协议使用的术语“**红帽商标**”指红帽或红帽关联机构拥有并在各适用的“计划附约”中列出的商标。红帽授予合作伙伴在地区范围和协议期限内具有非排他性、不可转让、无特许使用费且可撤销的许可权，许可合作伙伴仅在本协议允许的红帽产品市场推广和分销活动中使用红帽商标；合作伙伴没有从属许可权。根据本协议，不得将红帽商标用于任何其它用途。

合作伙伴同意仅按照本协议的规定使用红帽商标，在使用过程中遵守红帽制定的质量标准并同意遵守<http://www.redhat.com/about/corporate/trademark/guidelines>中随时修订的商标使用准则以及任何适用的“计划附约”中的其它商标条款（“**红帽商标准则**”）。合作伙伴同意未获得红帽事先书面批准，不使将红帽商标与任何其它商品名、商标或服务标识组合在一起使用。如若红帽提出要求，合作伙伴应向红帽提供任何材料（包括网页、营销、广告、推广和辅助材料（“**推广材料**”））中所含的红帽商标代表使用样例。

**8.2** 合作伙伴使用红帽标志取得的全部商誉为且仅为红帽所有。除了依据本协议使用红帽标志的权利外，合作伙伴对红帽标志或与其相关的商誉没有任何权利、所有权或利益。合作伙伴不得对红帽标志的有效性提出异议，亦不得协助任何人对红帽标志的有效性提出异议。合作伙伴同意，本协议有效期内及之后，不会就任一红帽标志或包含红帽标志的任何域名提出注册申请，亦不会使用或注册与任一红帽商品名称、商标或服务标志类似而易于混淆或对其进行了参考的任何商品名称、商标、服务标志、徽标、标识或域名。合作伙伴不得诋毁红帽、红帽标志或红帽产品。

## 9. Additional Requirements

**9.1** Red Hat reserves all rights not expressly granted in this Agreement and all rights not expressly granted to the Red Hat Products and Services (including rights under any trademarks, copyrights, patents or other intellectual property of Red Hat). Partner will not use Red Hat Products or Services to create an offering competitive with Red Hat, directly or indirectly, or, unless specifically permitted in this Agreement, for the benefit of any other person or entity or permit any third party to make such use. If Red Hat determines that any of the Red Hat Products or Services is being used (in whole or in part) by Partner in any way to (a) avoid paying fees that would otherwise be due hereunder, (b) provide Services to third parties outside of the scope of a Program or (c) create revenue without payment of fees to Red Hat for Red Hat Products or Services, Red Hat may immediately suspend performance and/or terminate this Agreement and any Program, and reserves its rights to exercise any and all legal and equitable remedies available to it.

**9.2** For each Red Hat Product (or Partner product that incorporates a Red Hat Product or Service, in whole or in part) that Partner sells to an End User under a Program Appendix, Partner shall purchase the equivalent Red Hat Product with respect to such conditions as the term (1 or 3 years) and support level. For example, if the End User purchases a one year 24x7 support level Red Hat Enterprise Linux product from Partner, Partner shall purchase a one year Premium (24x7) Red Hat Product from Red Hat. Similarly, Partner is only authorized to resell the complete Red Hat Product it purchased and is not permitted to decouple the Red Hat Product or sell it in parts. For example, Partner will not purchase a one year Red Hat Product from Red Hat and then break it into multiple shorter increments of time for resale. Partner will work with Red Hat to ensure that its resale of Red Hat Products to End Users is consistent with the terms for the Red Hat Products purchased.

**9.3** Without limiting the generality of Sections 9.1 or 9.2 above, Partner agrees: (i) not to modify the Red Hat Products or Services in any manner unless agreed to by Red Hat in writing and (ii) not to use or resell the Red Hat Products or Services in any manner or for any purpose not permitted by this Agreement, including, without limitation, for Partner's own internal or production use, other than as may be expressly permitted in the applicable Program Appendix or by any applicable mandatory rule of law. For certain Programs and only during the term of the Program, Red Hat may provide Partner with access to non-production, evaluation, development kits and/or not for resale (aka "NFR") Red Hat Products for the sole purpose of testing and/or supporting its partners and/or End Users on issues related to Partner's rights and obligations hereunder. Should Partner resell or use its access to such Red Hat Products for Partner's own internal or production use other than as expressly permitted in the applicable Program Appendix, Partner agrees to purchase the appropriate Red Hat Product(s) under Red Hat's standard terms for such resale and/or use, and to pay the applicable fee for all periods. This Agreement establishes the rights and obligations associated with Red Hat's Programs, Products and Services, and is not intended to limit Partner's rights to software code under the terms of an open source license.

## 9. 附加要求

**9.1** 红帽保留本协议中未明确授予的所有权利以及所有未明确授予红帽产品和服务的权利（包括红帽任何商标、版权、专利或其它知识产权下的权利）。除非本协议特别约定，否则合作伙伴不得利用红帽产品或服务创造与红帽直接或间接竞争的产品或服务，为任何其他人或实体牟利，或允许任何第三方进行此类利用。如果红帽认定合作伙伴正以任何可达到下列目的的方式使用任何服务或红帽产品（全部或部分）：**(a)** 避免支付根据本协议需要支付的费用，**(b)** 向计划之外的第三方提供服务，或 **(c)** 创造收入但不向红帽支付红帽产品或服务费用，红帽可以立即暂停履约和/或终止本协议及任何计划，同时保留采取根据本协议可得的所有法律和衡平法救济措施的权利。

**9.2** 对于合作伙伴根据“计划附约”销售给最终用户的每件红帽产品（或包含红帽软件的合作伙伴产品），合作伙伴应购买等同条件（如 1 或 3 年的服务期限和支持级别）的红帽产品。例如，如果最终用户从合作伙伴处购买了一年的全天候支持级别的 Red Hat Enterprise Linux 产品，合作伙伴也应从红帽购买一年的高级（全天候）红帽产品。同样，合作伙伴仅被授权本协议转售其购买的完整红帽产品，而不允许分拆销售或部分销售红帽产品。例如，合作伙伴不得从红帽购买完整的一年红帽产品，然后将该产品分解多个小部分按月或按小时转售给最终用户。合作伙伴将协同红帽确保其将红帽产品转售给最终用户的行为符合所购红帽产品的指导方针。

**9.3** 在不限制上文第 9.1 或 9.2 节一般性的原则下，合作伙伴同意：**(i)** 不以任何方式修改红帽产品或服务；并且 **(ii)** 不以任何本协议不允许的方式使用或转售红帽产品或服务，或将红帽产品用于任何本协议不允许的用途，包括，但不限于：供合作伙伴自己内部或生产使用，但适用的“计划附约”或任何适用的强制法律规定明确允许的情况除外。针对某些计划且仅在计划的期限内，红帽可能会向合作伙伴提供非用于生产的评估性开发工具及/或非转售的红帽产品，仅限于测试及/或向其合作伙伴及/或最终用户就与合作伙伴的相关权利及义务相关的问题提供支持之用。如果合作伙伴希望将红帽产品用于适用的“计划附约”明确允许之外的其它合作伙伴内部或生产用途，合作伙伴应同意按照红帽标准的内部使用条款购买相应的红帽产品并就所有使用阶段支付相应费用。本协议旨在确立与红帽计划、产品和服务相关的权利和义务，并无意于限制合作伙伴根据开放源代码许可证条款享有的软件代码权利。

## 10. Intellectual Property

Partner agrees that all trade name, trademark, service mark, copyright, patent, trade secret, domain name and all other intellectual and industrial property rights anywhere in the world, including moral rights, and all applications, provisional applications, registrations, continuations and renewals thereof, and all associated goodwill (present or future) in and to the Red Hat Products, and Services are and will, as among the parties, be owned by and vested in Red Hat or its licensors, notwithstanding any use of terms such as "purchase," "sale" or the like within this Agreement. Red Hat may provide access to third party software programs with the Red Hat Software that are not part of the Red Hat Software. These third party programs are (a) not required to run the Red Hat Software, (b) provided as a convenience, and (c) subject to their own license terms. The license terms either accompany the third party software programs and/or may be viewed at <http://www.redhat.com/licenses/thirdparty/eula.html>. If Partner does not agree to abide by the license terms for the third party software programs, then Partner may not install, use or distribute them.

## 11. Limited Warranties, Limitation of Liability, Disclaimer of Damages, and Insurance and Indemnity

**11.1 General Representations and Warranties.** Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Partner; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Partner, include malicious code for the purpose of damaging or corrupting the Software.

**11.2 Disclaimer of Warranties.** EXCEPT AS SET FORTH IN SECTION 11.1 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RED HAT PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Partner will make no representations or warranties on behalf of Red Hat regarding the Red Hat Products or services in connection with the distribution of the Red Hat Products or Services or otherwise.

**11.3 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO PARTNER AND ITS AFFILIATES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY ORDER FORM HEREUNDER, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE TOTAL AMOUNT PAID TO RED HAT AND ITS AFFILIATES BY PARTNER AND ITS AFFILIATES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE RED HAT PRODUCT OR SERVICE THAT IS THE SUBJECT MATTER OF THE CLAIM OR U.S. \$5,000.00, WHICHEVER IS GREATER. THE FOREGOING LIMITATION SHALL NOT APPLY TO CLAIMS FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE

## 10. 知识产权

合作伙伴同意：尽管本协议中使用了“购买”、“销售”或类似术语，但在协议各方中，红帽产品及服务中现在及以后在世界各地的全部商品名称、商标、服务标志、版权、专利、商业秘密和所有其它知识产权和工业产权（包括精神权利），及其所有申请、临时申请、注册及其继续与更新，以及全部相关商誉均为红帽或其许可人所有。红帽提供红帽软件时，可一同提供并非红帽软件一部分的第三方软件程序。该等第三方软件程序(a)不需要运行红帽软件，(b)出于方便而提供，(c)仅受自身许可条款约束。许可条款可能随附在第三方软件程序中，和/或可在<http://www.redhat.com/licenses/thirdparty/eula.html> 上进行查看。如果合作伙伴不同意遵守第三方软件程序的许可条款，则合作伙伴可不对其进行安装、使用或经销。

## 11. 无担保声明、责任限制、损害免责声明以及保险与赔偿

**11.1 般声明与保证。**红帽声明并保证：(a)派遣专业、熟练的合格员工提供服务；(b)有权与合作伙伴订立本协议；(c)就红帽所知，交付给合作伙伴时，红帽品牌软件并不包含会对软件造成损害或使之崩溃的恶意代码。

**11.2 无担保声明。**除上文第 11.1 节规定外，在适用法律允许的最大范围内，红帽产品和服务将按“原样”提供，而不提供任何形式的保证或条件（包括适销性、非侵权及适用性的默示保证）。合作伙伴不能就其经销的红帽产品或服务或其它而代表红帽做出与红帽产品或服务相关的声明或保证。

**11.3 责任限制。**在适用法律允许的最大范围内，无论任何事件和情形，红帽及其关联机构对合作伙伴及其关联机构承担的因本协议或由本协议产生的任何订购表引起或与之相关的责任，包括但不限于根据履行或未履行责任的理由确定的责任，无论形式或原因，也无论是合同、侵权（包括但不限于疏忽）、法定还是其它责任，将仅限于直接损坏，总累计额不超过合作伙伴及其关联机构按照本协议规定，在第一次引发责任的事件发生前十二 (12) 个月内所涉及的红帽产品或服务支付给红帽及其关联机构的总金额，或者 5,000.00 美元，以其中较高者为准。上述限制不适用于由红帽或其雇员的疏忽造成的人身伤害（包括死亡）以及个人有形资产损坏而引起的索赔。

TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF RED HAT OR ITS EMPLOYEES.

**11.4 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY ORDER FORM, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO THE PARTNER OR ITS AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without limiting the generality of the foregoing disclaimer, Red Hat Products and Services are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems or (c) direct life support systems. Partner agrees that it is solely responsible for the results obtained from the use of the Red Hat Products and Services.

**11.5 Insurance and Indemnity.** Partner shall put in place and at all times maintain during the Term and for two (2) years thereafter, at its own cost and expense, appropriate and sufficient commercial general liability insurance with a reputable insurance company to cover the activities of Partner contemplated in this Agreement. The premiums for these policies of insurance shall be the responsibility of Partner. Upon request, Partner will provide Red Hat certificates of insurance for all insurance coverage. Partner will indemnify and hold harmless Red Hat from any and all liability, losses, costs, damages or expenses, including reasonable attorney's, solicitor's or legal fees and costs, resulting from or arising out of third party demands or claims against Red Hat relating to any of Partner's actions including, but not limited to, performance or non-performance under this Agreement.

## 12. Publicity and Confidentiality

**12.1 Publicity.** Partner will keep confidential and will not disclose, market or advertise to third parties the terms of this Agreement (including the fees paid hereunder). Partner or Red Hat may reference its relationship with the other, in the normal course of business including during earnings calls, discussions with analysts, meetings with the press, customer briefings, general marketing activities, and in regulatory filings. Neither Party will issue formal press releases or other similar activities referencing the other Party without the written consent of the other Party.

**12.2 Confidential Information.** The Parties agree that Confidential Information provided under this Agreement will be held and maintained in confidence and each Party will use at least the same degree of care to protect such Confidential Information that it uses to protect its own confidential information, but in no event less than reasonable care. The recipient may use Confidential Information of the other Party only for the purposes of exercising its rights and fulfilling its obligations under this Agreement. Confidential Information may be disclosed only to Affiliates, employees, agents and

**11.4 损害免责声明。**即使存在与本协议或由其产生的任何订购表相反的规定，在适用法律允许的最大范围内，无论任何情况下，红帽或其关联机构都不因下列原因对合作伙伴或其关联机构负责：任何基于第三方索赔的索赔；任何意外、后果性、特殊、间接、惩戒性或惩罚性的损害，无论是由侵权行为、合同还是其它情况引起；或由于以下原因引起或与以下原因有关的损害：故障、延迟、数据丢失、利润损失、节约成果损失、服务中断、业务或预期利润损失，即使红帽或其关联机构收到过可能出现此类损害的提醒也是如此。在不限制上述免责声明的一般性的原则下，红帽产品和服务并非为以下用途而特别设计和生产且无意用于下列用途：(a) 核设施的规划、建设、维护、控制或直接运行；(b) 航空器导航、控制或通信系统、武器系统；或 (c) 直接生命维持系统。合作伙伴同意对使用红帽产品和服务所产生的后果负完全责任。

**11.5 保险与赔偿。**在协议期限内和之后的两 (2) 年内，合作伙伴应当自费向知名保险公司购买并一直保有恰当充分的商业一般责任险，以覆盖合作伙伴根据本协议意欲开展的活动。这些保单的保费应由合作伙伴负责支付。如若红帽提出要求，合作伙伴应就所有保险覆盖向红帽提供保险凭证。如果第三方向红帽提出的要求或主张与合作伙伴的行为（包括但不限于履行或不履行本协议）有关，对于由此引起或产生的所有债务、损失、成本、损害或开销，包括合理的代理费、律师费或法律费用和成本，合作伙伴都应予以补偿，使红帽免受损失。

## 12. 公开性与保密性

**12.1 公开性。**未经红帽事先书面同意，合作伙伴应对本协议条款（包括协议规定支付的费用）保密，不得向第三方透露、出售或宣传。合作伙伴或红帽在正常业务过程（包括在财报电话会议、与分析师讨论、与媒体会面、客户情况介绍、一般性市场活动以及监管文件提交）中可提及双方关系。未经对方书面同意，任何一方都不得发布提及另一方的正式新闻稿或进行其它类似活动。

**12.2 机密信息。**双方同意对依据本协议提供的机密信息保密，每一方应以至少与保护自身机密信息相同的关切来保护该等机密信息，但任何情况下均不得低于合理关切。接收方仅能将另一方的机密信息用于行使接收方本协议权利和履行接收方本协议义务。机密信息仅能披露给需要知悉的关联机构、雇员、代理、承包商，以及审计师与法律顾问，但每一情况下，前述人士均须承担为该等信息保密的书面义务或法律责任，保密标准不得低于本协议要求。“机密信息”指本协议有效期内，任何一方向另一方披露的标记为机密，或就信息性质或披露时情形而言被合理视为机密的全部信息与资料。机密信息不包括以下信息：(i) 在未违反本协议的情

contractors with a need to know, and to its auditors and legal counsel, provided in each case they are under a written obligation or legal duty to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. "Confidential Information" means all information and materials disclosed by either Party to the other during the Term that is either marked confidential or, by the nature of the information or the circumstances surrounding its disclosure, would reasonably be considered confidential. Confidential Information does not include information that (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the disclosing Party without obligation of confidentiality; (ii) is known to the recipient at the time of disclosure by the disclosing Party without obligation of confidentiality; (iii) is independently developed by the recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. Except in relation to Partner's obligations pursuant to Section 12.1, both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information.

### 13. Termination

**13.1 Term.** This Agreement begins on the Effective Date and continues until the expiration or termination of all applicable Program Appendices ("Term"). The term of each Program Appendix is independent of the term of any other Program Appendix. "Effective Date" means the first date when both Parties have fully accepted or signed the Agreement.

**13.2 Termination by Red Hat or Partner.** Red Hat may (without prejudice to any other right or remedy) terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in any Program) for any reason at any time upon ninety (90) days prior written notice to Partner. If Partner or Red Hat breaches the terms of this Agreement, and the breach is not cured within thirty (30) days after written notice of the breach is given to the breaching Party (except for payment obligations, in which case five (5) days), then the other Party may, by giving written notice of termination to the breaching Party, terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in any Program) without prejudice to any other right or remedy; unless a shorter cure period is otherwise stated under this Agreement or in the applicable Program Appendix and provided that no cure period is required for a breach of Sections 8, 9.1, 12.2 or 14.3 hereof.

**13.3 Effect of Agreement Termination or Expiration.** Termination or expiration of this Agreement in whole for any reason will immediately terminate Partner's participation in any and all Programs. Upon such termination or expiration, Partner will immediately (i) cease referring to itself as a Red Hat Partner, or any other title associated with the Program, and using those titles in any communication or advertising; (ii) to the extent applicable, cease all promotion, demonstration, sale(s) and distribution of the Red Hat Products and/or Services; (iii) cease all use of the Red Hat Marks; (iv) return or destroy, at Red Hat's option, all printed materials containing Red Hat Marks, including all documentation and Promotional Materials; and (v) remit all fees due to Red Hat within fifteen (15) days of such

况下为公众所知或以后为公众所知, 或由披露方在不承担保密义务的情况下进行披露; (ii) 不承担保密义务的披露方披露时, 接收方已经知悉; (iii) 在不使用机密信息的情况下, 由接收方独立研发; (iv) 接收方在不受限制的情况下, 自具有合法信息披露权的来源合法知悉或获得; (v) 为接收方所在行业具有一般技能的人士所共知或很容易获得; 或(vi) 为依据开源许可获得许可的目标代码或源代码形式的软件代码。除根据第 12.1 节规定的合作伙伴的义务之外, 双方同意, 保密义务的有效期为具体机密信息初始披露后两 (2) 年。

### 13. 终止协议

**13.1 协议期限。** 本协议自生效日期开始生效, 直到所有适用的“计划附约”到期或终止 (简称“期限”)。各“计划附约”的期限相互独立。“生效日期”指双方完全接受或签署本协议的首日。

**13.2 由红帽或合作伙伴终止协议。** 红帽可以在任何时间以任何理由终止本协议的全部或部分条款 (包括任何计划附约及合作伙伴对此类计划的参与), 而不损害任何其它权利或救济, 但必须提前九十 (90) 天以书面形式通知合作伙伴。如果合作伙伴或红帽违反本协议条款且未能在向违约方发出关于违约的书面通知后三十 (30) 天内 (不包括付款义务, 在此情形下为五 (5) 天内) 进行补救, 则另一方可向违约方发出书面终止通知, 终止本协议全部或部分条款 (包括任何计划附约及合作伙伴对任一计划的参与), 而不损害任何其它权利或救济; 除非本协议或适用计划附件规定了更短补救期限, 及未对第 8, 9.1, 12.2 或 14.3 的违反提供补救期限。

**13.3 协议终止或届满的效力。** 本协议因为任一原因而全部终止或届满, 均应立即终止合作伙伴对任一及所有计划的参与。协议终止或届满起, 合作伙伴应当立即 (i) 停止宣称自己为红帽合作伙伴或与计划相关的任何其它头衔, 并停止在任何通讯和宣传中使用该等头衔; (ii) 在适用范围内停止推广、展示、销售和经销红帽产品和/或服务; (iii) 停止对红帽标志的全部使用; (iv) 根据红帽的选择, 退回或销毁所有含有红帽标志的印刷材料 (包括所有文件和宣传推广材料); 以及 (v) 在终止或届满起十五 (15) 天内将所有应付款项汇给红帽, 但如果协议不是因合作伙伴违约而终止, 则合作伙伴有权在协议终止后不长于六十 (60) 日内, 将协议终止或届满时合作伙伴已向红帽全额付款并须用于履行尚未完成合同的库存红帽产品 (符合本协议规定) 进行出售。双方在本协议和所有适用计划附约中的所有权利和义务均应立即终止, 但

termination or expiration. If the termination is not the result of a Partner breach, the Partner will be entitled to sell, for a period of no longer than sixty (60) days after termination, any of its inventory of Red Hat Products (subject to this Agreement) for which Red Hat has been fully paid and that are required to fulfill any unperformed contracts of Partner outstanding at the date of termination or expiration. All rights and obligations of the Parties under this Agreement and all applicable Program Appendices will terminate immediately, except that obligations under Sections 6, 7, 8.2, 10, 11.2 – 11.5, 12, 13.3 - 13.4, 14.1 - 14.3, 14.6, 15, and 18 hereof, and any Partner payment obligations will survive such termination or expiration. Termination of this Agreement shall not affect any agreements between Red Hat and any End User.

**13.4 No Compensation.** Upon termination or expiration of this Agreement for any reason or at any time, Red Hat will have no obligation to Partner (except as Red Hat otherwise may be liable to Partner for Red Hat's material breach of this Agreement), or to any employee, agent or representative of Partner, for compensation or for damages of any kind, whether on account of the loss by Partner or such employee, agent or representative of present or prospective sales, investments, compensation or goodwill. Partner hereby indemnifies and holds Red Hat harmless from and against any and all claims, costs, damages and liabilities whatsoever asserted by any employee, agent or representative of Partner under any applicable cancellation, termination, labor, social security, payments under national insurance, or other laws or regulations.

## 14. General Provisions

**14.1 Governing Law and Venue.** The Agreement will be governed by the substantive laws of the People's Republic of China. To the extent permissible by law, the terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the Agreement. Any dispute arising out of, or in connection with, or with respect to the validity, interpretation and enforcement of the Agreement, including the breach, will be settled exclusively by binding arbitration administered by China International Economic and Trade Arbitration Commission ("CIETAC") in Beijing in accordance with the then current CIETAC Arbitration Rules. The arbitration will be carried out before one (1) arbitrator. The arbitrator shall be mutually agreed between the Parties failing which he will be appointed by CIETAC, all in accordance with CIETAC Arbitration Rules. The language to be used in the arbitral proceedings shall be English. Any arbitral award will be final and binding on the parties. The expense of arbitration will be borne between the parties as determined by the arbitrator.

**14.2 Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement must be in English, in writing, and will be deemed given when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with written confirmation of transmission by the transmitting equipment delivered promptly thereafter; or (c) received by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated hereafter (or to such other address, facsimile number, e-mail address or person as a party hereto may designate by notice to the other parties hereto): For Partner: the address/fax number indicated

本协议第 6、7、8.2、10、11.2-11.5、12、13.3 - 13.4、14.1-14.3、14.6、15、18 节规定的义务除外，合作伙伴的任一支付义务在本协议终止或届满后继续有效。本协议的终止不应影响红帽和任何最终用户之间的任何协议。

**13.4 无赔偿责任。**无论本协议因何原因或在何时间终止或届满，对于合作伙伴或合作伙伴的雇员、代理或代表当前或以后可能产生的销售、投资、薪酬或商誉损失，红帽对合作伙伴或合作伙伴的雇员、代理或代表均不负有任何类别的赔偿或损害补偿义务（红帽因严重违反本协议而对合作伙伴所负的责任除外）。对于合作伙伴的任一雇员、代理或代表依据国家保险法律法规或其它法律法规，而就适用的协议取消、终止、劳工、社会保障、薪资而声称的任一及全部索赔、费用、损害、责任，合作伙伴在此对红帽进行赔偿，并使其不受损害。

## 14. 一般规定

**14.1 管辖法律和审判地。**本协议受中华人民共和国实体法管辖。在法律允许的范围内，《联合国国际货物销售合同公约》的条款不适用，即使其被采纳为对本协议具有管辖权的法律的一部分。任何由本协议的有效性、释义和履行引起或与之有关的争议（包括违反本协议），最终应排它性的通过由位于北京的中国国际经济贸易仲裁委员会依据其当时有效的仲裁规则进行的仲裁加以解决。仲裁应由一 (1) 名仲裁员执行。仲裁员应由双方一致指定，如果双方无法达成一致，则由中国国际经济贸易仲裁委员会指定，仲裁员的指定应依据中国国际经济贸易仲裁委员会仲裁规则进行。仲裁程序所用语言应是英语。仲裁裁决为终局的，对双方均有约束力。仲裁费用的承担由仲裁员决定。

**14.2 通知。**本协议规定或准许的所有通知、同意、豁免和其它通讯必须用英文书写，在以下情况中将视为送达：(a) 由专人或国家认可的隔日快递服务（预付费用）递送至适当地址；(b) 通过传真或电子邮件发送且发送后立即收到了该传输设备提供的发送成功书面确认；或 (c) 被收信人接收。如果通知用挂号信寄出，在任何情况下都要求返回回执到下列地址、传真号码或电子邮件地址并进行标记以引起指定人员（通过姓名或职称）的注意（或返回到本协议中其中一方通知另一方的指定的其它地址、传真号码、电子邮件地址或人员）：对于合作伙伴：将“申请”中指出的地址/传真号或合作伙伴可能使用的其它此类地址以书面形式告知红帽；对于红帽软件（北京）有限公司：中国北京市朝阳区东大桥路 9 号北京侨福芳草大厦A座 8 层，100020，法务部门，并将一份副本发送至：亚太法务总监，8 Shenton Way, #11-00, Singapore 068811；传真：+65-6490-4201。

on the Application or at such other address as may be communicated by Partner to Red Hat in writing; For Red Hat Software (Beijing) Co., Ltd.: Legal Department, 8/F Tower A, Beijing Parkview Green Fang Cao Di, No. 9 Dong Da Qiao Road, Chaoyang District, Beijing, P.R.C. 100020, with a copy to Head of Legal Asia Pacific Region, 8 Shenton Way, #11-00, Singapore 068811; Facsimile: +65-6490-4201.

#### 14.3 Compliance with Law and Export Controls.

**14.3.1** As between Red Hat and Partner, Partner (a) understands that countries, including the U.S., may restrict the import, use, export, re-export or transfer of encryption products and other controlled materials (which may include Red Hat Products, Services or related technical information) (“**Controlled Materials**”); (b) will be solely responsible for compliance with any such import, use, export, re-export or transfer restrictions in connection with Partner’s use, sale and/or distribution of Controlled Materials; and (c) will be the importer and exporter of record of the Controlled Materials that Partner uses, sells and/or distributes, and is responsible for all associated obligations, including but not limited to, paying all import duties and tariffs, and obtaining any required regulatory approvals, registrations, and export and import licenses.

**14.3.2** Partner acknowledges that Red Hat may be prohibited from providing Controlled Material(s) if Red Hat has knowledge or reason to believe that a violation of the applicable law will or has occurred.

**14.3.3** As required by U.S. law, Partner represents and warrants that it: (a) understands that certain of the Controlled Materials are of U.S. origin and subject to export controls under the U.S. Export Administration Regulations (the “**EAR**”); (b) is not located in (or owned or controlled by any person or entity located in) any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR or by any person or entity listed on the U.S. Department of Treasury Office of Foreign Assets Control (“**OFAC**”) list of Specially Designated Nationals and Blocked Persons (“**SDNs**”) (and is not 50% or more owned or controlled by any one or more persons or entities identified on the SDN list); (c) will not export, re-export or transfer the Controlled Materials to (1) any prohibited destination, (2) anyone who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government or (3) any end user who Partner knows or has reason to know will use them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets, or unmanned air vehicle systems or any other prohibited use under the EAR; and (d) understands and agrees that if it is in the United States and exports, re-exports or transfers the Controlled Materials to eligible end users, it will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the U.S. Commerce Department’s Bureau of Industry and Security, that include the name and address (including country) of each transferee..

**14.3.4** Partner and its Affiliates and any other persons performing any activities related to this Agreement, will comply with all applicable laws and regulations including all applicable anti-corruption laws and regulations, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act (collectively, the “**Anti-Corruption Laws**”), and will not engage in conduct that would cause Red Hat to violate any law or regulation including the Anti-Corruption Laws. Among other conduct, the Anti-Corruption Laws prohibit Partner, directly or indirectly,

#### 14.3 遵守法律和出口管制。

**14.3.1** 在红帽和合作伙伴之间，合作伙伴 (a) 理解，包括美国在内的国家可能会对加密产品及其它受控材料（可能包括红帽产品、服务或相关技术信息）（“**受控材料**”）的进口、使用或出口施加限制； (b) 在其使用、销售及/或经销受控材料的过程中，对遵守任一该等进口、使用或出口限制负全责； (c) 是合作伙伴使用、销售及/或经销的受控材料的记录进口商与出口商，并对全部相关义务负责，该等义务包括但不限于支付全部进口关税、获得所需的任何监管批准、登记及进出口许可。

**14.3.2** 合作伙伴确认，如果红帽知悉或有理由认为将会或已经违反适用法律，则红帽可能会被禁止提供受控材料。

**14.3.3** 按照美国法律的要求，合作伙伴声明并保证： (a) 了解某些红帽产品、其组件和相关技术信息受美国商务部《出口管理条例》（“**EAR**”）的出口管制； (b) 不在《出口管理条例》第 740 部分附录 1 中的国家/地区分组 E:1 中列出的国家/地区； (c) 不将红帽产品、其组件或相关技术信息出口、再出口或转让至 (1) 任何禁止目的地， (2) 美国政府的任何联邦机构不允许参与美国出口交易的任何最终用户，或者 (3) 合作伙伴知道或有理由知道将利用它们设计、开发或生产核武器或生化武器、火箭系统、航天运载器、探测火箭或无人驾驶的空中运载系统的任何最终用户； (d) 理解并同意，如果其在美国境内向符合要求的最终用户出口、再出口或转让红帽产品、其组件和相关技术信息，则必须按上述《出口管理条例》第 740.17 (e) 条的规定，每半年向美国商务部的行业安全局提交报告，说明各受让人的姓名、地址（包括所属国/地区）等情况； (e) 理解各个国家/地区（包括美国）都可能限制加密产品（可能包含红帽产品、其组件和相关技术信息）的进口、使用或出口，理解自己必须全权负责对这些进口、使用或出口限制的遵守。

**14.3.4** 合作伙伴及其关联方和任何履行与本协议有关行为的其他人员将遵守所有适用法律法规，包括美国的《反海外腐败法》和英国的《反贿赂法案》等反腐败法律法规（统称“**反腐败法**”），不得做出可能会导致红帽违反任何法律或法规（包括反腐败法）的行为。除其它行为外，反腐败法还禁止合作伙伴以使接受方不当履行相关职能或活动为目的，直接或间接从/向私人方或者政府或公职人员收授任何有价之物，或者酬谢某人的不当行为。政府或公职人员包括政府机构、部门或组织的雇员和官员，以及政府所有或者政府控制的公司、国际公共组织、政党

from receiving anything of value from, or offering anything of value to, either private parties or government or public officials with the intent that the recipient perform improperly a relevant function or activity or a person be rewarded for improper performance. A government or public official includes employees and officers of a government agency, department or instrumentality as well as the employees or officers of government-owned or government-controlled companies, public international organizations, political parties and candidates for political office. Partner represents and warrants that none of its significant shareholders, owners, partners, officers or directors ("**Partner Officials**") is a government or public official and that if any of the Partner Officials becomes a government or public official, Partner will immediately notify Red Hat in writing in accordance with the terms of this Agreement. Partner will not permit its resellers or partners or any other third-party business partners (Collectively, "**Supply Chain Entities**") acting on behalf of Partner in connection with the services performed under this Agreement to do anything that would violate or cause Red Hat to violate any law or regulation including the Anti-Corruption Laws. If Red Hat believes that Partner or any Supply Chain Entity has breached or may breach any of the provisions of this Section or a notice is provided pursuant to this Section, Red Hat can immediately terminate the Agreement or suspend its performance without any liability to Partner.

**14.4 No Assignment.** This Agreement is only assignable by Partner with Red Hat's prior written consent. Any assignment made by Partner without Red Hat's prior written consent will be void and Red Hat will not be required to recognize the assignment. Red Hat may assign any or all of its rights and delegate or novate any or all of its obligations hereunder without the prior approval of Partner. At the request of Red Hat, Partner will execute any papers or documents reasonably necessary to give effect to such assignment or novation. Partner shall promptly notify Red Hat of any material change to its ownership structure.

**14.5 Independent Contractor.** Partner and Red Hat are independent contractors for all purposes, without express or implied authority to bind the other. Neither Party nor its employees, agents or contractors is entitled to any employee benefits of the other. Each Party will be responsible for all costs and expenses incident to performing its business. Nothing in this Agreement shall be deemed to constitute a partnership or to create a relationship of principal and agent between the Parties for any purpose.

**14.6 Force Majeure.** Neither Party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. Upon the occurrence of any of the foregoing, the date of performance will be deferred for a period of time equal to the time lost by reason of the delay. This section does not relieve either Party of its obligation(s) to make payments.

## 15. Miscellaneous

(a) All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation. (b) If any provision of this Agreement is held invalid or unenforceable for any reason, but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If

以及政治部门候选人的员工或官员。合伙人声明并保证没有重要股东、所有人、合作伙伴、高管或董事 ("**合作伙伴高管**") 是政府或公职人员，如果合作伙伴有任何高管变成政府或公职人员，合作伙伴将立即根据本协议之条款以书面形式通知红帽。合作伙伴将不允许其经销商或合作伙伴或代表合作伙伴就本协议项下提供的服务而行使的任何其他第三方业务伙伴（统称“供应链实体”）做什么会违反或导致红帽违反任何法律或法规（包括反腐败法）的事情。如果红帽认为合作伙伴（或其任何供应链实体）已经或可能会违反本节的规定或依据本节提供的通知，红帽可立即终止本协议，或中止履行，而不对合作伙伴承担任何责任。

**14.4 不得转让。**只有在获得红帽的事先书面同意后，合作伙伴方可转让本协议。如果事先未得到红帽的书面同意，合作伙伴的任何转让都将无效，也无法要求红帽承认该转让。红帽可以转让自己在本协议下的部分或所有权利，并可委托或变更其在本协议下的部分或全部义务，无需经合作伙伴事先批准。如果红帽要求，合作伙伴应签署合理必需的文件或文档，以使此类转让或变更生效。合作伙伴应立即将其所有权结构的任何重大变化通知红帽。

**14.5 独立承包商。**就各方面而言，合作伙伴和红帽都是独立的承包商，没有约束另一方的明确或暗示权力。协议一方或其雇员、代理或分包商，都无权享有另一方的员工福利。合作伙伴负责支付开展其业务产生的所有成本和费用。本协议中任何内容都不能视为构成一种合作关系，或为了某种目的而在双方之间建立委托人和代理关系。

**14.6 不可抗力。**对于因自然灾害、战争、暴乱、罢工、火灾、洪水、地震、政府限制、恐怖活动或其它超出一方合理控制而造成不履行或延迟，任何一方都不必承担责任。如果发生上述任何一种情况，协议履行日期延迟的时间要与耽误的时间相等。本节不免除任何一方付款的义务。

## 15. 其它事项。

(a) 本协议中的所有标题均为为识别与方便而插入，解释时不得视为本协议一部分。(b) 如果本协议任一条款由于任一理由而被判定无效或不可强制执行，但经适当修改后即有效并可强制执行，则应对该条款进行必要修改以使其有效并可强制执行。如果无法对该条款进行如此修改，则双方同意，该无效条款不会影响本协议剩余条款的有效性。(c) 任何一方延迟或未履行其在本协议中的权利不得构成且不得被视为放弃或丧失了该等权利。除非以书面

such provision cannot be so modified, the Parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement. (c) The delay or failure of either Party to exercise any rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the Party against whom such waiver or forfeiture is sought to be enforced. (d) If there is a conflict between the Partner Terms and Conditions in this Appendix 1 and any applicable Program Appendix, Program Guide(s), End User License Agreement or any other Program literature, the terms will be interpreted in the following order (1) the applicable Program Appendix, (2) the Partner Terms and Conditions, (3) the End User License Agreement, (4) the Program Guide and (5) any other Program literature. (e) Except as otherwise provided in Section 2, this Agreement may not be changed except by written instrument signed by authorized signatories of the Parties, that makes specific reference to this Agreement. (f) 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 instrument. The Parties may exchange electronic signatures and signature pages electronically and such signatures will be effective to bind the Parties. (g) The Parties acknowledge that they have each reviewed and participated in settling the terms of this Agreement. Furthermore, the Parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation or construction of this Agreement. (h) This Agreement has been prepared, negotiated and signed in English, and English is the controlling language of this Agreement.

## 16. Waiver of Jury Trial

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 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.

## 17. Acknowledgment of Partner

Partner confirms that it intends to become a Partner of Red Hat Programs, has read and fully understand the terms and conditions and obligations contained in the Agreement including the applicable Program Appendix(es) and any terms incorporated via URL, and agrees to be bound by all such obligations as a party to the Agreement which may be amended or modified by Red Hat from time to time.

## 18. Entire Agreement

**18.1** This Agreement will constitute the exclusive terms and conditions with respect to the subject matter of this Agreement. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the Parties, whether oral or written, in relation to that subject matter including any different or additional terms that may be contained in the form of a purchase order or other document used by Partner even if such purchase order or other document is dated subsequent to the date of this Agreement.

**18.2** Each Party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject-matter of this Agreement at any

形式做出，并由被寻求放弃权利或丧失权利的一方的获授权代表签字，否则弃权无效。(d)如果本附表 1 中的“合作伙伴条款与条件”与任一适用计划附约、计划指南、最终用户许可协议或任何其它计划文件发生冲突，将按照如下次序对条款进行解释：(1) 适用计划附约，(2) 合作伙伴条款与条件，(3) 最终用户许可协议，(4) 计划指南，以及 (5) 任何其它计划文件。(e) 第 2 节规定除外，除非以书面形式做出，并经双方授权签字人签字，且明确指称本协议，否则对本协议的变更无效。(f) 本协议一式两份，均被视为原件，两份文件共同构成同一文本。双方可通过电子方式交换电子签字与签字页，该签字对双方均具有约束力。(g) 双方均承认审查并参与了本协议条款的制定。此外，双方同意：对本协议进行解释或阐释时，不使用“歧义之处应做不利于拟订人解释”规则。(h) 本协议以英文起草、谈判并签署，本协议的适用语言为英语。

## 16. 放弃由陪审团审理的权利。

在适用法律允许的最大范围内，各方放弃由陪审团审理由本协议或因其产生的交易或与之相关的任何法律诉讼的权利。

## 17. 合作伙伴的确认。

合作伙伴确认其有意成为红帽计划的合作伙伴，已阅读并完全理解本协议所载条款与条件及义务（包括适用的“计划附约”和通过 URL 纳入的任何条款），并同意作为协议（可由红帽随时修改或修订）一方受所有此类义务的约束。

## 18. 完整协议

**18.1** 本协议将构成就本协议标的事项的排他性条款与条件，并将取代所有之前由或代表双方所作的（无论是口头的还是书面的）任何性质的协议、协议草案、安排、附带的保证、附带的合同、声明、担保、陈述及保证，并使之无效，包括合作伙伴使用的采购单或其它文件（即便该等采购单或文件于本协议生效日期以后的日期作出）所包含的不同或额外条款，

**18.2** 各方确认，除了明确包含在本协议中的事项以外，其签署本协议之前并未依据由或代表另外一方就本协议项下之标的事项所作的任何口头的或书面的声明、附带的或其他的保证、担保、陈述或承诺（统称“签约前声明”）而签署本协议。

time before its signature (together Pre-Contractual Statements), other than those which are set out in this Agreement.

**18.3** Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

**18.4** Nothing in this Section 18 shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

### **19. Authorized Signatures**

Partner may assent to this Agreement by (i) accepting this Agreement in an on-line transaction at the Partner Portal (<http://www.redhat.com/en/partners>) or a Red Hat designated successor to such URL, (ii) electronically signing the document via a Red Hat acceptable electronic signature tool and emailing to the email address identified in (a) below, or (iii) signing a physical copy of this Agreement and forwarding ALL pages of the signed Agreement via (a) email to [globalcontracts@redhat.com](mailto:globalcontracts@redhat.com) via pdf, (b) fax to +65-6490-4201, or (c) mail to Red Hat Asia Pacific Pte Ltd, Attn: Contract Administrator, 8 Shenton Way, #11-00, Singapore 068811.

**18.3** 各方在此就该等签约前声明放弃其权利及其他可使用的救济手段。

**18.4** 本第 18 节中的任何规定并未排除或限制任何一方因其签约前所作之欺诈性误导或欺诈性隐瞒而应承担的责任。

### **19. 授权签字。**

合作伙伴可以通过以下任一方式同意并接受本协议 (i) 接受在合作伙伴门户 (<http://www.redhat.com/en/partners>) 或红帽指定的其它类似的 URL 上公布的协议, (ii) 通过红帽可接受的电子签名工具所签名的电子文件, 并以电子邮件方式发送到如下 (a) 款所示的电子邮件地址, 或 (iii) 签署本协议的纸质文档并将已签字协议的所有页面通过以下任一方式转发 (a) 以 PDF 格式电邮至 [globalcontracts@redhat.com](mailto:globalcontracts@redhat.com), (b) 传真至 +65-6490-4201, 或 (c) 以邮件方式寄送到 Red Hat Asia Pacific Pte Ltd., 联系人: 合同管理员, 地址: 8 Shenton Way, #11-00, Singapore 068811.