

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 New Zealand Limited of Level 4, Rabobank Tower, 2 Commerce Street, Auckland 1010, New Zealand. 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 subject to the terms of such 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 New Zealand Dollars.

## 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. Unless otherwise defined in this Agreement, capitalized expressions in this Section 6 have the same meaning as those expressions in the Goods and Services Tax Act 1985. All amounts payable shall be exclusive of any Taxes (including being exclusive of any GST). 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. If a party makes a Taxable Supply in connection with this Agreement for a Consideration in Money, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Consideration In Money is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay GST is subject to a valid Tax Invoice being delivered. "Taxes" means any form of taxation of whatever nature and by whatever authority imposed (including without limitation, GST and any fine, penalty, surcharge or interest), 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 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, unless Partner provides Red Hat with the original withholding tax documentation that is sufficient for Red Hat to apply for and obtain a tax credit for the full withheld amount. The Parties will work together in good faith to minimize adverse tax consequences to Red Hat 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

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 an 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.

## 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 in any manner unless agreed to by Red Hat in writing and (ii) not to use or resell the Red Hat Products 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.

## **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, 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 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 announcements or 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 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; (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. Both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information.

- 12.3 Privacy.** Partner acknowledges that any use of personal information (as that term is defined in the Privacy Act 1993) is consistent with Red Hat's privacy policy from time to time, which is described at [http://www.redhat.com/legal/privacy\\_statement.html](http://www.redhat.com/legal/privacy_statement.html). Partner must comply with the Information Privacy Principles under the *Privacy Act 1993*, regardless of whether it is otherwise legally obliged to do so.

### **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 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, 14.5, and 15 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.** Any claim, controversy or dispute arising out of or related to this Agreement is governed by the substantive laws of New Zealand. Any claim, controversy or dispute arising out of, or in connection with, or with respect to the validity, interpretation and/or enforcement of the Agreement, including the breach thereof, will be finally settled exclusively by the courts of New Zealand, provided, however, that Red Hat may in its sole discretion, bring any claim or dispute (including but not limited to seeking injunctive relief and/or equitable remedy) arising out of, or in connection with the validity, interpretation and/or performance of this Agreement before any courts and/or administrative authorities, in any jurisdiction, having jurisdiction over the subject matter of any such claim or dispute. Notwithstanding anything to the contrary in this Agreement:
- (a) the parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods from this Agreement;
  - (b) the parties acknowledge, and Partner warrants, that the goods and services supplied under this Agreement are supplied and acquired in trade within the meaning of the Fair Trading Act 1986. The parties agree that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to this Agreement and that it is fair and reasonable to exclude their application;
  - (c) the parties are both in trade and acknowledge, and Partner warrants, that the goods and services supplied under this Agreement are supplied and acquired in trade within the meaning of the Consumer Guarantees Act 1993. The parties agree that the provisions of the Consumer Guarantees Act 1993 will not apply to this Agreement; and
  - (d) for the purposes of this clause 14 the Partner acknowledges that it had a reasonable opportunity to review this Agreement, discuss its terms with Red Hat, and receive advice from its legal advisor, if it wished to do so.

**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 most current address/fax number indicated by Partner to Red Hat in writing; For Red Hat: General Counsel, Red Hat, Inc., 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: +1 (919) 754-3704, and Red Hat New Zealand Limited: Level 4, Rabobank, 2 Commerce, Auckland 1010, New Zealand, and by Facsimile: +65 6490 4203.

**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 or export 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, or export 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 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, 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 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 of its resellers or partners) has breached or may breach any of the provisions of this Section or a notice is provided pursuant to this Section, Red Hat may immediately terminate the Agreement or stop performing its obligations (including making payments, if applicable) without any liability to Partner.

**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 any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; (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; 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 will not engage in any activity that is prohibited under the Anti-boycotting Act (50 USCA 2407, Part 760).

**14.3.5** 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.

**14.4 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 Joint venture, 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 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) This Agreement will constitute the exclusive terms and conditions with respect to the subject matter of this Agreement, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Partner, including subsequent to the date of this Agreement. This Agreement contains the final, complete and exclusive statement of the agreement between the Parties with respect to the transactions contemplated herein and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter of this Agreement are contained herein. 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.

## **16. 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, #10-00, Singapore 068811.



This Solution Provider/VAR/Reseller Program Appendix ("**Reseller Program Appendix**") is subject to the terms and conditions of the Partner Agreement between Partner and Red Hat. Capitalized terms not defined herein have the meaning set forth in the Partner Agreement.

## **1. Appointment as Reseller**

- 1.1 Appointment.** The Partner Agreement and this Reseller Program Appendix set forth the terms and conditions under which Partner is authorized to act as a Red Hat Reseller. Subject to Partner's compliance with the terms and conditions of the Partner Agreement and the Reseller Program Appendix, Red Hat grants Partner the right to demonstrate, market, promote and resell the Red Hat Products during the Term (defined below) to End Users (defined below) within the Territory specified in the Partner Agreement. If no Territory is identified in the Partner Agreement, the Territory will default to the country of the address provided or your corporate headquarters. Resellers may purchase from a Red Hat authorized distributor ("**Distributor**") or if approved by Red Hat, directly from Red Hat.
- 1.2 Red Hat Products.** "**Red Hat Products**" means the Red Hat branded commercial offerings as defined in the Enterprise Agreement or Order Form. "**Documentation**" means user manuals, training materials, software descriptions and specifications, brochures, technical manuals, license agreements, supporting materials and other printed information, whether distributed in print, electronic or video format.
- 1.3 Terms of Distribution.** Red Hat sells Red Hat Products on a per "Unit" basis. Partner must resell Red Hat Products on the same per Unit basis for each Red Hat Product. The applicable "Unit" definitions for Red Hat Products are set forth in Appendix 1 to the Enterprise Agreement at [www.redhat.com/agreements](http://www.redhat.com/agreements), which may be updated by Red Hat from time to time.

## **2. Partner Obligations**

- 2.1 Marketing and Distribution.** Partner will use reasonable efforts in the Territory to (a) demonstrate, actively market, promote and resell the Red Hat Products; (b) make periodic and regular demonstrations that showcase the features of the Red Hat Products; (c) establish and maintain appropriate marketing and distribution facilities and personnel to create and meet the demand for Red Hat Products in the Territory and related support among End Users; and (d) carry out the promotional and other tasks set forth and agreed in writing. Partner will represent the Red Hat Products accurately and fairly and, at all times, avoid misleading, illegal, or unethical business practices. Partner will not make any claim or representation relating to the performance or functionality of the Red Hat Products other than as expressly set forth by Red Hat in the Documentation. Partner agrees to confer periodically with Red Hat, at Red Hat's request, on matters relating to market conditions, sales forecasting, product planning and promotional marketing strategies.
- 2.2 End User Subscription Agreements**
- 2.2.1** Partner will require each End User to sign or otherwise assent in an enforceable manner to the agreement set forth at [www.redhat.com/agreements](http://www.redhat.com/agreements), as updated by Red Hat from time to time ("**Enterprise Agreement**"), as a condition to the distribution of the Red Hat Products to such End User. An "**End User**" is a purchaser who has acquired Red Hat Products for their own personal or internal use and without the right to resell, remarket or otherwise distribute Red Hat Products. Partner will not amend or grant any waiver under the Enterprise Agreement.
- 2.2.2** If Partner becomes aware of any violation of an Enterprise Agreement, Partner will notify Red Hat immediately and will reasonably assist Red Hat in its efforts to enforce the terms of the Enterprise Agreement.
- 2.3 Preservation of Goodwill.** Partner will at all times comply with the terms of the Partner Agreement and this Reseller Program Appendix and conduct business in its own name and in such a manner that will be reasonably expected to reflect favorably at all times on the Red Hat Products and the good name, goodwill and reputation of Red Hat.
- 2.4 Reporting.** Partner will submit to Distributor or Red Hat, as applicable, sufficient information regarding the Red Hat Product(s) and End User for Red Hat to entitle such products.

## **3. Purchase and Payment**

- 3.1 Purchases via Authorized Distributors.** If Partner is obtaining the Red Hat Products from a Distributor, pricing for Red Hat Products is determined by the Distributor. Partner will pay such Distributor for the Red Hat Products.
- 3.2 Purchases with Red Hat.** If Partner is obtaining the Red Hat Products directly from Red Hat as set forth in a written signed Order Form, Partner will issue to Red Hat purchase orders subject to such Order Form. Partner shall identify the intended End User(s) relating to such purchase order. Red Hat shall have the right to reject any purchase order in its sole discretion. Payments will be made to Red Hat in accordance with the terms of the Partner Agreement.

## **4. Fulfillment**

- 4.1 Physical Media.** Upon receipt of a purchase order from Partner for Red Hat Products with physical media, Red Hat will directly, or through its authorized agent, create and ship the physical media to Partner or to the End User, as directed by Partner. Shipment is F.O.B. point of shipment by the method Red Hat deems most advantageous. Transportation and insurance charges, expenses and costs will be invoiced

to Partner and are not included in the prices set forth on an Order Form. Risk of loss or damage to the Red Hat Products will automatically pass to Partner when the Red Hat Products are placed with the carrier for shipment to Partner or to the End User, as the case may be.

**4.2 Electronic Fulfillment.** Upon receipt of a purchase order from Partner for Red Hat Products with no physical media, Red Hat will provide access to the downloadable format of the Red Hat Products to Partner or to the End User identified by Partner.

**4.3 Returns.** The Red Hat Products are sold without return privileges.

## **5. Partner Subscriptions**

**5.1** During the Term, Partner may install and use the Red Hat Products subject to, and under the terms of, the Enterprise Agreement, at no additional cost, solely for the purpose of sales, marketing, sales enablement training of Partner's personnel and demonstration of the functions and features of the Red Hat Products to End Users and prospective End Users. If Partner uses Red Hat Products for any other purposes (e.g., internal production or development use), Partner purchase the applicable Red Hat Product(s) at Red Hat's standard pricing for such product pursuant to the Enterprise Agreement. Any violation of this Section 5.1 or the Subscription Agreement will be deemed a material breach of the Partner Agreement and this Reseller Program Appendix.

**5.2** During the Term, Partner may reproduce or copy the Promotional Materials as reasonably necessary for Partner to fulfill its obligations under this Reseller Program Appendix; provided, however, that such right does not include a right to copy any third-party copyrighted materials included in the Promotional Materials. "**Promotional Materials**" means any marketing collateral associated with the Red Hat Products that is provided by Red Hat to Partner for distribution to prospective End Users, including any Red Hat authorized translations of those materials. All Promotional Materials and modifications to such materials will remain or become the property of Red Hat.

## **6. Trademarks Authorized for Use under this Reseller Program Appendix**

**6.1** As used in this Reseller Program Appendix, the terms "**Red Hat Marks**" mean the trademarks owned by Red Hat that are made available to the Partner specifically for this Reseller Program. The license and use of the Red Hat Marks by Partner is subject to the terms and conditions of Section 8, Trademarks, of the Partner Agreement.

## **7. Term**

**7.1 Term.** This Reseller Program Appendix will begin on the Effective Date and will continue for a period of one (1) year ("**Term**") unless terminated earlier in accordance with the Partner Agreement or this Reseller Program Appendix. This Reseller Program Appendix will automatically renew for successive one (1) year terms unless either party provides written notice of termination no less than thirty (30) days before the anniversary date. "Effective Date" means (a) the date Partner clicks to agree or otherwise assents to these terms and Partner has been accepted by Red Hat as a Partner; or (b) if this Reseller Program Appendix is not incorporated by reference in the Partner Agreement, the date Red Hat fully signs a hard copy of this Appendix (if applicable).