

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 authorize you to participate in the Reseller Program as set forth in the attached appendix 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 Agreement is comprised of this the Partner Terms and Conditions, the Reseller Partner Appendix, any additional Program Appendix(ices) (if any), any referenced documents or links and 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 the Program(s) is governed by the following:

- (a) Partner Acceptance Document including these Partner Terms and Conditions;
- (b) the applicable Program Appendix(ices) which have been agreed to by the Parties, including any End User License Agreements and Program Guide that may be referenced and/or incorporated into these documents; 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, Inc. with a principal place of business of 100 East Davie Street, Raleigh, North Carolina 27601, U.S.A. Red Hat "**Products**" and "**Services**" mean the specific Red Hat branded offerings set forth in a Program Appendix. 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

Details of Programs, membership levels, specializations and qualifications for Partner participation in Programs and, if applicable, related Program Guides are included in Program Appendices, each of which may be amended by Red Hat from time to time effective seven (7) days after notice or as otherwise set forth in such notice. In particular, Red Hat reserves the right to change Programs, membership levels and/or specializations at any time, provided if you do not agree with the new terms, you may elect not to continue to participate in such Program or Program level. Unless otherwise agreed in writing, any subscriptions for Red Hat Products or Services purchased under a Program Appendix will commence upon the earlier of the first use of such Product or Service or the purchase date of such Product or Service.

## 3. Affiliate Authorizations

Partner's Affiliate(s) may participate in the 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 the Agreement. Red Hat and Partner may elect to expand the Territory, add Affiliates and establish the 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 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 US 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 such purchase order will not amend, supplement or modify the terms of the Agreement or be binding on Red Hat. Partner must pay all sums due to Red Hat on a prepaid basis, without regard as to when or whether Partner collects payment from an End User. 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' 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, including without limitation sales, service, use or value-added taxes, which are paid or are payable by Red Hat or present Red Hat with a valid tax exemption certificate. "**Taxes**" means any form of taxation, levy, duty, charge, contribution or impost of whatever nature and by whatever authority imposed (including without limitation 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, should Partner be 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 to yield to Red Hat 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 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 (as defined in Section 13.1) and for at least two (2) years thereafter, Partner will keep and maintain commercially reasonable written records and accounts 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 such Records to determine Partner's compliance with this Agreement. Such verification may take the form of requests for information, documents or records (with which Partner shall respond promptly), on-site visits (in respect of which Partner hereby grants the requisite access), or both. Partner agrees to act reasonably and to cooperate with Red Hat in relation to such verifications. Any on-site visit will occur during regular business hours at Partner's offices, and will not interfere unreasonably with Partner's business activities. For an on-site visit, Red Hat will give Partner at least ten (10) day's prior written notice of the date of each visit.

## 8. Trademarks

- 8.1 As used in this Agreement, 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 the Red Hat Products as permitted in this Agreement, without the right to sublicense. Any other use of the Red Hat Marks is not permitted under this Agreement.
- 8.2 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 found in any applicable Program Appendix (the "**Red Hat Trademark Guidelines**"). Partner agrees not to use the Red Hat Marks in combination with any other trade name, trademark or service mark without the prior written approval of Red Hat. Upon Red Hat's request, 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**").
- 8.3 If Red Hat determines that Partner is using the Red Hat Marks improperly, and/or in connection with goods or services not covered under this Agreement or outside of the Territory, Red Hat will notify Partner, and Partner will remedy the improper use within two (2) business days following receipt of such notice from Red Hat. Use of the Red Hat Marks other than as expressly permitted in this Agreement is a material breach of this Agreement, and Red Hat shall have the right to immediately terminate this Agreement. Partner agrees that any use of the Red Hat Marks after termination of the Agreement for any reason will cause Red Hat irreparable harm.
- 8.4 All goodwill created by the use of the Red Hat Marks by Partner is for the sole benefit of, and accrues to Red Hat. Partner acquires no right, title or interest in the Red Hat Marks or the goodwill associated with them, other than the right to use the Red Hat Marks according to this Agreement. In accepting this Agreement, Partner acknowledges Red Hat's ownership of the Red Hat Marks, their validity and the goodwill connected with the Red Hat Marks. Partner will not challenge the validity of the Red Hat Marks, nor assist any one in challenging them. 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 common law or registered trademark, trade name or service mark during or after the Term of this Agreement. At the request of Red Hat, Partner will execute any papers or documents reasonably necessary to protect the rights of Red Hat in the Red Hat Marks and will execute and deliver such other documents as may be reasonably requested by Red Hat. Partner's use of the Red Hat Marks may not state or imply sponsorship or endorsement of Partner by Red Hat. Partner may not disparage Red Hat, Red Hat Marks or Red Hat Products. The right of Partner to use the Red Hat Marks will cease immediately upon the termination or expiration of this Agreement, and Partner must immediately discontinue use of the Red Hat Marks. If Partner becomes aware of any (possible or actual) infringement of the intellectual property rights of Red Hat it will immediately notify Red Hat in writing. This Section 8.4 will survive termination or expiration of this Agreement.
- 8.5 Partner agrees that when using the Red Hat Marks in any documentation or Promotional Materials to include the following trademark legend: "[Name of Red Hat trademark] is a trademark of Red Hat, Inc., registered in the U.S. and other countries. Used under license." Red Hat's trademark legend will be no less prominent than the trademark legend for Partner's trademarks.
- 8.6 **Packaging.** Partner will not change or alter Red Hat packaging that houses Red Hat Products, including the graphic design appearing on such packaging or any labeling, words, logos, trademarks, pictures and collateral or other representations that appear on such packaging ("**Packaging**"). An alteration or change to Packaging includes, without limitation: (i) the application or attachment to Packaging of any material (e.g., labels, notes, seals, stamps, manuals, booklets, brochures, software packages, computer programs, compact discs, digital versatile discs, blue-ray discs, tapes, manuals and toys); and (ii) the marking of Packaging in any way. Any alteration or change to Packaging must be expressly authorized in writing by Red Hat, which authorization may be withheld or granted in Red Hat's sole discretion.

## 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 the Red Hat Products or Services to create an offering competitive with Red Hat, directly or indirectly, or for the benefit of any other person or entity or permit any third party to make such utilization, unless specifically agreed to in this Agreement. If Red Hat determines that any of the Services or Red Hat Products are 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 the Agreement and any Program, and reserves its rights to exercise any and all legal and equitable remedies available to it under this Agreement or otherwise.

- 9.2** For each Red Hat Product (or Partner product that incorporates Red Hat Software) 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 hereunder 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 1 year Red Hat Product from Red Hat and then break it down into monthly or hourly increments for resale to the End User. Partner will work with Red Hat to ensure that its resale of the Red Hat Product to End Users is consistent with the guidelines of the Red Hat Products purchased.
- 9.3** Without limiting the generality of Section 9.1 or 9.2 above, Partner agrees: (i) not to modify the Red Hat Products in any manner; 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. Should Partner desire to use the 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 internal use, and to pay the applicable fee for all periods of use. 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 acknowledges and agrees that all trademark, copyright, patent, trade secret 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.

## **11. No Warranties, Limitation of Liability, Disclaimer of Damages, and Insurance and Indemnity**

- 11.1 No Warranties.** 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 in connection with the distribution of the Red Hat Products or Services or otherwise.
- 11.2 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 HIGHER. THE FORGOING 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.
- 11.3 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY ORDER FORM HEREUNDER, 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 A 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.
- 11.4 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 hereunder. 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) without the prior written consent of Red Hat. 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 utilizes 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 for which it was disclosed. 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 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 (a) is already known to the receiving Party at the time it is disclosed and has not been obtained wrongfully, (b) becomes known publicly without fault of the receiving Party, (c) is independently developed by the receiving Party, (d) is approved for release in writing by the disclosing Party, (e) is disclosed without restriction by the disclosing Party to a third party, (f) is disclosed pursuant to legal or regulatory obligations beyond the control of the disclosing and receiving Parties, or (g) is licensed under an Open Source License (as defined by the Open Source Initiative ([www.opensource.org](http://www.opensource.org))). 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 such Program) for any reason at any time upon thirty (30) days prior notice in writing to Partner. Red Hat or Partner 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 such Program) at any time upon notice in writing to the other Party if the other Party is in material breach of any obligation thereunder and (in the case of a remediable breach) such breaching Party fails to remedy the breach within thirty (30) days (except for payment obligations, in which case five (5) days) of being requested in writing to do so unless a shorter cure period is otherwise stipulated under this Agreement or in the applicable Program Appendix, provided, however, that no cure period will be required for a breach of Sections 8, 9.1, 12.2 or 15.3 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, including eligibility to the Program benefits. 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 and 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 such 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; provided, however, if the termination is not the result of a Partner breach, the Partner will be entitled to sell 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 for a period of no longer than sixty (60) days. All rights and obligations of the Parties under this Agreement and all applicable Program Appendices will terminate immediately, except that the such obligations under Sections 6, 7, 8.4, 10-12, 13.3 - 13.4, 14, 15.1 - 15.2, 15.3.4, 15.3.5, 15.5, 16, and 18 hereof, any Partner payment obligations, and any provision regarding waiver of jury trial in the Exhibits or any applicable Program Appendices hereto, 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.** In the event of a 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 of Partner, for compensation or for damages of any kind, whether on account of the loss by Partner or such employee 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. Certain Remedies

The parties agree to make a good faith effort to resolve amicably any problem before commencing any proceeding (except where urgent injunctive relief is sought).

## 15. General Provisions

**15.1 Governing Law and Venue.** Any claim, controversy or dispute arising out of or related to this Agreement is governed by the substantive laws of the State of New York. 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 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 in the state or federal courts of Wake County, North Carolina.

**15.2 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.

**15.3 Compliance with Law and Export Controls.**

**15.3.1** As between Red Hat and Partner, Partner will be the importer of record of the Red Hat Products and Services into the countries in which it sells and will be responsible for (a) compliance with all applicable laws, regulations and legal requirements; (b) paying all import duties or tariffs; and (c) obtaining any regulatory approvals and import licenses required by any applicable law.

**15.3.2** 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 can immediately terminate the Agreement or stop performing its obligations (including making payments, if applicable) without any liability to Partner.

**15.3.3** Partner agrees that it will not re-export the Red Hat Products, their components or related technical information received from Red Hat except as permitted by the laws and regulations of the United States of America and the laws and regulations of the jurisdiction in which Partner obtained the Red Hat Products or Services, their components or related technical information or that are otherwise applicable. Without limiting the foregoing, Partner will comply with applicable U.S. export laws, regulations and legal requirements. Partner acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical information, including software, of U.S. origins.

**15.3.4** As required by U.S. law, Partner represents and warrants that it: (a) understands that certain of the Red Hat Products, their components and related technical information are subject to export controls under the U.S. Export Administration Regulations ("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 Red Hat Products, their components or related technical information to (1) any prohibited destination, (2) any end user 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 utilize 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; (d) understands and agrees that if it is in the United States and exports, re-exports or transfers the Red Hat Products, their components or related technical information 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, which include the name and address (including country) of each transferee; and (e) understands that countries including the U.S. may restrict the import, use or export of encryption products (which may include the Red Hat Products, their components or related technical information) and that it will be solely responsible for compliance with any such import, use, or export restrictions.

**15.3.5** Partner will not export any Red Hat Product, component or related technical information to a third party or to an Affiliate that is located in a country that is engaged in boycotting activities not sanctioned by the U.S. and will not make any sale that is prohibited under the Anti-boycotting Act (50 USCA 2407, Part 760).

**15.3.6** To the extent required by law or to protect the rights of Red Hat, Partner will register this Agreement, at its expense, with any governmental authority requiring such registration, or with which registration is advisable, provided that Red Hat will have the right to review and approve any application for registration prior to its submission to any governmental authority. At Red Hat's option, Red Hat may obtain such registration in its own name. At Red Hat's request, Partner will withdraw any application or registration of this Agreement that it has filed.

**15.3.7** Partner acknowledges that Red Hat may be prohibited from providing Services (including maintenance and support) for Red Hat Products, their components and related technical information if Red Hat has knowledge that a violation of the EAR has occurred. The Parties agree to cooperate with each other with respect to any application for any required licenses and approvals; provided, however, that

Partner acknowledges it is Partner's ultimate responsibility to comply with any and all export, import and use laws and that Red Hat has no further responsibility after the initial export to Partner.

**15.4 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 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.

**15.5 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 subcontractors is entitled to any employee benefits of the other. Partner 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 create a relationship of principal and agent between the Parties for any purpose.

**15.6 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. In the event of 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.

**16. 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. In the event of a conflict between the Partner Terms and Conditions in this Exhibit 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 Appendices, (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 amended, supplemented or modified except by written instrument signed by authorized signatories of the Parties hereto, which instrument 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 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. (i) This Agreement has been prepared, negotiated and signed in English, and English is the controlling language of this Agreement.

**17. Authorized Signatures.**

Partner may assent to this Agreement either by a) accepting this Agreement in an on-line transaction at the Partner Center ([www.partner.redhat.com](http://www.partner.redhat.com)) or b) signing a physical copy of this Agreement and forwarding it to the appropriate Red Hat office. For Partners in North America who wish to submit a physical copy of the signed Agreement, please submit ALL pages to [nacontracts@redhat.com](mailto:nacontracts@redhat.com) via pdf, send a fax to +1 (919) 754-3729, or mail to Red Hat, Inc., Att: Contract Administrator, 100 East Davie Street, Raleigh, North Carolina 27601.

**18. Waiver of Jury Trial.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OF OR THE TRANSACTIONS CONTEMPLATED HEREBY.





This is a Solution Provider/VAR/Reseller Program Appendix (“**Reseller Program Appendix**”) to the Partner Agreement between Partner and Red Hat and is subject to the terms and conditions of the Partner Agreement. 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 terms contained herein, 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. Resellers may purchase directly from Red Hat (upon Red Hat’s approval) or from a Red Hat authorized distributor (“**Distributor**”).
- 1.2 Red Hat Products.** “**Red Hat Products**” means Software Subscriptions (as defined in the Enterprise Agreement) and related Documentation in Exhibit A, as well as any other Red Hat-branded products or services agreed to by the parties. “**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 the 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/licenses/rhel\\_us\\_appendix1.html](http://www.redhat.com/licenses/rhel_us_appendix1.html), 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 (i) demonstrate, actively market, promote and resell the Red Hat Products; (ii) make periodic and regular demonstrations that showcase the features of the Red Hat Products; (iii) 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 (iv) carry out the promotional and other tasks set forth in Exhibit D. 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 a manner acceptable to Red Hat) to the agreement set forth at [www.redhat.com/licenses](http://www.redhat.com/licenses), 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 Red Hat or Distributor, as applicable, the reports set forth in Exhibit B.

## 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, Partner will issue to Red Hat purchase orders identifying the Red Hat Products that Partner desires to purchase from Red Hat. 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. Red Hat Products, prices and any applicable discounts are set forth in Exhibit A. 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 Exhibit A. 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, as directed 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 Subscription 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. Partner may not use Red Hat Products for any other purposes (e.g., internal production or development use), except upon purchase by Partner of Subscription Services under the terms of the Subscription 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 the 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 authorized translations of those materials as provided for below. 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 set forth in Exhibit C. The license and use of the Red Hat Marks by Partner is subject to the terms and conditions of Section 8 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 twelve (12) months ("**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 indicated on the Acceptance Notice under the Partner Agreement, if they Partner Agreement includes reference to this Reseller Program Appendix; 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).



**EXHIBIT A**  
**PRODUCTS, PRICING AND TRAINED STAFF**

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1. **Red Hat Products.** Partner will be authorized to sell those Red Hat Products that are listed in Exhibit A-1. Red Hat may modify the Red Hat Product list from time to time to add or remove Red Hat Products or to reflect a change in prices, in each case at its sole discretion. Partner shall resell to End Users the Red Hat Products on a per Unit basis. Appendix 1 at [www.redhat.com/licenses/rhel\\_us\\_appendix1.html](http://www.redhat.com/licenses/rhel_us_appendix1.html) contains the current Unit definitions for each Red Hat Product, and such definitions are subject to change.
2. **Standard Discount.** Partner will receive the following standard discount for the Red Hat Products:

| Red Hat Product          | Discount |
|--------------------------|----------|
| Red Hat Enterprise Linux |          |
| JBoss                    |          |

3. **Special Bids.** Red Hat may, at its sole discretion, agree to provide special terms for a particular End User for a specific transaction. In such case, Partner and Red Hat will agree in writing to provide such terms under Red Hat's standard Special Bid Order Form. In order to receive such terms, Partner will be required to provide the identity of the End User receiving the pricing.
4. **Payment Instructions:** As provided to Partner by either the Distributor or Red Hat, as applicable, from time to time.

**1. Partner Contact**

Partner contact for Red Hat questions and correspondence concerning reports in this Exhibit:

|               |  |
|---------------|--|
| Name:         |  |
| Phone Number: |  |
| Email:        |  |

**2. Weekly Report**

Partner will provide Red Hat or Distributor, as applicable,\* a weekly report with the following information:

- (a) Sell Through: Sales for the preceding week (including subscriptions sold, cost value and reseller who purchased, and the other information Partner is required to provide under Section 3 (Direct Entitlement) of Exhibit D to this Reseller Partner Appendix);
- (b) Stock held in inventory; and
- (c) Stock or backorder (items ordered by Resellers on the Partner but not shipped due to credit hold or inventory constraints).

**3. Monthly Report**

Partner will submit a report by the 10th day of each month to the Red Hat or Distributor, as applicable,\* contact above indicating the following:

- (a) Number of Red Hat Products shipped to End Users by type;
- (b) Red Hat Product SKU #;
- (c) Unit price set forth in this Agreement;
- (d) End User or Reseller identification and contact information;
- (e) Address to which the Red Hat Products were shipped; and
- (f) Resellers that are participating in Red Hat renewal programs.

\* The report shall be given to the Distributor if Partner makes purchases via Authorized Red Hat Distributors or to Red Hat if Partner makes purchases directly from Red Hat,

**redhat.**

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**R E A D Y  
BUSINESS  
PARTNER**

The terms of this Exhibit D apply only if Partner makes purchases directly from Red Hat.

**1. Marketing Plan**

- 1.1** Partner will submit a quarterly marketing plan to Red Hat that meets the reasonable requirements of Red Hat.

**2. Subscription Management**

- 2.1 Subscription Management Tools.** Red Hat will provide Partner with subscription management tools to assist Partner in managing End User subscriptions and renewals.

**2.2 Renewals**

- 2.2.1** Partner will inform its End Users that their subscriptions are up for renewal within ninety (90) days of such renewal dates, or Partner will provide the required information to Red Hat to enable Red Hat to inform such End Users of upcoming renewals.
- 2.2.2** Partner will participate in renewal marketing programs established by Red Hat from time to time, and will encourage Resellers to participate in such renewal marketing programs.

**3. Direct Entitlement**

- 3.1** Partner will create an automated process with input from Red Hat to load the data described below into Red Hat's ordering system. Based on Partner's End User sales data, Partner will generate a data extract (or real-time communication) containing the following order information required to directly entitle the end-customer using Red Hat's ordering and subscription management system:
- (a) Partner reference number (optional);
  - (b) System identification number or Red Hat registration number
  - (c) End User company information (e.g., name, address, etc.);
  - (d) End User customer sales contact information (e.g., name, address, phone number, email address, etc.);
  - (e) Reseller information (if applicable);
  - (f) Subscription shipment date;
  - (g) Partner part number;
  - (h) Red Hat SKU;
  - (i) Quantity; and
- 3.2** Partner will supply sufficient resources with access to both the Partner order management system and Red Hat's partner ordering system to validate the order, correct any errors (e.g., customer selection fails), and electronically submit the order on a transaction basis.