

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is dated June 6, 2008, and is by and between Red Hat, Inc., a Delaware corporation, DataTern, Inc., a Texas corporation, and Amphion Innovations PLC, a public limited liability company incorporated in the Isle of Man.

### RECITALS

WHEREAS, a dispute exists between DataTern, Inc. (which indicates that FireStar Software, Inc., assigned certain patent rights to it) on the one hand, and Red Hat, Inc. and Red Hat Middleware LLC, on the other;

WHEREAS, the dispute is the subject of a patent infringement suit titled *FireStar Software, Inc., v. Red Hat, Inc., et al.*, 2-06cv-258 (E.D. Tex.);

WHEREAS DataTern, Inc. and Amphion Innovations PLC are involved in the dispute;  
and

WHEREAS, the parties desire to resolve their dispute.

NOW, therefore, for and in consideration of the covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### 1. DEFINITIONS

The terms set forth below shall have the following meanings in the Agreement:

1.1 "Affiliate" means an Entity that controls, is controlled by, or is under common control with another Entity, where "control" of an Entity means ownership, directly or indirectly, of a majority of the voting equity or, in the case of a non-corporate Entity, equivalent interests of such Entity.

1.2 "Amphion" means Amphion Innovations PLC and all parents, subsidiaries, Affiliates (including without limitation Amphion Capital Partners, LLC), related entities, or successors, and any Entity which is now or which shall subsequently be owned or controlled, either directly or indirectly, in whole or in part, by Amphion Innovations PLC, where "owned or controlled" means ownership, directly or indirectly, of a majority of the voting equity or, in the case of a non-corporate Entity, equivalent interests of such Entity. A "successor" includes, without limitation, any Entity which is the survivor of any merger with, or an Entity which is sold all or substantially all of the assets of, Amphion Innovations PLC, or any parent, subsidiary, Affiliate, or entity related to either of them.

1.3 "Current and Near Future Intellectual Property" means (a) any and all Licensed Patents or other patents currently owned, enforceable, or controlled, in whole or in part by any Licensor

or Licensor Related Entities on the Effective Date or in the six (6) months preceding the Effective Date; and (b) any patent to which any right to own, enforce, or control, in whole or in part, is acquired by any Licensor or Licensor Related Entities during the five (5) years following the Effective Date.

**1.4** "DataTern" means DataTern, Inc., a Texas corporation, and all parents, subsidiaries, Affiliates, related entities, or successors, and any Entity which is now or which shall subsequently be owned or controlled, either directly or indirectly, in whole or in part, by DataTern, Inc., where "owned or controlled" means ownership, directly or indirectly, of a majority of the voting equity or, in the case of a non-corporate Entity, equivalent interests of such Entity. A "successor" includes, without limitation, any Entity which is the survivor of any merger with, or an Entity which is sold all or substantially all of the assets of, DataTern, or any parent, subsidiary, Affiliate, or Entity related to it.

**1.5** "Derivative" means any derivative work or any other product, process, service, or code that is based on another product, process, service, or code.

**1.6** "Effective Date" of this Agreement means the date on which the last of the Parties executes this Agreement.

**1.7** "Entity" means an individual, company, trust, corporation, partnership, sole proprietorship, joint venture, limited liability company, association, unincorporated organization, university, college, or other legal, governmental, or other entity.

**1.8** "FireStar" means FireStar Software, Inc., a Delaware corporation, and all parents, subsidiaries, Affiliates, related entities, or successors, and any Entity which is now or which shall subsequently be owned or controlled, either directly or indirectly, in whole or in part, by FireStar Software, Inc. A "successor" includes, without limitation, any Entity which is the survivor of any merger with, or an Entity which is sold all or substantially all of the assets of, FireStar, or any parent, subsidiary, Affiliate, or entity related to either of them.

**1.9** "Future Intellectual Property" means any patent to which any right to own, license, enforce, or control, in whole or in part, is acquired after five years or more after the Effective Date by any Licensor or Licensor Related Entities.

**1.10** "Licensed Patents" means (a) all Specified Patents, (b) any and all patents claiming priority to (1) any of the Specified Patents or (2) an application to which any of the Specified Patents claims priority or from which any of the Specified Patents issued, and (c) any reissue(s), continuation(s), continuation(s)-in-part, divisional(s), reexamination(s), extension(s), or foreign counterpart(s) of that which is defined in parts (a) or (b) of this paragraph and any patent claiming priority thereto.

**1.11** "Licensor" means DataTern.

- 1.12** "Licensor Related Entities" means Amphion and its Affiliates.
- 1.13** "Litigation" means the lawsuit filed in the U.S. District Court for the Eastern District of Texas titled *FireStar Software, Inc., v. Red Hat, Inc., et al.*, 2-06cv-258 (E.D. Tex.) and any other lawsuit filed by any of the Parties or FireStar against Red Hat that is pending on or prior to the Effective Date.
- 1.14** "Parties" means Red Hat, DataTern, and Amphion.
- 1.15** "Red Hat" means Red Hat, Inc., a Delaware corporation, and all parents, subsidiaries, Affiliates, related entities, or successors, and any Entity which is now or which shall subsequently be owned or controlled, either directly or indirectly, in whole or in part, by Red Hat, Inc. including without limitation Red Hat Middleware LLC, a Delaware limited liability company. A "successor" includes, without limitation, any Entity which is the survivor of any merger with, or an Entity which is sold all or substantially all of the assets of, Red Hat, or any parent, subsidiary, Affiliate, or entity related to it.
- 1.16** "Red Hat Brand" means a trademark, service mark, trade name, or brand owned, exclusively licensed, or controlled, now or in the future, by Red Hat.
- 1.17** "Red Hat Combination Product" means any product, process, service, or code that is a combination of (a) at least one Red Hat Product or Red Hat Derivative Product and (b) at least one product, process, service, or code portion that is neither a Red Hat Product nor a Red Hat Derivative Product. A "Red Hat Combination Product" does not include any Red Hat Product or Red Hat Derivative Product. A combination includes, without limitation, two products distributed together, two products that interact or that interoperate, and two products that call each other.
- 1.18** "Red Hat Community Member" means any Entity that is a licensee or licensor of, contributes to, develops, authors, provides, distributes, receives, makes, uses, sells, offers for sale, or imports, in whole or in part, directly or indirectly, any Red Hat Licensed Product, including without limitation any upstream contributor to, or downstream user or distributor of, a Red Hat Licensed Product. An upstream contributor includes, for example, an Entity that contributes to a software product, so long as a copy or derivative work of that software product is distributed or used by Red Hat. For example, an Entity would be an upstream contributor if it contributes to a version of Open Office if that version or a derivative work of that version is distributed by Red Hat as part of Red Hat Enterprise Linux. A downstream distributor includes, for example, an Entity that distributes a copy of a Red Hat software product received from Red Hat or another Entity or that distributes a derivative work of such software product. For example, an Entity would be a downstream distributor if the Entity received a derivative work of Hibernate Tools from either Red Hat or another Entity and then distributed a copy of the derivative work.

**1.19** "Red Hat Derivative Product" means any product, process, service, or code that is a direct or indirect Derivative of at least one Red Hat Product. "Red Hat Derivative Product" does not include any Red Hat Product. An indirect Derivative of a Red Hat Product includes, for example, a derivative work based on a derivative work of the Red Hat Product.

**1.20** "Red Hat Licensed Product" means any Red Hat Product, Red Hat Derivative Product, or Red Hat Combination Product.

**1.21** "Red Hat Product" means (a) any product, process, service, or code developed by, licensed by, authored by, distributed under a Red Hat Brand by, made by, sold under a Red Hat Brand by, offered for sale under a Red Hat Brand by, sponsored by, or maintained by Red Hat, (b) any predecessor version of any of the foregoing, including without limitation any upstream predecessor version of any of the foregoing, (c) an identical copy of any of the foregoing, or (d) a combination of any of the foregoing.

**1.22** "Specified Patents" means (a) U.S. Patent No. 6,101,502, (b) U.S. Patent No. 5,937,402, U.S. Patent No. 5,826,268, U.S. Patent No. 5,542,078, and U.S. Patent No. 5,522,077, (c) any other patent owned, controlled, or enforceable, in whole or in part, by DataTern at any time before the Effective Date, (d) any patent issuing from or claiming priority to any currently pending patent application of Licensor, and (e) any foreign counterpart of the patents identified in parts (a)-(d) of this paragraph.

## **2. WARRANTY OF PATENT RIGHTS**

Licensor and Licensor Related Entities warrant that as of the Effective Date Licensor is the sole owner of, and has the exclusive right to enforce, the Licensed Patents. Licensor and Licensor Related Entities warrant that Licensor owns all right, title, and interest in the Licensed Patents, including without limitation U.S. Patent No. 6,101,502. Licensor shall provide to Red Hat evidence clearly showing that Licensor has met the ownership obligations (as of and on the Effective Date) set forth in this paragraph within two (2) days of the Effective Date; such evidence shall consist of executed affidavits exactly in the form shown in Exhibits A and B to the Agreement.

## **3. PAYMENT**

**MATERIAL REDACTED**

## **4. DISMISSAL OF THE LITIGATION**

DataTern shall cause to be duly executed and filed pleadings dismissing the Litigation with prejudice exactly six (6) business days after sending the evidence cited in Section 2 of the

Agreement to Red Hat unless Red Hat objects. Red Hat may object only if the evidence provided does not consist of executed affidavits exactly in the form shown in Exhibits A and B to the Agreement. Concurrently, Red Hat shall cause to be duly executed and filed pleadings dismissing any of its counterclaim(s) in the Litigation without prejudice. To prevent future collateral litigation regarding this matter and for any other reasonable purpose, any dismissal shall provide that each party will bear its own costs and attorneys' fees.

## **5. LICENSE TERMS**

**5.1** Licensor grants and promises to grant to Red Hat a perpetual, fully paid-up, royalty-free, irrevocable worldwide license of the Licensed Patents for any and all purposes and to engage in any and all activities under the Licensed Patents, not intending any limitations. The license granted under Section 5.1 includes, without limitation, a license to make, have made, use, have used, sell, have sold, offer for sale, have offered for sale, provide or have provided, distribute or have distributed, import, or have imported any Red Hat Licensed Product and services related to any Red Hat Licensed Product. For the avoidance of doubt, Section 5.1 does not provide Red Hat a separate right to sublicense the Licensed Patents.

**5.2** Licensor grants and promises to grant to Red Hat Community Members a perpetual, fully paid-up, royalty-free, irrevocable worldwide license of the Licensed Patents to engage in any and all activities related to Red Hat Licensed Products, including without limitation to make, have made, use, have used, sell, have sold, offer for sale, have offered for sale, provide or have provided, distribute or have distributed, import, or have imported any Red Hat Licensed Product and services related to any Red Hat Licensed Product. For the avoidance of doubt, Section 5.2 does not provide Red Hat Community Members a separate right to sublicense the Licensed Patents.

**5.3** Licensor grants and promises to grant to Red Hat and Red Hat Community Members a perpetual, fully paid-up, royalty-free, irrevocable right to grant worldwide sub-licenses of the Licensed Patents to Red Hat Community Members to the same extent the Red Hat Community Members are licensed under Section 5.2 of this Agreement.

**5.4** Neither of the license grants set forth in Sections 5.2 and 5.3 of this Agreement shall apply, with respect to a particular Licensed Patent at issue, to the following:

(a) a Red Hat Combination Product that infringes the particular Licensed Patent at issue without use of or reference to any portion or functionality in or from (1) a Red Hat Product that is part of the Red Hat Combination Product or (2) a Red Hat Product on which a Red Hat Derivative Product that is part of the Red Hat Combination Product is based; and

(b) a Red Hat Derivative Product that infringes the particular Licensed Patent at issue without use of or reference to any portion or functionality in or from a Red Hat Product on which the Red Hat Derivative Product is based.

## **6. RELEASE OF CLAIMS, COVENANT NOT TO SUE, AND INDEMNITY**

### **6.1 Releases and Covenants Not to Sue as to Red Hat**

(a) As to its Current and Near Future Intellectual Property, Licensor and Licensor Related Entities hereby grant and promise to grant to Red Hat a release and covenant not to sue for any and all claims arising from the beginning of time through the term of this Agreement.

(b) As to its Future Intellectual Property, Licensor and Licensor Related Entities hereby grant and promise to grant to Red Hat a release and covenant not to sue in relation to any activity occurring from the beginning of time through five (5) years following the Effective Date. Licensor and Licensor Related Entities agree to toll forever, as to Red Hat, any damages that would otherwise be incurred under its Future Intellectual Property occurring during the period from the beginning of time through five (5) years following the Effective Date.

### **6.2 Releases and Covenants Not to Sue as to Red Hat Community Members**

(a) As to its Current and Near Future Intellectual Property, Licensor and Licensor Related Entities hereby grant and promise to grant to Red Hat Community Members a release and covenant not to sue for any and all claims related to any Red Hat Licensed Product arising from the beginning of time through the term of this Agreement.

(b) As to its Future Intellectual Property, Licensor and Licensor Related Entities hereby grant and promise to grant to Red Hat Community Members a release and covenant not to sue in relation to any activity associated with a Red Hat Licensed Product occurring from the beginning of time through five (5) years following the Effective Date. Licensor and Licensor Related Entities agree to toll forever, as to each and every Red Hat Community Member, any damages that would otherwise be incurred under its Future Intellectual Property relating to any activity associated with a Red Hat Licensed Product occurring during the period from the beginning of time through five (5) years following the Effective Date.

(c) The releases and covenants not to sue set forth in Sections 6.2(a) and 6.2(b) of this Agreement shall not apply, with respect to a particular patent within the Current and Near Future Intellectual Property or Future Intellectual Property ("the particular patent at issue"), to the following:

(1) a Red Hat Combination Product that infringes the particular patent at issue without use of or reference to any portion or functionality in or from (a) a Red Hat Product that is part of the Red Hat Combination Product or (b) a Red Hat Product on which a Red Hat Derivative Product that is part of the Red Hat Combination Product is based; and

(2) a Red Hat Derivative Product that infringes the particular patent at issue without use of or reference to any portion or functionality in or from a Red Hat Product on which the Red Hat Derivative Product is based.

### 6.3 General Releases

(a) **Release by DataTern and Amphion.** Effective upon the filing of pleadings dismissing the Litigation pursuant to Section 4 of this Agreement, DataTern and Amphion and any person or entity claiming by or through them or any of them, in consideration of the agreements set forth herein, and intending to be legally bound, irrevocably release and forever discharge Red Hat and its present and former parents, subsidiaries, and Affiliates, and their present and former directors, officers, shareholders, consultants, attorneys, and employees (solely in those capacities) (collectively, the "Red Hat Releasees") from any and all actions, causes of action, suits, rights, debts, sums of money due, accounts, accountings, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, indemnities, liabilities, variances, trespasses, damages, judgments, extents, executions, claims and demands, of every nature and description whatsoever, in law, admiralty or equity, or as a result of arbitration, whether known or unknown, asserted or unasserted, that are related to any claim(s) or counterclaim(s) raised in the Litigation or that could have been raised in the Litigation, including without limitation forgiving and releasing any claim for any and all act(s) of alleged infringement that was raised in the Litigation, from the beginning of time to the Effective Date. The release in this paragraph: (1) is personal to the Red Hat Releasees; (2) is not intended to benefit any third party not specifically identified in any way; and (3) does not apply to any of the rights and obligations set forth in this Agreement.

(b) **Release by Red Hat.** Effective upon the filing of pleadings dismissing the Litigation pursuant to Section 4 of this Agreement, Red Hat and any person or entity claiming by or through them, in consideration of the agreements set forth herein, and intending to be legally bound, hereby fully, finally and forever releases and discharges DataTern and Amphion and its present and former parents, subsidiaries, and affiliates, and their present and former directors, officers, shareholders, consultants, attorneys, and employees (solely in their capacities as such) (collectively, the "DataTern Releasees") from all actions, causes of action, suits, rights, debts, sums of money due, accounts, accountings, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, indemnities, liabilities, variances, trespasses, damages, judgments, extents, executions, claims and demands, of every nature and description whatsoever, in law, admiralty or equity, or as a result of arbitration, whether known or unknown, asserted or unasserted, that are related to any claim(s) or counterclaim(s) raised in the Litigation or that could have been raised in the Litigation, including without limitation forgiving and releasing any counterclaim that was raised in the Litigation, from the beginning of time to the Effective Date. The release in this paragraph: (1) is personal to the DataTern Releasees; (2) is not intended to benefit any third party not specifically identified in any way; and (3) does not apply to any of the rights and obligations set forth in this Agreement. Notwithstanding the foregoing, nothing in this Agreement prohibits or estops Red Hat from asserting any defense or allegation relative to any patent, including without limitation asserting a defense that any patent is invalid, not infringed, and/or unenforceable. Notwithstanding any statement in the Agreement, no release or covenant in this section (Section 6.3(b)) shall apply to FireStar in any way, in whole or in part.

#### **6.4 Release Acknowledgment**

Licensor and Licensor Related Entities acknowledge that this Agreement releases claims which they may presently have, but which are unknown and about which they may have no reason to know. To the extent the law of any state or jurisdiction limits or excludes releases, each party expressly disclaims and waives reliance on such law. The parties further acknowledge that they are relying on this express disclaimer and waiver as a material inducement to entering into this agreement. The Parties voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on releases. Specifically, each party hereby expressly waives any rights it may have under California Civil Code Section 1542 which provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

#### **6.5 Indemnification**

Licensor and Licensor Related Entities hereby agree to indemnify, defend and hold Red Hat and Red Hat Community Members ("Indemnified Parties") harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of or resulting from any allegation, claim, action, suit or proceeding occurring from the Effective Date through ten (10) years following the Effective Date by FireStar alleging patent infringement or any other cause of action under Title 35 of the United States Code in relation to any patent or patent application issued or pending on or before the Effective Date (and to any patent claiming priority thereto), with the exception of the cause of action asserted by FireStar as of May 31, 2008 in *FireStar Software, Inc., v. Red Hat, Inc., et al.*, 2-06cv-258 (E.D. Tex.). The Indemnified Parties shall have the sole right to conduct and control the defense of any such allegation, claim, action, suit, or proceeding by FireStar, including without limitation the sole right to decide litigation strategy, conduct any negotiations for its settlement or compromise, and to settle such action, except that any such settlement or compromise which will require Licensor or Licensor Related Entities to provide monetary compensation to FireStar in an amount exceeding the total payment referenced in Section 3 shall not be made without the consent of Licensor or Licensor Related Entities (which consent shall not be unreasonably withheld). Licensor and Licensor Related Entities shall be jointly and severally liable and responsible for the obligations of this section (Section 6.5).

### **7. CONFIDENTIALITY**

#### **7.1 Confidentiality Obligation**

This Agreement shall be kept confidential for thirty (30) days from the Effective Date. Afterwards, this Agreement shall not be confidential, except that Section 3, which concerns payment terms, shall remain confidential for the term of this Agreement. The Parties may



disclose the terms of the Agreement (except for Section 3) to the public at any time, however, including before thirty (30) days from the Effective Date.

## **7.2 Third Party Requests**

In the event that confidential terms of this Agreement are requested by a third party in a legal proceeding, by subpoena, document request, or otherwise, the Party receiving the request shall provide notice to the other Parties pursuant to the notice provisions of this Agreement in sufficient time to allow the other party the opportunity to intervene and limit or prevent the disclosure in that legal proceeding (and in no case less than ten (10) business days). In any case, the producing party shall make all reasonable efforts to secure the most limited possible disclosure of confidential information, including without limitation payment terms set forth in Section 3 of this Agreement in any legal proceeding, including protecting the confidentiality of confidential information through the use of a protective agreement or order.

## **8. NOTICE**

Any notice provided for under this Agreement shall be made in writing via overnight delivery. If the notice is directed towards Red Hat, the notice shall be addressed as follows:

General Counsel  
Red Hat, Inc.  
1801 Varsity Drive  
Raleigh, N.C. 27606

If the notice is directed towards DataTern, and/or Amphion, the notice shall be addressed as follows:

DataTern, Inc.  
The Energy Center  
719 West Front Street, Suite 170  
Tyler, Texas 75702  
Attn: Joseph Flicek

With a copy to:

Leonard Street & Deinard  
150 South Fifth Street  
Suite 2300  
Minneapolis, MN 55402  
Attn: Gabriel Holloway

The addresses for delivery of notice may be changed by any party by providing written notice in the manner set forth in this Agreement.

## **9. MISCELLANEOUS**

### **9.1 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to the Litigation and the Licensed Patents. It is intended to supersede and replace any prior or contemporaneous agreement of the parties with respect to the subject matter of this Agreement. No party has relied on any oral representations whatsoever in entering into this Agreement, and the only written representations which are or have been relied on are those expressly made in this writing. This Agreement may only be modified in a writing executed by all Parties thereto which specifically and expressly refers to this Agreement and to Section 9.1 of this Agreement. By way of example and not limitation, there is no representation made by any Licensor Related Entity that any patent is valid and/or enforceable and there is no acknowledgement by Red Hat that it infringes any patent.

### **9.2 Warranty of Authority**

Each Party warrants and represents that it has the full authority to undertake the obligations and grant the benefits provided for in this Agreement. Each Party further warrants and represents that none of the claims released in this Agreement have been assigned or transferred, and that each party has the full authority to grant, and is otherwise able to grant, the full and complete licenses, releases and covenants not to sue contained in this Agreement. The persons signing this Agreement warrant that they have full authority to sign and enter into this Agreement on behalf of their respective companies.

### **9.3 Assignment of Agreement**

This Agreement (including each of the rights and obligations in the Agreement) is non-transferable except as explicitly stated herein. Red Hat may assign or transfer this Agreement, including without limitation any and all rights, releases, and covenants not to sue under this Agreement, in connection with the sale, merger, or transfer of substantially all of or a portion of the business or assets to which the license, releases, and/or covenants not to sue herein relate; provided, however, that such rights, releases, and covenants will only extend to that portion of the combined business relating to the business of Red Hat immediately prior to such sale, merger, or transfer, and to the software of the combined business licensed under a free or open source license, which shall be deemed to be a Red Hat Product. Notwithstanding any statement in this section (Section 9.3), no entity (including without limitation the non-Red Hat portion of the combined business) shall be deprived of any license, release, or covenant that it might otherwise have under this Agreement or otherwise.

### **9.4 No Other Relationship Between Parties**

Nothing herein contained shall be construed to constitute the parties hereto as partners, joint venturers, or agents of the other.

#### **9.5 No Waiver**

No waiver by either party, whether expressed or implied, of any provision of this Agreement, or of any breach or default, shall constitute a continuing waiver of such provision or a waiver of any other provision of this Agreement.

#### **9.6 Legal Fees**

Each party will be responsible for the payment of its own legal fees, costs, and expenses in connection with the Litigation.

#### **9.7 Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed one and the same instrument.

#### **9.8 Neutral Construction**

This Agreement has been drafted with the cooperation and participation of all Parties and their attorneys. Accordingly, no part of this Agreement shall be construed in favor of or against any Party. The Parties each acknowledge, accept, warrant and represent that (i) they are sophisticated parties represented at all relevant times during the negotiation and execution of this Agreement by counsel of their choice, and that they have executed this Agreement with the consent and on the advice of such independent legal counsel, and (ii) they and their counsel have determined through independent investigation and robust, arm's-length negotiation that the terms of this Agreement shall exclusively embody and govern the subject matter of this Agreement.

#### **9.9 No Admission**

No Party admits any wrongdoing whatsoever. Both DataTern and Red Hat deny any allegation of liability made in the Litigation. Red Hat makes no admission regarding the Licensed Patents, including no admission that any Licensed Patent is infringed, valid, or enforceable.

#### **9.10 Consideration Not Related To Conveyance of Red Hat Licensed Product**

Neither the payment indicated in Section 3 of this Agreement nor any other consideration in this Agreement is based on the extent of Red Hat's or Red Hat Community Member's activity of conveying any Red Hat Licensed Product or other work.

#### **9.11 Severability**

If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this

Agreement will continue in full force and effect and be enforceable. The parties agree to negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent of such provision.

#### **9.12 Third Party Beneficiaries**

Other than with respect to Sections 5 and 6 (licenses, covenants, and releases), there are no third-party beneficiaries of this Agreement. Red Hat Community Members are intended third-party beneficiaries of this Agreement as to Sections 5 and 6. This Agreement may be amended by the Parties pursuant to Section 9.1 of this Agreement without the consent of the Third Party Beneficiaries, however. Status as a third-party beneficiary of the Agreement provides no independent right to a third-party beneficiary to assert a cause of action arising under the Agreement, including without limitation no independent right to assert a cause of action for breach of the Agreement; provided, however, that a Red Hat Community Member may sue any Party that breaches any obligation under Section 6.5 of the Agreement. Red Hat Community Members may assert their rights under Section 5 and 6 defensively, including without limitation as a defense against a cause of action for any alleged infringement of the Licensed Patents or Current and Future Intellectual Property.

#### **9.13 Choice of Law and Venue**

This Agreement shall be governed by and construed first in accordance with the federal laws of the United States to the extent subject matter jurisdiction exists, and second in accordance with the laws of the State of Delaware, exclusive of its choice of law rules. The Parties agree that the United States District Court for the Eastern District of Texas shall be the proper and exclusive jurisdiction for any action related to this Agreement. Each Party consents to the personal jurisdiction of that Court solely for such purposes. If, for some reason, that Court is found to lack jurisdiction, then the state courts of Texas shall be the proper and exclusive forum for any action related to this Agreement.

#### **9.14 Term**

The term of this Agreement shall commence upon the Effective Date and shall continue in perpetuity.

AGREED TO:

For Red Hat Inc.

By: Walter E. Cook

Title: VP Finance

Dated: June 6, 2008

\_\_\_\_\_  
For DataTern, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

For Amphion Innovations PLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

AGREED TO:

For Red Hat, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

For DataTern, Inc.

By: Joseph R. Elias

Title: CEO & President

Dated: 6-6-08

For Amphion Innovations PLC

By: Robert J. Bertoldi

Title: President & CFO

Dated: 6-6-08

# EXHIBIT

# A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FIRESTAR SOFTWARE, INC.,

Plaintiff,

v.

RED HAT, INC.,  
RED HAT MIDDLEWARE LLC,

Defendants

Civil Action No. 2:06-CV-258

(TJW)

**AFFIDAVIT OF JOSEPH R. FLICEK REGARDING  
OWNERSHIP OF INTELLECTUAL PROPERTY**

Before the undersigned officer duly authorized by law to administer oaths, personally appeared Joseph R. Flicek, who being duly sworn, deposes as follows:

1. My name is Joseph R. Flicek. I am over 18 years old and am competent to provide this affidavit. The facts set forth in this Affidavit are true and correct.
2. I hold the office of President and Chief Executive Officer within DataTern, Inc. and as such I have personal knowledge of the facts sworn to in this Affidavit.
3. I understand that DataTern, Inc., Amphion Innovations PLC, and Red Hat, Inc. have entered into a Settlement Agreement with an Effective Date of June 6, 2008.
4. All terms used in this Affidavit have the meaning ascribed to them in the Settlement Agreement. I understand that "Licensed Patents" includes, without limitation, U.S. Patent No. 6,101,502, U.S. Patent No. 5,937,402, U.S. Patent No. 5,826,268, U.S. Patent No. 5,542,078, and U.S. Patent No. 5,522,077, and any foreign counterpart or reexamination of these five patents.



5. On the Effective Date of the Settlement Agreement, DataTern, Inc. is the exclusive owner of all right, title, and interest in all of the Licensed Patents, including the sole and exclusive right to enforce each of the Licensed Patents and the sole and exclusive right to sue for past damages under each of the Licensed Patents.

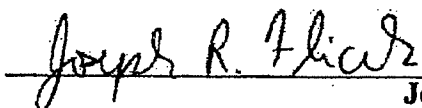
6. On the Effective Date of the Settlement Agreement, no other Entity (including without limitation any person or company) has any ownership rights in the Licensed Patents, and no other Entity has any right to enforce the Licensed Patents.

7. The documents produced to Red Hat, Inc. in the litigation titled *FireStar Software, Inc. v. Red Hat, Inc., et al.*, 2-06cv-258 (E.D. Tex.), and labeled FS356359-FS356517 and FS356273-FS356358 ("the Produced Documents") are true and accurate copies of agreements and assignments entered into by DataTern, Inc., Amphion Innovations PLC, and FireStar Software, Inc. The Produced Documents accurately reflect the ownership of the Licensed Patents on the Effective Date of the Settlement Agreement. The Produced Documents accurately reflect that DataTern, Inc. is the sole and exclusive owner of all right, title, and interest in the Licensed Patents (except for U.S. Patent No. 5,826,268, and U.S. Patent No. 5,542,078), including the sole and exclusive right to enforce the Licensed Patents and the sole and exclusive right to sue for past damages for the Licensed Patents.

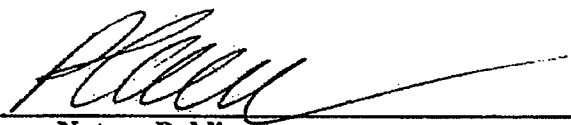
9. U.S. Patent No. 5,826,268 and U.S. Patent No. 5,542,078 have expired for failure to pay maintenance fees. I understand that they cannot be revived.

10. The Produced Documents constitute all of the documents of which I am aware that might transfer, assign, or impact any right, title, or interest of the Licensed Patents.

11. There has been no transaction that might transfer, assign, or impact any right, title, or interest in the Licensed Patents since the December 20, 2007 transaction reflected in the Produced Documents.

  
\_\_\_\_\_  
Joseph R. Flicek

On this 6 day of June, 2008, before me, a notary public, came **Joseph R. Flicek** to me known and known to be the individual described in and who executed the foregoing affidavit, and he duly acknowledged the same to be his free act and deed.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

PHI NGUYEN  
Notary Public, State of New York  
No. 02NG8140041  
Qualified in New York County  
Commission Expires 1/17/2010

# EXHIBIT

# B

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FIRESTAR SOFTWARE, INC.,

Plaintiff,

v.

RED HAT, INC.,  
RED HAT MIDDLEWARE LLC,

Defendants

Civil Action No. 2:06-CV-258

(TJW)

**AFFIDAVIT OF ROBERT J. BERTOLDI REGARDING  
OWNERSHIP OF INTELLECTUAL PROPERTY**

Before the undersigned officer duly authorized by law to administer oaths, personally appeared Robert J. Bertoldi, who being duly sworn, deposes as follows:

1. My name is Robert J. Bertoldi. I am over 18 years old and am competent to provide this affidavit. The facts set forth in this Affidavit are true and correct.

2. I hold the office of President and Chief Financial Officer within Amphion Innovations PLC and as such I have personal knowledge of the facts sworn to in this Affidavit.

3. I understand that DataTern, Inc., Amphion Innovations PLC, and Red Hat, Inc. have entered into a Settlement Agreement with an Effective Date of June 6, 2008.

4. All terms used in this Affidavit have the meaning ascribed to them in the Settlement Agreement. I understand that "Licensed Patents" includes, without limitation, U.S. Patent No. 6,101,502, U.S. Patent No. 5,937,402, U.S. Patent No. 5,826,268, U.S. Patent No. 5,542,078, and U.S. Patent No. 5,522,077, and any foreign counterpart or reexamination of these five patents.

5. On the Effective Date of the Settlement Agreement, DataTern, Inc. is the exclusive owner of all right, title, and interest in all of the Licensed Patents, including the sole and exclusive right to enforce each of the Licensed Patents and the sole and exclusive right to sue for past damages under each of the Licensed Patents.

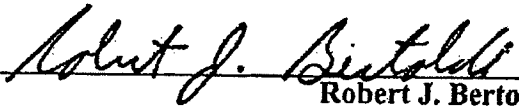
6. On the Effective Date of the Settlement Agreement, no other Entity (including without limitation any person or company) has any ownership rights in the Licensed Patents, and no other Entity has any right to enforce the Licensed Patents.

7. The documents produced to Red Hat, Inc. in the litigation titled *FireStar Software, Inc. v. Red Hat, Inc., et al.*, 2-06cv-258 (E.D. Tex.), and labeled FS356359-FS356517 and FS356273-FS356358 ( "the Produced Documents") are true and accurate copies of agreements and assignments entered into by DataTern, Inc., Amphion Innovations PLC, and FireStar Software, Inc. The Produced Documents accurately reflect the ownership of the Licensed Patents on the Effective Date of the Settlement Agreement. The Produced Documents accurately reflect that DataTern, Inc. is the sole and exclusive owner of all right, title, and interest in the Licensed Patents (except for U.S. Patent No. 5,826,268, and U.S. Patent No. 5,542,078), including the sole and exclusive right to enforce the Licensed Patents and the sole and exclusive right to sue for past damages for the Licensed Patents.


9. U.S. Patent No. 5,826,268 and U.S. Patent No. 5,542,078 have expired for failure to pay maintenance fees. I understand that they cannot be revived.

10. The Produced Documents constitute all of the documents of which I am aware that might transfer, assign, or impact any right, title, or interest of the Licensed Patents.

11. There has been no transaction that might transfer, assign, or impact any right, title, or interest in the Licensed Patents since the December 20, 2007 transaction reflected in the Produced Documents.

  
\_\_\_\_\_  
Robert J. Bertoldi

On this 6 day of June, 2008, before me, a notary public, came Robert J. Bertoldi to me known and known to be the individual described in and who executed the foregoing affidavit, and he duly acknowledged the same to be his free act and deed.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

PHI NGUYEN  
Notary Public, State of New York  
No. 02NG6140041  
Qualified in New York County  
Commission Expires 1/17/2010