

THE RED HAT ENTERPRISE AGREEMENT U.S. FEDERAL GOVERNMENT



This Red Hat Enterprise Agreement for US Government agencies, including its Appendix 1 and/or any other Appendices referenced in the Order, ("Agreement") is between the U.S Government agency placing the Business Partner order for Red Hat Products and Red Hat, Inc. ("Red Hat"). This Agreement addresses unique commercial considerations that apply to Red Hat Products, open source software, and our subscription business model taking into consideration the requirements of FAR Part 12, including the tailoring of provisions and clauses for the acquisition of commercial items in accordance with FAR 12.302. This Agreement shall be incorporated as part of a Business Partner order. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58 Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protection; and 41 U.S.C. 423 relating to procurement integrity.

1. The Mechanics of the Agreement

- 1.1 **Ordering.** The Agreement applies to Red Hat Products that you purchase or for which you acquire the right to access or use, including Subscriptions, Professional Services, Training Services, access to Red Hat Online Properties and other Red Hat offerings. You may order Red Hat Products from a Red Hat Business Partner using the Business Partner's ordering procedure.
- 1.2 **Structure.** The Agreement consists of three components: (1) the General Terms; (2) the Product Appendices (which may include end user license agreements) applicable to Your Products; and (3) if applicable, required terms included in the Business Partner order (e.g. Product quantities and period of performance). Certain terms are defined in the General Terms or in the Definitions section at the end of the General Terms. Any agreement that you enter into with the Business Partner is solely between you and the Business Partner and will not be binding on Red Hat.

2. Term

- 2.1 **Agreement Term.** The Agreement begins on the Effective Date and will terminate at the expiration of the Business Partner order.
- 2.2 **Services Term.** Unless otherwise agreed in writing, the Service that you order will start at the earlier of (a) your first use of the Service, (b) the date you purchased the Service, or (c) the start date contained in the Business Partner order, and, in each case, will end at the expiration of the Services Term unless sooner terminated as set forth below. Any Services that you order must be consumed during the applicable Services Term and any unused Services will expire.

3. Fees and Payment

- 3.1 **Reserved.**
- 3.2 **Basis of Fees.** Fees are determined by counting the Units associated with the applicable Red Hat Product. For example, Subscriptions may be priced based on the number of systems or nodes. You agree to order and pay for the appropriate type and quantity of Red Hat Products based on the Units you use or deploy. If during the term of the Agreement, the actual number of Units you use or deploy exceeds the number of Units you have ordered and paid for, you must promptly report to Red Hat and Business Partner the number of additional Units used or deployed and the date(s) on which they were used or deployed. Business Partner will invoice you and you agree to pay for the additional Units in accordance with your approved payment terms. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act.

4. Termination

- 4.1 **Termination.** Termination shall be governed by FAR 52.212-4(l) *Termination for the Government's convenience* or FAR 52.212-4(m) *Termination for cause*, as appropriate. Without prejudice to any other right or remedy of Red Hat and consistent with FAR 52.212-4(l) *Termination for the Government's convenience* or FAR 52.212-4(m) *Termination for cause*, in the event of termination, Client will pay for all Services provided up to the effective date of termination.
- 4.2 **Effect of Termination; Survival.** The termination or suspension of an individual Business Partner order will not terminate or suspend any other Business Partner order or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Business Partner order(s) and Services will terminate. If this Agreement or any Business Partner order is terminated, you agree to pay for all Units that you used or deployed or that were provided by Red Hat up to the effective date of termination. Sections 1.2, 3, 4.2, 5.2, 5.3, 9 (to the extent set forth therein), 10, 11 (to the extent set forth therein) and 12-15 will survive the termination of this Agreement.

5. Representations and Warranties

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

of such use. In particular, Red Hat Products are not specifically designed, manufactured or intended for use in (a) the design, planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft control, navigation, or communication systems (c) weapons systems, (d) direct life support systems (e) or other similar hazardous environments.

6. Reserved.

7. Red Hat Online Properties. You may be required to create an Account to access Red Hat Online Properties. You agree to provide accurate information when creating an Account. You may not access or create multiple accounts in a manner that is intended to avoid, or has the effect of avoiding, payment of Fees or circumventing thresholds or Unit limitations associated with your Account or otherwise in a manner intended to violate the Agreement. You are solely responsible for all activities in connection with your Account and will notify Red Hat promptly if you become aware of any unauthorized use of your Account. Your use of and access to the Red Hat Online Properties may also be subject to the Product Appendices applicable to the Red Hat Product.

8. Evaluations. Red Hat may offer Evaluation Subscriptions for evaluation and not for production purposes. Evaluation Subscriptions may be provided with limited or no support or subject to other limitations.

9. Confidentiality

9.1 Recipient (a) may not disclose Confidential Information of a Discloser to any third party unless Discloser approves the disclosure in writing or the disclosure is otherwise permitted under this Section 9; (b) will use the same degree of care to protect Confidential Information of Discloser as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; and (c) may disclose Confidential Information of the Discloser only to its employees, Affiliates, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation (or other professional obligation) to keep such information confidential using standards of confidentiality no less restrictive than those required by this Section 9. These obligations will continue for a period of two (2) years following initial disclosure of the particular Confidential Information. A Recipient may disclose Confidential Information if it is required to do so by applicable law, regulation or court order but, where legally permissible, will provide advance notice to the Discloser to enable the Discloser to seek a protective order or other similar protection if feasible. **"Recipient"** is the party receiving Confidential Information under this Agreement. **"Discloser"** is a party disclosing Confidential Information under this Agreement. Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. 552.

9.2 Information is not Confidential Information, if: (a) the information is or becomes publicly available other than as a result of the Recipient's breach of this Agreement, (b) the Recipient, at the time of disclosure, knows or possesses the information without obligation of confidentiality or thereafter obtains the information from a third party not under an obligation of confidentiality; (c) the Recipient independently develops the information without use of the Discloser's Confidential Information, (d) the information is generally known or easily developed by someone with ordinary skills in the business of the Recipient, or (e) the information is licensed under an Open Source License (as defined by the Open Source Initiative (<https://opensource.org/>)).

9.3 Confidential Information that is disclosed prior to termination of this Agreement will remain subject to this Agreement for the period set forth above. Upon written request of the Discloser, the Recipient will promptly return or destroy all Confidential Information, except for Confidential Information stored in routine back-up media not accessible during the ordinary course of business.

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

10.1 Client Information. If you provide Client Information in connection with your use of or access to Red Hat Products, you agree that, subject to Section 9, Red Hat, its Affiliates, and Suppliers may use such Client Information in connection with providing the Red Hat Products. You agree that your provision (and Red Hat's use) of Client Information under this Agreement does not require any additional consents or licenses, will be in compliance with applicable law, and will not violate any intellectual property, proprietary, privacy, or other right of any third party. As between Red Hat and you, you retain all other rights in and to Client Information.

10.2 Feedback. You may be asked to voluntarily provide Red Hat with Feedback in connection with Red Hat Products, but have no obligation to do so. If you choose to do so, Red Hat may use Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve Red Hat Products and other Red Hat offerings without attribution or compensation. You grant Red Hat a perpetual and irrevocable license to use all Feedback for any purpose. You agree to provide Feedback to Red Hat only in compliance with applicable laws and you represent that you have the authority to provide the Feedback and that Feedback will not include proprietary information of a third party.

10.3 Reservation of Rights. Red Hat grants to you only those rights expressly granted in the Agreement with respect to the Red Hat Products and reserves all other rights in and to the Red Hat Products (including all intellectual property rights). Red Hat may collect and use for any purpose aggregate anonymous benchmark data about your use of the Red Hat Products. Nothing in this Agreement will limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to you. The terms of Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

11. Review. During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) if Client security requirements are not met and upon Red Hat's request, Client will run a self-assessment with tools provided by and at the direction of Red Hat ("Self-Assessment") to verify Client's compliance with this Agreement and the Business Partner order. Within thirty (30) days from Red Hat's request, Client will finalize the Self-Assessment and provide Red Hat and Business Partner with the results in the form of a written report, including the number of underreported Units of Software or Services, certified by Client's contracting officer or an authorized contracting officer's technical representative ("Report"). In either event, after providing Notice or Report and receipt of an invoice, Client will make payment to Business Partner for the underreported Units of Software or Services. Notwithstanding the foregoing, nothing prevents the Client from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. 7107-7109).

12. Limitations

12.1 DISCLAIMER OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR ITS AFFILIATES, WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY DAMAGES FOR LOST OR DAMAGED DATA, LOST PROFITS, LOST SAVINGS OR BUSINESS OR SERVICE INTERRUPTION, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12.2 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RED HAT'S AND ITS AFFILIATES' TOTAL AND AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY RED HAT WITH RESPECT TO THE PARTICULAR RED HAT PRODUCT GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM; PROVIDED THAT IN NO EVENT WILL RED HAT'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES RECEIVED BY RED HAT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THIS LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHER LEGAL THEORY. THESE LIMITATIONS DO NOT LIMIT CLAIMS OF BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF RED HAT OR ITS AFFILIATES. THIS CLAUSE SHALL NOT IMPAIR THE US GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733.

13. Governing Law and Claims. The validity, interpretation and enforcement of this Agreement, including end user license agreements for Software, will be governed by and construed in accordance with the laws of the United States of America without giving effect to the conflict of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.212-4(d) *Disputes*, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state law or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

14. Miscellaneous

14.1 Export. Red Hat may supply you with Controlled Materials. You agree to comply with all applicable export and import laws or regulations, including any local laws in your jurisdiction concerning your right to import, export or use Controlled Materials and agree that Red Hat is not responsible for your compliance. In addition, you will not, and will not allow third parties under your control, (i) to provide Red Hat with Client Information that requires an export license under applicable export control laws or (ii) to process or store any Client Information that is subject to the ITAR. You acknowledge that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, vendors and/or subcontractors, which may be located worldwide.

14.2 Notices. Notices must be in English, in writing, and will be deemed given upon receipt, after being sent using a method that provides for positive confirmation of delivery to the address(es) or email address provided by you, including through an automated receipt or by electronic log. Any notice from you to Red Hat must include a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Email: legal-notices@redhat.com. Billing notices to you will be addressed to the billing contact designated by you.

14.3 Assignment. Assignments are subject to FAR 52.232-23 *Assignment of Claims* and FAR 42.12 *Novation and Change-of-Name Agreements*.

14.4 Waiver. A waiver by a party under this Agreement is only valid if in writing and signed by an authorized representative of such party. A delay or failure of a party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights.

14.5 Independent Contractors. The parties are independent contractors and nothing in this Agreement creates an employment, partnership or agency relationship between the parties or any Affiliate. Each party, including Client, is solely responsible for supervision, control and payment of its personnel. Red Hat may subcontract Services to third parties or Affiliates as long as (a) subcontractors agree to protect Confidential Information and (b) Red Hat remains responsible to you for performance of its obligations.

14.6 Third Party Beneficiaries. This Agreement is binding on the parties to this Agreement and, other than as expressly provided in the Agreement, nothing in this Agreement grants any other person or entity any right, benefit or remedy.

14.7 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212-4(f) Excusable delays.

14.8 Complete Agreement and Order of Precedence. The Agreement represents the complete agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and proposals, whether written or oral, with respect to such subject matter. Changes to the Agreement must be in accordance with FAR 52.212-4 (c) *Changes*. Any terms contained in any other documentation that you deliver to Red Hat, including any purchase order or other order-related document, are void and will not become part of the Agreement or otherwise bind the parties. If there is a conflict between the General Terms, the Product Appendices and/or a Business Partner order, the General Terms will control unless otherwise expressly provided in the Product Appendices and/or the Business Partner order.

14.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by email or electronic signature process and such signatures will be effective to bind the parties to the Agreement.

14.10 Severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect to the greatest extent permitted by law.

14.11 United States Government End Users. The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the Client acquires the Software and its documentation subject to the terms of this Agreement.

14.12 Section 508. Red Hat's Voluntary Product Accessibility Templates (VPATs) are set forth at: <https://access.redhat.com/articles/2918071#section-508-8>. Red Hat Products are provided "as is" and any representations concerning accessibility features are made only to the extent documented

within the VPAT, inclusive of any deviations, notes, and other comments within the VPAT. If no VPAT is available for a particular Red Hat Product, then Red Hat makes no representations regarding the accessibility of the Red Hat Product. Any statement regarding the accessibility features of Red Hat Products made elsewhere, whether pursuant to Section 508 or any other accessibility standards, is invalid and unenforceable.

15. Definitions

- 15.1 "Account"** means an account that enables you to access and use Red Hat Online Properties and may include a user name and password or other means of access designated by Red Hat.
- 15.2 "Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 15.3 "Business Partner"** means a cloud provider, distributor, reseller, OEM or other third party authorized to resell or distribute Red Hat Products.
- 15.4 "Business Partner order"** means a commercial item Client order for a Red Hat Product placed through a Business Partner.
- 15.5 "Client" or "you"** means the US Government entity acquiring the right to use or access the Red Hat Products that placed a Business Partner order and which is a party to this Agreement. Unless otherwise expressly indicated herein or in the Business Partner order, Client only includes Client's subordinate affiliates and does not include Client's parent affiliates, superior commands, or any other entities.
- 15.6 "Client Information"** means any data, information, software or other materials that you provide to Red Hat under the Agreement.
- 15.7 "Confidential Information"** means information disclosed by the Discloser to the Recipient during the term of the Agreement that (i) is marked confidential; (ii) if disclosed orally, is clearly described as confidential at the time of disclosure and is subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure; or (iii) is of a nature that the Recipient knows is confidential to the Discloser or should reasonably be expected to know is confidential.
- 15.8 "Controlled Materials"** mean software or technical information that is subject to the United States Export Administration Regulation.
- 15.9 "Effective Date"** means earliest of (a) the date of the last signature on this Agreement or the Business Partner order, (b) your online acceptance of the Agreement, and (c) when you first receive access to a Red Hat Product.
- 15.10 "Evaluation Subscriptions"** means Red Hat Products offered without charge solely for evaluation and not for production purposes, including offerings described as "evaluation", "preview" or "beta".
- 15.11 "Feedback"** means any ideas, suggestions, proposals or other feedback you may provide regarding Red Hat Products.
- 15.12 "Fees"** are the amounts to be paid by Client to a Business Partner for the Red Hat Products.
- 15.13 "General Terms"** means the terms contained in Sections 1 – 15 of this document.
- 15.14 "Online Subscriptions"** means Subscriptions to one of the Red Hat Online Properties.
- 15.15 RESERVED**
- 15.16 "Product Appendices"** means the Red Hat Product Appendices set forth here: <https://www.redhat.com/en/about/agreements#prodapps>, or (b) for Professional Services, that are incorporated into an applicable statement of work.
- 15.17 "Professional Services"** means consulting services provided by Red Hat.
- 15.18 "Red Hat Online Properties"** mean Red Hat websites, portals and hosted Services included in, or provided in connection with, Red Hat Products.
- 15.19 "Red Hat Products"** means Software, Services, Subscriptions and other Red Hat branded offerings made available by Red Hat.
- 15.20 "Service(s)"** means Red Hat branded services offered as Subscriptions, Professional Services, Training Services, access to Red Hat Online Properties or other services offered by Red Hat.
- 15.21 "Services Term"** means the period during which you are entitled by Red Hat to use, receive access or consume a particular Red Hat Product pursuant to a Business Partner order.
- 15.22 "Software"** means Red Hat branded software that is included in Red Hat Product offerings.
- 15.23 "Subscription"** means a time bound Red Hat Services offering, other than Professional Services.
- 15.24 "Supplier"** means a third party that provides service(s) to Red Hat in order for Red Hat to offer Services to its customers and/or Business Partners.
- 15.25 RESERVED**
- 15.26 "Training Services"** means access to Red Hat training courses, including online courses or courses provided at a site as may be agreed by the parties.
- 15.27 "Unit"** means the basis upon which Fees are determined for Red Hat Products as set forth in Product Appendices or a Business Partner order.
- 15.28 "Your Products"** means the Red Hat Products that you have purchased, licensed, or otherwise acquired the right to access or use.