

# THE RED HAT ENTERPRISE AGREEMENT NEW ZEALAND



PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM RED HAT. BY USING RED HAT SOFTWARE OR SERVICES, CLIENT SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. 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 CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE RED HAT SOFTWARE OR SERVICES. THIS AGREEMENT INCORPORATES THE PRODUCT APPENDICES REFERENCED BY URL IN THIS AGREEMENT.

The Agreement (as further described in Section 1.2 below) is between the Client and Red Hat New Zealand Limited (“Red Hat”) and addresses unique commercial considerations that apply to Red Hat Products, open source software, and Red Hat’s subscription business model.

## 1. The Mechanics of the Agreement

- 1.1 Ordering.** The Agreement applies to Red Hat Products that you purchase or otherwise acquire the right to access or use, including Subscriptions, Professional Services, Training Services Online Services and other Red Hat offerings, whether obtained directly from Red Hat or from a Business Partner. You may order Red Hat Products directly from Red Hat by submitting an Order Form or from a Business Partner using the Business Partner’s ordering procedure. Affiliates of either party may conduct business under the Agreement by signing an Order Form or other document that references these General Terms and may include additional terms relating to pricing, local requirements or other transaction details. Specific pricing established in an Order Form does not extend globally unless specifically agreed by the parties.
- 1.2 Structure.** The Agreement consists of three components (a) these General Terms; (b) the Product Appendices (which may include end user license agreements and supported life cycles) applicable to Your Products; and (c) if applicable, all Order Forms. Certain terms are defined in the Definitions section at the end of the General Terms. If you order Red Hat Products from a Business Partner, 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 (except to the extent that your agreement with a Business Partner references this Agreement).

## 2. Term

- 2.1 Agreement Term.** The Agreement begins on the Effective Date and continues until it is terminated as set forth below.
- 2.2 Services Term.** Unless otherwise agreed in writing, a Service that you order will start at the earliest of (a) your first use of the Service; (b) the date you purchased the Service; or (c) the start date contained in the Order Form, and will end at the expiration of the Services Term unless sooner terminated as set forth below. Subscriptions automatically renew for successive terms of the same duration as the original Services Term, unless either party gives written notice to the other party of its intention not to renew at least thirty (30) days before the expiration of the applicable Services Term. 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 Payment of Fees.** Section 3.1 applies only to Red Hat Products ordered directly from Red Hat. The payment terms applicable to Red Hat Products purchased from a Business Partner are included in your Business Partner agreement.
- a) Unless otherwise set forth in an Order Form, you agree to pay Fees (1) for Professional Services and Training Services at the time of your order; and (2) for all other Red Hat Products, no later than 30 days after the date of Red Hat’s invoice. Credit is subject to Red Hat’s approval and Red Hat may change credit terms.
- b) Fees do not include reasonable out-of-pocket expenses, shipping costs, Taxes, or service provider fees (such as payment processor or vendor management) and you agree to pay or reimburse Red Hat for such amounts. You must pay the Fees and expenses without withholding or deduction. If you are required to withhold or deduct any Taxes from the Fees or expenses, then you agree to increase the amount payable to Red Hat by the amount of such Taxes so that Red Hat receives the full amount of all Fees and expenses. All Fees, expenses and other amounts paid under the Agreement are non-refundable. The Software Subscription Fees are for Services; there are no Fees associated with the Software licenses.
- c) If you are purchasing by credit card, then you (1) authorize Red Hat to charge your credit card for all amounts due; and (2) agree to provide updated credit card information to Red Hat as needed to pay the Fees or other amounts owed.
- 3.2 Basis of Fees.** Fees are determined by counting the Units associated with the applicable Red Hat Product, as described in the Product Appendix and/or Order Form. For example, Subscriptions may be priced based on the number of physical or virtual 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 number of Units you use or deploy exceeds the number of Units you have ordered and paid for, you will promptly report to Red Hat or a Business Partner the number of additional Units used or deployed and the date(s) on which they were used or deployed. Red Hat (or the Business Partner) will invoice you and you agree to pay for the additional Units. If you purchase Red Hat Products through a marketplace, you agree that information relating to your use of Red Hat Products may be shared with Red Hat Affiliates (including IBM) for billing and metering purposes.
- 3.3 Taxes.** Unless otherwise defined in the Agreement, capitalized expressions in this Section 3.3 bear the same meaning as those terms in the *Goods and Services Tax Act 1985*. Any amount payable under the Agreement, including all Fees, is exclusive of Taxes. You will pay Red Hat an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by Red Hat. Specifically in respect of GST as defined in the Act, if a party makes a Taxable Supply in connection with this Agreement for a Consideration In Money, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient’s obligation to pay GST is subject to a valid Tax Invoice being delivered.

## 4. Termination

- 4.1 Termination for Cause.** Either party may terminate this Agreement (in whole or with respect to any Order Form or Red Hat Product, whether obtained from Red Hat or a Business Partner) by notice to the other party if (a) the other party materially breaches this Agreement, and does not cure the breach within thirty (30) days after written notice (except in the case of a breach of Section 8 in which case no cure period will apply); or (b) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Red Hat may, at its option and without limiting its other remedies, suspend (rather than terminate) any Services if you breach the Agreement (including with respect to payment of Fees) until the breach is remedied.
- 4.2 Termination for Convenience.** Either party may terminate the Agreement by notice to the other party at any time if all Services Terms have expired.
- 4.3 Effect of Termination; Survival.** The termination or suspension of an individual Order Form, Business Partner order, or any Red Hat Products purchased from Red Hat or a Business Partner will not terminate or suspend any other Order Form, Business Partner order, Red Hat Product or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order Form(s), Business Partner orders and Services will terminate. If this Agreement, any Order Form or 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, 4.3, 5.2, 5.3, 8 (to the extent set forth therein), 9, 10 (to the extent set forth therein) and 11-14 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. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RED HAT AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE RED HAT PRODUCTS WILL BE UNINTERRUPTED, SECURE, ERROR FREE, ACCURATE, COMPLETE, 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 COMMERCIALY 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; or (e) or other similar hazardous environments.
- 6. Open Source Assurance.** Purchases of Subscriptions may entitle you to participate in Red Hat's Open Source Assurance Program, which is described at <http://www.redhat.com/rhel/details/assurance/> and provides certain protections in the event of a third party infringement claim. The terms for this optional program are subject to the agreement at [http://www.redhat.com/legal/open\\_source\\_assurance\\_agreement.html](http://www.redhat.com/legal/open_source_assurance_agreement.html).

- 7. Red Hat Online Properties.** You may be required to create an account to access Red Hat websites and portals. You will provide accurate information when creating an account. You will not access or create multiple accounts in a manner that is (a) intended to avoid, or has the effect of avoiding, payment of Fees; (b) circumventing thresholds or Unit limitations associated with your account; or (c) 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. Your use and access may also be subject to the Product Appendices applicable to the Red Hat Product.

## 8. Confidentiality

- 8.1** Recipient (a) will 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 8; (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 8. 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 and feasible, will provide advance notice to the Discloser to enable the Discloser to seek a protective order or other similar protection.
- 8.2** 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/>)).

**8.3** 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.

## **9. Client Information, Feedback, Reservation of Rights, & Review**

**9.1 Client Information.** If you provide Client Information in connection with your use of or access to Red Hat Products, Red Hat, its Affiliates, and Suppliers may use such Client Information in connection with providing the Red Hat Products (subject to Section 8 with respect to disclosure of Client Information that constitutes Confidential Information). You represent and warrant that your provision (and Red Hat's use) of Client Information under this Agreement will not require any additional consents or licenses, will comply 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, subject to the rights granted in this Section, you retain all of your rights in and to Client Information. You acknowledge that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners or Suppliers, which may be located worldwide.

**9.2 Data Protection.** For the purposes of this Agreement, "**Data Protection Laws**" means (i) New Zealand Privacy Act of 2020 and any regulations and guidelines made thereunder, as amended from time to time; and (ii) all other applicable laws and regulations relating to or impacting on the processing of Personal Data and privacy enacted in the countries where the Personal Data originated from and/or is processed, as amended from time to time. "**Personal Data**" shall have the meaning given to "Personal Information" under the applicable Data Protection Law. Except with respect to Online Services covered by Product Appendix 4, you agree not to provide to Red Hat Personal Data, provided that you may disclose business contact information or similar Personal Data, relating to you or of your personnel to Red Hat to the extent required to enable Red Hat to perform its obligations under this Agreement and/or to provide you with Red Hat's products and/or services (the "**Purpose**"). In disclosing such Personal Data to Red Hat, you agree and undertake: (a) to comply with any applicable obligations under the Data Protection Laws at all times; (b) not to, by any act or omission in connection with this Agreement, place Red Hat in breach of any Data Protection Laws; (c) to ensure that all instructions provided to the Red Hat in relation to the collection, use and disclosure of Personal Data comply with Data Protection Laws; (d) to ensure that any such Personal Data provided to Red Hat is accurate and complete, and that you will inform Red Hat of any updates or changes to the same; (e) to ensure that, prior to the disclosure of such Personal Data, you have: (i) notified the relevant individual to whom the Personal Data relates that his/her Personal Data will be disclosed to Red Hat and of the Purpose relating thereto; and (ii) obtained the consent of the relevant individual for the disclosure of his/her Personal Data to Red Hat and for Red Hat to collect and use such Personal Data for the Purpose, and to disclose the Personal Data to Red Hat's third party service providers, in any jurisdiction, for the Purpose; and (f) to ensure that, prior to the provision of such Personal Data to Red Hat, you have fulfilled all requirements and completed all necessary steps for export of data in compliance with the Data Protection Laws.

**9.3 Feedback.** You may 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.

**9.4 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 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. Nothing will 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 Section 8 of this Agreement.

**10. Review.** While the Agreement is in effect and for one (1) year thereafter, Red Hat or its designee, acting in accordance with Section 8, may inspect your facilities and records to verify your compliance with this Agreement. You agree to (a) respond promptly to requests for information, documents and/or records; (b) grant appropriate access for on-site visits in order to verify your compliance; and (c) reasonably cooperate in connection with any such verification. Red Hat will provide at least ten (10) days prior written notice for any on-site visits, and will conduct on-site visits during regular business hours in a manner that reasonably minimizes interference with your business. If Red Hat notifies you of any noncompliance or underpayment, then you will resolve the non-compliance and/or underpayment within fifteen (15) days from the date of notice. If the underpayment exceeds five percent (5%), then you will also reimburse Red Hat for the cost of the inspection.

## **11. Limitations**

**11.1 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.

**11.2 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 ARISING OUT OF OR RELATING TO 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(S) 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 AND AGGREGATE 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 BASED ON 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.

**11.3 Exclusion of the Consumer Guarantees Act and parts of the Fair Trading Act**

- a) The parties are both in trade, and both parties acknowledge, and you warrant to Red Hat, that the goods and services supplied under this Agreement are supplied and acquired in trade within the meaning of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.
- b) The parties agree that the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to this Agreement and that it is fair and reasonable to exclude their application.
- c) For the purposes of this Section 12 you acknowledge that you have had a reasonable opportunity to review this Agreement, discuss its terms with Red Hat, and receive advice from your legal advisor, if you wished to do so.

**12. Governing Law and Claims.** The Agreement, and any claim, controversy or dispute arising out of or related to the Agreement, are governed by and construed in accordance with the laws of New Zealand without giving effect to any conflicts of laws provision. To the extent permissible, the United Nations Convention on Contracts for the International Sale of Goods will not apply, even if adopted as part of the laws of New Zealand. Any claim, suit, action or proceeding arising out of or relating to this Agreement or its subject matter will be brought exclusively in the courts of New Zealand, and each party irrevocably submits to the exclusive jurisdiction and venue. No claim or action, regardless of form, arising out of or related to the Agreement may be brought by either party more than one (1) year after the party first became aware, or reasonably should have been aware, of the basis for the claim. To the fullest extent permitted, each party waives the right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

**13. Miscellaneous**

**13.1 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. Without limiting the foregoing, you agree that you will not export, disclose, re-export or transfer the Controlled Materials, directly or indirectly, to (a) any U.S. embargoed destination; (b) any party who you know or have 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, unmanned air vehicle systems, or any other restricted end-use; or (c) anyone on (or controlled by a person or entity on) a U.S. government restricted persons list, including those who have been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. You will not provide Red Hat with any data or engage Red Hat in any activity subject to the International Traffic in Arms Regulations (ITAR). In addition, you will not, and will not allow third parties under your control to use the Red Hat Products and/or Services for any activity subject to the ITAR. Red Hat may terminate the Agreement and/or the applicable Order Form without liability to you if (a) you breach (or Red Hat believes you have breached) this paragraph or the export provisions of an end user license agreement for any Software; or (b) Red Hat is prohibited by law or otherwise restricted from providing Red Hat Products to you.

**13.2 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, including through an automated receipt or by electronic log, to the address(es) or email address provided by you. Any notice from you to Red Hat must include a copy sent to: Red Hat, LLC, Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601, United States; Email: legal-notices@redhat.com. Billing notices to you will be addressed to the billing contact designated by you.

**13.3 Assignment.** Upon written notice, either party may assign this Agreement to (a) an Affiliate; or (b) a successor or acquirer pursuant to a merger or sale of all or substantially all of such party's assets if, in each case, the assignee's financial condition and creditworthiness are deemed sufficient by the non-assigning party and the assignment will not affect the non-assigning party's obligations under the Agreement. Any other assignment will be deemed void and ineffective without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and will insure to the benefit of the parties and their respective successors and permitted assigns.

**13.4 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.

**13.5 Independent Contractors.** The parties are independent contractors and nothing in the Agreement creates an employment, partnership or agency relationship between the parties or any Affiliate. Each party 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.

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

**13.7 Force Majeure.** Neither party is responsible for non-performance or delay in performance of its obligations (other than payment of Fees) due to causes beyond its reasonable control.

**13.8 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. Any terms contained in any other documentation that you deliver to Red Hat, including any purchase order or other order-related document (other than an Order Form), 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 an Order Form, the General Terms will control unless otherwise expressly provided in the Product Appendices or Order Form.

**13.9 Counterparts.** The 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.

**13.10 Severable.** If any provision of the 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. Definitions**

**14.1 “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.

**14.2 “Agreement”** has the meaning set forth in Section 1.2.

**14.3 “Business Partner”** means a cloud provider, distributor, reseller, OEM or other third party authorized to resell or distribute Red Hat Products.

**14.4 “Business Partner order”** means an order for a Red Hat Product placed through a Business Partner.

**14.5 “Client” or “you”** means the person or entity acquiring the right to use or access the Red Hat Products and which is a party to this Agreement.

**14.6 “Client Information”** means any data, information, software or other materials that you provide to Red Hat under the Agreement.

**14.7 “Confidential Information”** means information disclosed by the Discloser to the Recipient during the term of the Agreement that (a) is marked confidential; (b) 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 (c) is of a nature that the Recipient knows is confidential to the Discloser or should reasonably be expected to know is confidential.

**14.8 “Controlled Materials”** means software or technical information that is subject to the United States Export Administration Regulations.

**14.9 “Discloser”** is a party disclosing Confidential Information under this Agreement.

**14.10 “Effective Date”** means earliest of (a) the date of the last signature on this Agreement or an Order Form; (b) your online acceptance of the Agreement; and (c) when you first receive access to a Red Hat Product.

**14.11 “Feedback”** means any ideas, suggestions, proposals or other feedback you may provide regarding Red Hat Products.

**14.12 “Fees”** means the amounts paid or to be paid by Client to Red Hat (directly or through a Business Partner) for the Red Hat Products.

**14.13 “General Terms”** means the terms contained in Sections 1 – 14 of this document.

**14.14 “Online Services”** means Red Hat branded cloud or hosted services offerings.

**14.15 “Order Form”** means Red Hat’s standard ordering document(s) or online purchasing form used to order Red Hat Products.

**14.16 “Product Appendices”** means (a) the Red Hat Product Appendices set forth here: <https://www.redhat.com/en/about/agreements#prodapps> as such appendices may be updated by Red Hat from time to time; or (b) for Professional Services, that are incorporated into an applicable statement of work.

**14.17 “Professional Services”** means consulting services provided by Red Hat.

**14.18 “Recipient”** is the party receiving Confidential Information under this Agreement.

**14.19 “Red Hat Products”** means Software, Services, and other Red Hat branded offerings made available by Red Hat.

**14.20 “Service(s)”** means Red Hat branded services offered as Subscriptions, Professional Services, Training Services, Online Services or other services offered by Red Hat.

**14.21 “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 an Order Form or Business Partner order.

**14.22 “Software”** means Red Hat branded software that is included in Red Hat Product offerings.

**14.23 “Subscription”** means a time bound Red Hat Product offering.

**14.24 “Supplier”** means a third party that provides services to Red Hat in order for Red Hat to offer Services to its customers and/or Business Partners.

**14.25 “Taxes”** means any form of taxation of whatever nature and by whatever authority imposed, including any interest, surcharges or penalties, arising from or relating to this Agreement or any Red Hat Products, other than taxes based on the net income of Red Hat.

**14.26 “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.

**14.27 “Unit”** means the basis upon which Fees are determined for Red Hat Products as set forth in Product Appendices or an Order Form.

**14.28 “Your Products”** means the Red Hat Products that you have purchased, licensed, or otherwise acquired the right to access or use.