

PLEASE READ THESE TERMS CAREFULLY BEFORE AGREEING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS OPEN SOURCE ASSURANCE AGREEMENT ON BEHALF OF THE ENTITY. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY CONTINUE TO USE THE COVERED SOFTWARE TO THE EXTENT PERMITTED BY OTHER AGREEMENTS WITH RED HAT BUT YOU WILL NOT BE COVERED UNDER RED HAT'S OPEN SOURCE ASSURANCE PROGRAM AS PROVIDED HEREIN.

This Open Source Assurance Agreement (“**OSA Agreement**”) is between Client and Red Hat, Inc., a Delaware corporation, with a principal place of business at 100 East Davie Street, Raleigh, North Carolina 27601, U.S.A. (“**Red Hat**”). The effective date of this OSA Agreement is the date that Client, or the authorized individual acting on its behalf, accepted this OSA Agreement (“**Effective Date**”). When we use a capitalized term without defining it in this OSA Agreement, the term has the meaning defined in the Red Hat Enterprise Agreement, Product Appendices and Order Form, if applicable (together, the “**Enterprise Agreement**”). “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 OSA Agreement.

You have obtained Red Hat Products that contain or run the Covered Software (defined below) from Red Hat or a Red Hat Business Partner under your Enterprise Agreement with Red Hat, and are interested in additional assurances for such Covered Software as described below.

By accepting this OSA Agreement, you agree to the following:

1. Open Source Assurance Program

If a third party asserts a legal claim against you alleging that your use of the Covered Software infringes or misappropriates the third party's intellectual property rights (a “**Claim**”) and you have been and continue to be in compliance with the terms of the Enterprise Agreement, then Red Hat will (a) defend you against the Claim and (b) pay costs, damages and attorneys' fees that are attributable to your use of the Covered Software and included in a final judgment against you or in a final settlement approved by Red Hat.

Red Hat may, at any time, at its sole expense and option: (i) obtain the rights necessary for you to continue to use the Covered Software; (ii) modify the Covered Software; or (iii) provide code of similar functionality to replace the portion of the Covered Software that is the subject of the Claim (collectively (i), (ii) and (iii) are the “**IP Resolutions**”); provided that, if none of the IP Resolutions are available on a basis that Red Hat finds commercially reasonable, then Red Hat may terminate subscriptions or access to the Red Hat Product that is the subject of the Claim without further liability under this OSA Agreement for your further use of the Covered Software, and, if you return the Covered Software that is subject to the Claim, Red Hat will refund pro-rata any prepaid fees with respect to the Red Hat Product with the Covered Software that is subject to the Claim.

As conditions precedent to Red Hat's obligations under this OSA Agreement, you must: (i) be current in the payment of all applicable fees at the time of the Claim; (ii) notify Red Hat in writing no later than ten (10) days following receipt of any Claim unless Red Hat is not prejudiced by any delay; (iii) grant Red Hat the right to control and conduct the defense of the Claim with counsel of Red Hat's choice and settle such Claim at Red Hat's sole discretion; and (iv) cooperate with Red Hat in the management and/or defense of the Claim.

Red Hat will have no obligations with regard to any Claim that is based on: (i) a modification of Covered Software not made by or at the written direction of Red Hat; (ii) Red Hat's compliance with designs, specifications or instructions provided by you; (iii) use of the Covered Software in combination with a product, process, step, structure, data, or business method not provided by Red Hat, if the infringement or misappropriation would not have occurred without the combined use; (iv) facts or circumstances constituting a breach of the Enterprise Agreement by you; (v) use of any release of the Covered Software if the infringement or misappropriation identified in the Claim would not have occurred or would have been less likely through use of a more recent release of the Covered Software or after notice by Red Hat (whether before or during a Claim) to discontinue use of all or a portion of the Covered Software; or (vi) any use of the Covered Software by you other than for your own internal use. If the Claim includes allegation(s) against you regarding matters other than the Covered Software, you are responsible for the proportional share of fees and costs in defending such allegations and Red Hat will only be responsible for the proportional share of fees and costs attributable to the Covered Software.

2. Covered Software

“**Covered Software**” is Red Hat branded software that is included in a Red Hat Product offering for which you have an active paid subscription at the time of a Claim. Covered Software does not include: (i) third party products or offerings; (ii) products, packages or code not provided or supported as part of a Red Hat Product, such as Fedora, Centos Stream or WildFly.org; (iii) software or services provided at no charge or for evaluation, preview or demonstration purposes; or (iv) any programs listed or described at <https://www.redhat.com/en/about/third-party-end-user-agreements>.

3. Limitations on Liability

Red Hat will not be obligated to defend or pay any amounts in connection with a Claim related to any period of time during which you do not have active, paid subscriptions to Red Hat Products with Covered Software that is the subject of the Claim. Red Hat will have no obligation to you under this OSA Agreement if, as of the Effective Date, you have received notice of allegations of infringement or misappropriation, are engaged in litigation, or have received an invitation to license, in each case concerning the subject matter of what would otherwise be a Claim under this OSA Agreement or with respect to a product substantially similar to the Covered Software.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, RED HAT'S AGGREGATE AND CUMULATIVE LIABILITY UNDER BOTH THIS OSA AGREEMENT AND THE ENTERPRISE AGREEMENT SHALL BE SUBJECT TO THE LIMITATIONS OF LIABILITY CONTAINED IN THE ENTERPRISE AGREEMENT IN EFFECT AS OF THE DATE OF A CLAIM; PROVIDED THAT IN NO EVENT WILL RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO YOU EXCEED THE TOTAL FEES PAID TO RED HAT WITH RESPECT TO YOUR PURCHASES OF RED HAT PRODUCTS (DIRECTLY OR INDIRECTLY FROM A RED HAT BUSINESS PARTNER) DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING YOUR NOTICE TO RED HAT OF THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS OSA AGREEMENT OR THE ENTERPRISE AGREEMENT, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO YOU OR YOUR AFFILIATES FOR ANY INCIDENTAL,

CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE FORESEEABLE.

This OSA Agreement sets forth your exclusive remedies and Red Hat's sole obligations for claims arising from or related to intellectual property rights and supersedes any other Red Hat obligation related to the subject matter. If any other applicable indemnity coverage or remedy is available to you related to intellectual property infringement, you agree that the total of all benefits payable under all such provisions will not exceed the total damages, costs, and expenses incurred by you, and that Red Hat will pay only its proportional share, subject to the limitations in this Section 3. Red Hat will have no obligations under this OSA Agreement with respect to any legal action that does not or no longer includes a Claim for which Red Hat is responsible under this OSA Agreement.

4. Term and Survival

The term of this OSA Agreement will begin on the Effective Date and will continue for such period as you have active, paid Red Hat subscriptions for Red Hat Products. If Red Hat updates or amends its Open Source Assurance program, (i) this OSA Agreement will apply only until the end of the then current subscription period (or one month later for on-demand subscriptions) and (ii) you will have the opportunity, if you so elect, to participate in the updated or amended OSA Agreement for any additional subscriptions or renewal that are purchased on or after the date Red Hat updates or amends the Open Source Assurance program. If this OSA Agreement is terminated for any reason, Sections 2 - 6 will survive termination.

5. Governing Law

This OSA Agreement, and any claim, controversy or dispute related to the OSA Agreement, are governed by and construed in accordance with the governing laws of the state of New York without giving effect to any conflicts of laws provisions. To the extent permissible, the United Nations Convention on Contracts for the International Sale of Goods will not apply, even if adopted. 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 OSA Agreement.

6. Miscellaneous

(i) 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 or email address indicated on your Red Hat account registration form or to Red Hat at: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601, U.S.A. or via email: legal-notices@redhat.com. (ii) This OSA Agreement is binding on the parties to this OSA Agreement, and nothing in this OSA Agreement grants any other person or entity any right, benefit or remedy. (iii) This OSA Agreement is assignable by either party only with the other party's prior written consent; provided that Red Hat may assign this OSA Agreement to an affiliate or pursuant to a merger or a sale of all or substantially all of its assets or stock without the prior approval. (iv) The delay or failure of Red Hat to exercise any rights under this OSA Agreement will not constitute a waiver or forfeiture of such rights. A waiver by a party under this OSA Agreement is only valid if in writing and signed by an authorized representative of the party. If any provision of this OSA Agreement is held invalid or unenforceable for any reason, this OSA Agreement will be deemed invalid in its entirety.