

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE AGREEING TO THESE TERMS. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS 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 ("**Agreement**") is between Client (defined below) 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**"). Client is the entity represented by the authorized individual who accepts this Agreement, under an active Support Agreement (defined below) ("**Client**"). The effective date of this Agreement is the date that the authorized individual accepted this Agreement on behalf of Client ("**Effective Date**").

Client is obtaining or has previously obtained from Red Hat, a Red Hat affiliate or a third party Red Hat business partner certain Covered Software (defined in Section 4 below) and associated Red Hat maintenance and/or support services ("**Red Hat Services**") under an agreement(s) between Client and Red Hat and/or a Red Hat affiliate ("**Support Agreement(s)**"). Client desires that Red Hat provide additional intellectual property-related assurances for Covered Software as described in Section 1 below. Client accepts these assurances on the terms outlined in this Agreement and agrees, in consideration of these assurances, that these terms are fair and reasonable and that if Client does not want to agree to these terms, Client has the option to use Covered Software and receive Red Hat Services under the Support Agreement(s) without agreeing to this Agreement.

1. Open Source Assurance Program

If an unaffiliated third party initiates a legal action, suit or proceeding against Client that includes an allegation that Client's use of Covered Software directly infringes the third party's copyrights, patents or trademarks, or misappropriates the third party's trade secret rights (such legal action, a "**Claim**") and Client has complied with and remains in compliance with the terms of this Agreement and the Support Agreement(s), then, subject to the terms in this Agreement, Red Hat will (i) defend Client against the Claim and (ii) pay costs, damages and attorneys' fees that are included in a final judgment against Client (without right of appeal) or in a settlement approved by Red Hat, that are attributable to Client's use of the Covered Software with respect to such alleged or actual infringement.

In addition, Client agrees that Red Hat may, at any time, at its sole expense and option: (i) obtain the rights necessary for Client to continue to use the Covered Software consistent with the Support Agreement(s); (ii) modify the Covered Software so that it is non-infringing; or (iii) provide non-infringing code of similar functionality to replace the allegedly infringing portion of the Covered Software (subsections (i), (ii) and (iii) are the "**IP Resolutions**"); provided that, after a Claim, if none of the IP Resolutions is available on a basis that Red Hat finds commercially reasonable, then Red Hat may terminate the Support Agreement(s) without further liability under this Agreement for Client's further use of the Covered Software, and, if Client returns the Covered Software that is subject to the Claim, Red Hat will refund the remaining pro-rata prepaid subscription fees related to such Covered Software.

As conditions precedent to Red Hat's obligations to Client under this Section 1, Client must (i) be current in the payment of all applicable fees (including Support Agreement(s)) at the time of the Claim; (ii) notify Red Hat promptly, but no later than ten (10) days of receipt of any Claim unless Red Hat receives the notice and is not prejudiced by any delay; (iii) within twenty-one (21) days of acknowledgment from Red Hat of its obligations under this Agreement, provide Red Hat with the right to control and conduct the defense of the Claim with counsel of Red Hat's choice and to settle such Claim at Red Hat's sole discretion; and (iv) cooperate with Red Hat in the defense of the Claim.

Notwithstanding the foregoing, Red Hat will have no obligations under Section 1 with regard to any Claim that is based, in whole or in part 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 Client; (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 a Support Agreement; (v) use of any release of the Covered Software if the infringement or misappropriation specifically identified in the Claim would not have occurred or would have been significantly less likely through use of a more recent release of the Covered Software or after notice by Red Hat (whether before or during pendency of a Claim) to discontinue use of all or a portion of the Covered Software; (vi) any use of the Covered Software by Client other than for Client's own internal use (for the avoidance of doubt, internal use does not include, for example, providing third party use or access to ABIs, APIs or binaries of the Covered Software, or similar uses or making, offering to sell, selling, distributing and/or importing Covered Software or products that include Covered Software); or (vii) is filed in response to Client's claim or lawsuit against a third party. If the Claim includes allegation(s) regarding matters other than Covered Software, Client is 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 in defending allegations regarding Covered Software.

2. Term and Governing Law

The term of this Agreement will begin on the Effective Date and will terminate upon the termination of Client's Support Agreement(s) for the Covered Software that is the subject of the Claim; provided that if Red Hat updates or amends its Open Source Assurance program, (i) this Agreement will apply only until the end of the then current subscription period for any active Client Subscriptions which were active at the time Red Hat updates or amends its Open Source Assurance program and (ii) Client will have the opportunity, if it so elects, to participate in the updated or amended Open Source Assurance program for any additional Subscriptions or renewal Subscriptions which are purchased on or after the date Red Hat updates or amends its Open Source Assurance program. If this Agreement is terminated for any reason, Sections 2 - 5 will survive termination. No express or implied warranties by Red Hat or its affiliates are created as a result of this Agreement.

The Agreement, and any claim, controversy or dispute related to the Agreement, are governed by and construed in accordance with the 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 as part of the laws of the State of New York. Any claim, suit, action or proceeding arising out of or relating to this Agreement or its subject matter will be brought exclusively in the state

or federal courts of Wake County, North Carolina, and each party irrevocably submits to the exclusive jurisdiction and venue. 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.

3. **Limitations on Liability**

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

IT IS RED HAT'S INTENT TO PROVIDE CLIENT A SET OF PROTECTIONS UNDER THIS AGREEMENT RELATED TO ALLEGATIONS THAT CLIENT'S USE OF COVERED SOFTWARE DIRECTLY INFRINGES A THIRD PARTY'S COPYRIGHTS, PATENTS, OR TRADEMARKS, OR MISAPPROPRIATES THE THIRD PARTY'S TRADE SECRET RIGHTS (AS DESCRIBED IN SECTION 1 ABOVE). IT IS NOT, HOWEVER, RED HAT'S INTENT TO EXPAND RED HAT'S TOTAL LIABILITY TO CLIENT IN EXCESS OF THE LIABILITY LIMITATIONS SET FORTH UNDER THE EXISTING SUPPORT AGREEMENT(S) WITH CLIENT. IN THIS REGARD, RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY UNDER BOTH THIS AGREEMENT AND THE SUPPORT AGREEMENT(S) SHALL BE SUBJECT TO THE LIMITATIONS OF LIABILITY CONTAINED IN THE SUPPORT AGREEMENT(S) IN EFFECT AS OF THE DATE OF A CLAIM; PROVIDED, HOWEVER, IN NO EVENT WILL RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO CLIENT ARISING OUT OF OR RELATING TO ANY AND ALL CLAIMS UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID TO RED HAT WITH RESPECT TO CLIENT'S PURCHASES OF SUBSCRIPTIONS (DIRECTLY OR INDIRECTLY FROM A RED HAT BUSINESS PARTNER) DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FILING DATE OF THE FIRST CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR THE SUPPORT AGREEMENT(S), IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS 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.

This Agreement sets forth Client's exclusive remedies and Red Hat's sole obligations for claims arising from or related to copyrights, patents, trademarks, trade secrets and any other intellectual property right and supersedes any other Red Hat obligation related to the subject matter of this Agreement (including, but not limited to, indemnification, breach of warranty, and/or breach of contract under the Support Agreement(s) or otherwise, and any implied warranty of non-infringement, which is hereby disclaimed). For the avoidance of doubt, the terms of Section 1 above shall apply in the place of, and the Client expressly waives any rights and releases Red Hat from, any obligations under the terms of any other warranties or terms relating to intellectual property rights or remedies, including without limitation any other Open Source Assurance agreement or terms or conditions that may be included in the Support Agreement(s). If there are any other applicable indemnity coverage or remedies available to Client related to intellectual property infringement, Client agrees that the total of all benefits payable under all such provisions will not exceed the total damages, costs, and expenses incurred by Client, and that Red Hat will pay only its proportional share of such total damages, costs, and expenses, subject to the immediately preceding paragraph above. Red Hat will have no obligations under this Agreement with respect to any legal action that does not or no longer includes a claim for which Red Hat is responsible under this Agreement.

4. **Covered Software and Subscription**

"Covered Software" are the instances of Red Hat branded software programs generally released to its customers by Red Hat and/or its affiliates for which Client has an active paid Subscription in accordance with the terms of its Support Agreement at the time of the Claim. A **"Subscription"** is a services subscription purchased from Red Hat and/or its affiliates or a Red Hat business partner for a fee that entitles Client to receive Red Hat Services. Covered Software does not include, without limitation, (i) Third Party Programs or Excluded Programs, in each case, listed or described at <http://www.redhat.com/licenses> and/or <http://www.redhat.com/licenses/thirdparty/eula.html>, (ii) products, packages and/or code not provided as part of a Subscription, such as Fedora or WildFly.org or (iii) software or Subscriptions provided at no charge to Client such as for evaluation and/or demonstration purposes.

5. **Miscellaneous**

(i) Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to Client at the address indicated on Client's 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.; Email: legal-notices@redhat.com. (ii) This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity (other than affiliates of the parties) any right, benefit or remedy of any nature whatsoever. This Agreement is assignable by either party only with the other party's prior written consent with a specific reference to this Section 5; provided that Red Hat may assign this 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 of Client. (iii) The delay or failure of Red Hat to exercise any rights hereunder will not constitute a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced. (iv) This Agreement represents the final, complete and exclusive statement of the agreement between the parties with respect to the subject matter of this Agreement, and all prior written agreements (including any previous version(s) of the Open Source Assurance Agreement) and all prior and contemporaneous oral agreements with respect to the subject matter of this Agreement are merged herein. If any provision of this Agreement is held invalid or unenforceable for any reason, this Agreement will be deemed invalid in its entirety. Except as set forth in Section 2 above, this Agreement may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement.