

PLEASE READ THIS RED HAT SOFTWARE SUBSCRIPTION AGREEMENT ("AGREEMENT") CAREFULLY BEFORE INSTALLING, EXECUTING OR USING RED HAT SOFTWARE OR SERVICES. BY INSTALLING, EXECUTING OR USING RED HAT SOFTWARE OR SERVICES, YOU SIGNIFY ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT INSTALL, EXECUTE OR USE RED HAT SOFTWARE AND/OR SERVICES.

This is an Agreement between Red Hat, Inc. ("Red Hat") and the individual or entity which purchased Red Hat Software and Services from the Service Provider for use in the Portal ("You" or "you").

## 1. Background and Definitions.

- 1.1 Definitions.** "Instance" means a virtual or physical system on which you install or execute all or a portion of the Software. "Portal" means the online portal (e.g. cloud, hosted platform, managed service provider offering) through which you purchase and/or receive access to Software and Services. "Software" means the Red Hat branded software, including all modifications, additions and further enhancements, in each case, which are delivered by Red Hat and obtained directly or via Service Provider or another third party, and in either binary or source code form. "Services" means access to Software maintenance in the form of fixes, updates, upgrades, modifications and security advisories, when and if available, provided by Red Hat and delivered to you through the Service Provider. "Service Provider" means the Red Hat authorized third party from whose Portal you receive access to Software and Services.
- 1.2 Agreement Background.** You have purchased the right to access Red Hat Software and Services from Service Provider for use in the Portal. This Agreement establishes the terms and conditions under which Red Hat will provide Software and Services to you in connection with your use of the Software in the Portal, which are in addition to the terms contained in the agreement between you and the Service Provider. Red Hat is not responsible for (a) the actions of Service Provider, (b) any additional obligations, conditions or warranties provided by Service Provider or (c) any products and/or services that Service Provider provides to you under agreements between you and Service Provider.

## 2. Terms of Service

- 2.1 Software Access and Updates.** For each Instance of Software purchased from Services Provider for use in the Portal, you will receive access to a) the Software and (b) Services. Software and Services are provided only for your own benefit and use within the Portal. Support services for the Software, if any, will be provided to you by the Service Provider and Red Hat will not provide to you any direct technical assistance or other support services under this Agreement.
- 2.2 Purchase Requirements.** During the term of this Agreement as set forth in Section 4, you are required to purchase Services for each Instance from either (i) Service Provider, when the Software Instance is obtained from Service Provider, or (ii) Red Hat or a Red Hat authorized business partner, when the Software Instance is obtained from Red Hat or authorized business partner. If you are using any of the Services to support or maintain instances of Red Hat or non-Red Hat software (other than Software Instances obtained from and for which you have paid Services Provider) either within or outside the Portal, then you are required to notify Red Hat of such use and pay Red Hat the standard published software subscription fees for such use (e.g. <https://www.redhat.com/wapps/store/catalog.html>) under the terms of the Red Hat Enterprise Agreement, a copy of which is set forth at [www.redhat.com/licenses](http://www.redhat.com/licenses). Distributing the Software and Services (or any portion) to a third party outside the Portal or using the Software and/or Services to support a third party without paying for each Instance is a material breach of this Agreement even though the open source license applicable to individual software packages may give you the right to distribute those packages (and this Agreement is not intended to interfere with your rights under those individual licenses). For clarification purposes, this Agreement **does not** apply to Software subscriptions purchased from Red Hat directly for use outside the Portal or in conjunction with the Red Hat Cloud Access program (as set forth at <https://www.redhat.com/solutions/cloud/access/enroll.html>).

## 3. License.

Use of the Software is governed by the applicable end user license agreement posted at <https://www.redhat.com/licenses/eulas/>. No right, express or implied, is granted under this Agreement to (i) use any Red Hat or affiliate trade name, service mark, or trademark or (ii) distribute the Software utilizing any Red Hat or affiliate trademarks.

## 4. Term, Reporting and Inspection.

The Agreement begins on the date that you accept this Agreement or the date you first obtain the ability to access to the Software in the Portal, whichever is earlier, and continues for the period of time you have the ability to access the Software in the Portal. During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect and review your facilities and records in order to verify your compliance with this Agreement. Red Hat will give you written notice of any non-compliance, and you will have fifteen (15) days from the date of such notice to make payment to Red Hat for any amounts owed.

## 5. Limitation of Liability and Disclaimer of Damages

**5.1 Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT TO EXCEED THE AMOUNT THAT YOU PAID TO SERVICE PROVIDER ATTRIBUTABLE TO THE RED HAT SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT (AS DEFINED IN SECTION 1.1 ABOVE) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT, LESS THE AMOUNT RECOVERABLE BY YOU FROM SERVICE PROVIDER RELATING TO SUCH LIABILITY.

**5.2 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO YOU OR YOUR AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; 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.

## 6. Representations and Warranties.

Red Hat represents and warrants that, to its knowledge, the Software does not intentionally include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, THE SERVICES AND THE SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE, THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS OR THAT INFORMATION STORED WHEN USING THE SERVICES ON VENDOR'S PORTAL WILL BE SECURE. RED HAT SERVICES MAY BE SUBJECT TO DELAYS, OR OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS; RED HAT IS NOT RESPONSIBLE FOR SUCH DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RED HAT, ITS AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS, SERVICE PROVIDER OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

## 7. Governing Law/Consent to Jurisdiction.

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Raleigh, North Carolina, USA and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws 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.

## 8. Data Restrictions.

You may not use the Software to process or store information, data or technology governed by the International Traffic in Arms Regulations.

## 9. Miscellaneous.

**(9.1) Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent to the addresses or facsimile numbers set forth below, using a method that provides for positive confirmation of delivery; provided that any notice from you to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: (919) 754-3704. **(9.2) Assignment.** This Agreement is binding on the parties to this Agreement and nothing in this Agreement confers upon any other person any right, of any nature, save for the parties' affiliates. Red Hat may assign this Agreement to its affiliates or subsidiaries or pursuant to a merger or a sale of all or substantially all its assets or stock. **(9.3) Force Majeure.** Except with respect to the payment of fees under this Agreement, neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. **(9.4) Export Responsibilities.** Red Hat may supply you with technical data that may be subject to export control restrictions. Red Hat will not be responsible for compliance by you with applicable export obligations or requirements for such technical data. You agree to comply with all applicable export control restrictions. **(9.5) Dispute Resolution.** No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. **(9.6) Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement; provided, however, that if Section 5 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety. **(9.7) Waiver.** No waiver will be valid unless in writing signed by an authorized representative of the party against whom such waiver is sought. **(9.8) Complete Agreement.** This Agreement represents the complete agreement between the parties with respect to subject matter hereof and all other agreements with respect to the subject matter hereof are merged therein. **(9.9) Amendment.** 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. **(9.10) Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 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 UNDER THIS AGREEMENT.