



PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING, ACCESSING OR CONSUMING THE SOFTWARE OR SERVICES FROM RED HAT. BY CLICKING YOUR ASSENT OR USING, ACCESSING OR CONSUMING THE RED HAT SOFTWARE OR SERVICES, YOU SIGNIFY YOUR ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGE YOU HAVE READ AND UNDERSTAND THE TERMS. 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 YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT USE, ACCESS OR CONSUME THE RED HAT SOFTWARE OR SERVICES.

These Partner Terms and Conditions, along with a duly executed Partner Acceptance Document, authorizes you to participate in a Red Hat Partner Program as set forth in the Partner Acceptance Document (or as otherwise agreed in writing) in the Territory authorized by Red Hat and sets forth the terms of your participation. If no Territory is identified in the Partner Acceptance Document, the Territory will default to the country based on your address. The Agreement is comprised of this the Partner Terms and Conditions, Partner Acceptance Document, the Program Appendix, any referenced documents or links and transaction documents entered into pursuant to these terms (collectively, the "Agreement").

## 1. Purpose

Red Hat designs programs for its partners ("Programs") to promote Red Hat Products, enhance the satisfaction of Red Hat's End Users and augment the expertise and resources of partners. Partner's participation in the Program(s) is governed by the following:

- (a) Partner Acceptance Document including these Partner Terms and Conditions;
- (b) the applicable Program Appendix(ices) which have been agreed to by the Parties, including any End User License Agreements and Program Guide that may be referenced and/or incorporated into these documents; and
- (c) any transaction documents (subject to this Agreement) for Red Hat Products and/or Services (each, an "Order Form")

"Red Hat" means Red Hat Software (Beijing) Co., Ltd., with its principal place of business as set forth in the Partner Acceptance Document. The term "Red Hat" shall be construed to include Red Hat, Inc. as a party to this Agreement only for purposes of Sections 8, 11 and 15. Red Hat "Products" and "Services" mean the specific Red Hat branded offerings set forth in a Program Appendix. Red Hat and Partner are collectively referred to as the "Parties" and may be referred to individually as a "Party". "End User" is defined in the Program Appendices.

## 2. Programs, Application Process, and Acceptance

Details of Programs, membership levels, specializations and qualifications for Partner participation in Programs and, if applicable, related Program Guides are included in Program Appendices, each of which may be amended by Red Hat from time to time effective seven (7) days after notice or as otherwise set forth in such notice. In particular, Red Hat reserves the right to change Programs, membership levels and/or specializations at any

使用、访问或消费 RED HAT 软件或服务之前，请仔细阅读本协议。点击接受或使用、访问或消费 RED HAT 软件或服务，表示您同意接受本协议，并且确认您已阅读并理解这些条款。代表某实体行事的个人表示其有权代表该实体签署本协议。如果您不接受本协议条款，您不能使用、访问或消费 RED HAT 软件或服务。

这些合作伙伴条款与条件及正式签署的合作伙伴批准文件授权您在红帽授权地区参与“红帽合作伙伴计划”，该计划依据合作伙伴批准文件（或其他书面文档）订立并规定了相应的参与条款。如果上文未明确指明地区范围，该地区范围将默认为您的当前所在的国家 and 地区。本协议包括以下内容：合作伙伴条款与条件、合作伙伴批准文件、计划附约及按照这些条款订立的各种适用的参考文档或链接及交易文档（统称为“协议”）。

## 目的

红帽为其合作伙伴设计方案（“计划”）以推广红帽产品、提高红帽最终用户的满意度，同时提升合作伙伴的专业技术并扩增其资源。合作伙伴对“计划”的参与受下列文件的制约：

合作伙伴批准文件，包括本“合作伙伴条款与条件”；

各方约定的适用的计划附约，包括这些文件中引用和/或包含的所有“最终用户许可协议”和“计划指南”；以及

红帽产品和/或服务（每项为一个“订购表”）的任何（受本“协议”约束的）交易文件

“红帽”指红帽软件（北京）有限公司，其主要营业地点在“合作伙伴批准文件”中规定。仅在本协议中的第 8 章、第 11 章和第 15 章中，“红帽”应解释为包括红帽有限公司。红帽“产品”和“服务”表示“计划附约”中所列的特定的红帽品牌产品。“红帽”与“合作伙伴”两者合称为“双方”，单独一方则称为“一方”。“最终用户”将在各适用的“计划附约”中定义。

## 计划、申请流程与批准

关于计划、会员级别、合作伙伴参与计划的专业领域和资质，以及相关“计划指南”（如适用）的详细信息包含在“计划附约”中，红帽会随时对各“计划附约”进行修订。修订的生效时间为发出通知后七 (7) 天，或通知中另行规定的时间。特别是，红帽保留随时修改计划、会员级别和/或专门领域的权利，如果您不同意新条款，您可以选择不继续参与此类“计划”或“计划级别”。除非以书面形式另有

time, provided if you do not agree with the new terms, you may elect not to continue to participate in such Program or Program level. Unless otherwise agreed in writing, any subscriptions for Red Hat Products or Services purchased under a Program Appendix will commence upon the earlier of the first use of such Product or Service or the purchase date of such Product or Service.

### 3. Affiliate Authorizations

Partner's Affiliate(s) may participate in the Program only upon (a) approval by Red Hat, including with regard to Program level and credit terms, and (b) execution of a written participation agreement with Red Hat or its Affiliate(s) to bind the Partner Affiliate to this Agreement. "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, directly or indirectly, 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.

### 4. Territory

Partner may participate in the Program(s) only in the Territory designated in the Agreement. Red Hat and Partner may elect to expand the Territory, add Affiliates and establish the different terms and conditions (e.g. currency, taxes, entities, etc.) by mutual written agreement, which may take the form of a Partner Acceptance Document or written participation agreement subject to this Agreement.

### 5. Fees

Fees, if applicable, will be as indicated in each appropriate Program Appendix, and will be due and payable as set forth in such Program Appendix or Order Form subject to this Agreement. All amounts owed under the Agreement are to be paid in Chinese Renminbi Yuan to Red Hat Software (Beijing) Co., Ltd..

### 6. Billing, Payment and Taxes

If Partner acquires Red Hat Products and/or Services directly from Red Hat, Red Hat will invoice Partner as set forth herein and may require receipt of a purchase order for any amounts due to Red Hat; provided, however, that any terms contained in such purchase order will not amend, supplement or modify the terms of the Agreement or be binding on Red Hat. Partner must pay all sums due to Red Hat on a prepaid basis, without regard as to when or whether Partner collects payment from an End User. Partner will reimburse Red Hat for all costs and expenses incurred by Red Hat in connection with the collection of overdue amounts, including without limitation reasonable attorneys' or legal fees. All amounts payable shall be exclusive of any Taxes. Partner will pay to Red Hat, in addition to any amounts due to Red Hat for Red Hat Products or Services, an amount equal to any Taxes arising from or relating to this Agreement, including without limitation sales, service, use or value-added taxes, which are paid or are payable by Red Hat or present Red Hat with a valid tax exemption certificate. "Taxes" means any form of taxation, levy, duty, charge, contribution or impost of whatever nature and by whatever authority imposed (including without limitation any fine, penalty, surcharge or interest), exclusive of any taxes based on the net income of Red Hat. In the event of a cross-border transaction, should Partner be required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Red Hat, then (i) the sum payable to Red Hat will be increased by the amount necessary to yield to Red Hat an amount equal to the sum it would have received had no withholdings or deductions been made and (ii) the Partner shall pay such sums for which there is a requirement to make a

约定, 否则对根据“计划附约”购买的红帽产品或服务的订阅自此类产品或软件的首次使用日期或此类产品或服务的购买日期开始(以其中较早者为准)。

### 关联机构授权

合作伙伴的关联机构只有满足下列条件方可参与计划: (a) 经红帽批准, 包括计划级别和信用条款方面的批准, 且 (b) 与红帽或其关联机构签署了书面参与协议, 以根据本协议约束合作伙伴的关联机构。"关联机构"是指拥有或控制“一方”, 由“一方”拥有或控制, 或者与“一方”共同受控制或被拥有的实体, 其中“控制”是指通过拥有投票权的证券方式, 或者依据合同或其它方式, 直接或间接拥有管理一个实体的权力或拥有决定一个实体管理方向 and 政策的权力。

### 地区

合作伙伴仅能在本协议规定的地区范围参与项目。红帽和合作伙伴可选择通过双方签订书面协议扩展地区范围、增加关联机构并制订不同的条款与条件(例如, 货币、税率、实体等), 其中, 双方协议可以是“合作伙伴批准文件”, 也可以是根据本协议签署的书面参与协议。

### 费用

费用(如适用)将在各适用的“计划附约”中说明, 并且根据受本协议约束的此类“计划附约”或“订购表”的规定到期和支付。所有根据本协议所欠款项均应以中国的人民币(元)为单位支付给红帽软件(北京)有限公司。

### 开具发票、付款与税款

如果合作伙伴直接从红帽购买红帽产品和/或服务, 红帽将在收到订单以后, 根据此处之规定向这些合作伙伴开具应支付红帽之到期款项的发票, 但此类订单所含条款不得修订、增补或修改本协议之条款, 或使红帽受到制约。合作伙伴必须所有到期款项预先支付给红帽, 无论合作伙伴何时以及是否能从最终用户那里收到付款。对于红帽支付的、与过期未付款项收取相关的所有成本和开销, 包括, 但不限于合理的代理律师费或法律费用, 合作伙伴均须予以偿还。所有应付款项都不含税。除了应当支付红帽的红帽产品或服务款项, 合作伙伴还应支付红帽由本协议引起或与之相关的红帽已付或应付税款, 包括但不限于销售、服务、使用或增值税, 或者向红帽提供有效的免税证。

“税款”指任何税款、征收款、关税、费用、捐款或进口税等形式的, 行政部门征收的任何性质、任何种类的款项(包括但不限于罚款、罚金、附加费或利息), 不包括红帽净收入应缴的税款。在跨境交易情况下, 如果适用的法律或法规, 无论国内还是国外, 要求合作伙伴扣留或扣除部分应支付给红帽的款项, 则 (i) 应增加支付给红帽的总额, 增加额度应保证红帽获得在没有扣留或扣除的情况下应得的金额, 同时 (ii) 合作伙伴应及时支付该有扣留或扣除要求的金额并提供令人满意的文件证明此笔付款已支付给红帽。双方应本着真诚的态度共同努力, 减少跨境交易给红帽带来的税收方面的不利影响。任何逾期超过三十 (30) 日的款项都将按每月百分之一点五 (1½%) 或法律许可的最高比例加收滞纳金, 以较低者为准。

withholding or deduction in a timely manner and shall deliver satisfactory documentary evidence of such payment to Red Hat. The parties will work together in good faith to minimize adverse tax consequences to Red Hat created by cross-border transactions. Any payments more than thirty (30) days past due will be subject to a late fee of one and one-half percent (1½%) per month, or the maximum rate allowable by law, whichever is less.

## 7. Verifications

During the Term (as defined in Section 13.1) and for at least two (2) years thereafter, Partner will keep and maintain commercially reasonable written records and accounts regarding Partner's use and distribution of the Red Hat Products and Services and business activities related to the Program(s) ("Records"). Red Hat may, at its own expense, verify such Records to determine Partner's compliance with this Agreement. Such verification may take the form of requests for information, documents or records (with which Partner shall respond promptly), on-site visits (in respect of which Partner hereby grants the requisite access), or both. Partner agrees to act reasonably and to cooperate with Red Hat in relation to such verifications. Any on-site visit will occur during regular business hours at Partner's offices, and will not interfere unreasonably with Partner's business activities. For an on-site visit, Red Hat will give Partner at least ten (10) day's prior written notice of the date of each visit.

## 8. Trademarks

**8.1** As used in this Agreement, the term "Red Hat Marks" means the trademarks owned by Red Hat or a Red Hat Affiliate that are set forth in each applicable Program Appendix. Red Hat grants Partner a non-exclusive, non-transferable, royalty-free, revocable license in the Territory and during the Term to use the Red Hat Marks solely in connection with the marketing and distribution of the Red Hat Products as permitted in this Agreement, without the right to sublicense. Any other use of the Red Hat Marks is not permitted under this Agreement.

**8.2** Partner agrees to use the Red Hat Marks only as stated in this Agreement, and in doing so, to follow the standards of quality established by Red Hat and to adhere to the trademark usage guidelines found at: <http://www.redhat.com/about/corporate/trademark/guidelines> as amended from time to time and any other trademark terms found in any applicable Program Appendix (the "Red Hat Trademark Guidelines"). Partner agrees not to use the Red Hat Marks in combination with any other trade name, trademark or service mark without the prior written approval of Red Hat. Upon Red Hat's request, Partner will provide Red Hat with representative samples of the use of Red Hat Marks contained within any materials including web pages, marketing, advertising, promotional and collateral materials ("Promotional Materials").

**8.3** If Red Hat determines that Partner is using the Red Hat Marks improperly, and/or in connection with goods or services not covered under this Agreement or outside of the Territory, Red Hat will notify Partner, and Partner will remedy the improper use within two (2) business days following receipt of such notice from Red Hat. Use of the Red Hat Marks other than as expressly permitted in this Agreement is a material breach of this Agreement, and Red Hat shall have the right to immediately terminate this Agreement. Partner agrees that any use of the Red Hat Marks after termination of the Agreement for any reason will cause Red Hat irreparable harm.

**8.4** All goodwill created by the use of the Red Hat Marks by Partner is for the sole benefit of, and accrues to Red Hat. Partner

## 核实

在协议期限（如第 13.1 章中的定义）内以及之后至少两 (2) 年内，合作伙伴必须保存和维护与以下内容相关且从商业角度看合理的书面记录和报告：合作伙伴使用和经销红帽产品；与计划相关的商业活动（以下简称为“记录”）。红帽将自付费用对此类记录进行验证，确定合作伙伴是否遵守本协议的规定。此项验证将采取索取信息、文档或记录（合作伙伴应立即对其作出响应），现场视察（因此合作伙伴应准许进行必需的相关访问），或者二者相结合的形式。合作伙伴同意采取适当措施，配合红帽开展此类核实活动。所有现场视察都将于正常工作时间在合作伙伴的办公室进行，不得合理地干扰合作伙伴的商业活动。每次现场视察，红帽都将在视察之日前至少十 (10) 天向合作伙伴发出书面通知。

## 商标

本协议使用的术语“红帽商标”指红帽或红帽关联机构拥有并在各适用的“计划附约”中列出的商标。红帽授予合作伙伴在地区范围和协议期限内具有非排他性、不可转让、无特许使用费且可撤销的许可权，许可合作伙伴仅在本协议允许的红帽产品市场推广和分销活动中使用红帽商标；合作伙伴没有从属许可权。根据本协议，不得将红帽商标用于任何其它用途。

合作伙伴同意仅按照本协议的规定使用红帽商标，在使用过程中遵守红帽制定的质量标准并同意遵守 <http://www.redhat.com/about/corporate/trademark/guidelines> 中随时修订的商标使用准则以及任何适用的“计划附约”中的其它商标条款（“红帽商标准则”）。合作伙伴同意未获得红帽事先书面批准，不使将红帽商标与任何其它商品名、商标或服务标识组合在一起使用。如若红帽提出要求，合作伙伴应向红帽提供任何材料（包括网页、营销、广告、推广和辅助材料（“推广材料”））中所含的红帽商标代表使用样例。

如果红帽认定合作伙伴没有恰当使用红帽商标，和/或使用本协议中并未涵盖或地区范围之外的商品或服务的商标，红帽将通知合作伙伴，合作伙伴应在收到此类通知后的两 (2) 个工作日内纠正不恰当的使用行为。在本协议明确允许的情形之外使用红帽商标是对本协议的严重违约，红帽有权立即终止本协议。合作伙伴同意在本协议终止后以任何理由对红帽商标进行的任何使用都将给红帽造成无法弥补的损害。

合作伙伴使用红帽商标赢得的所有商誉皆属于且仅属于红帽所有，增

acquires no right, title or interest in the Red Hat Marks or the goodwill associated with them, other than the right to use the Red Hat Marks according to this Agreement. In accepting this Agreement, Partner acknowledges Red Hat's ownership of the Red Hat Marks, their validity and the goodwill connected with the Red Hat Marks. Partner will not challenge the validity of the Red Hat Marks, nor assist any one in challenging them. Partner agrees not to make any application to register any Red Hat Mark or any domain names containing a Red Hat Mark, and not to use or register any trade name, trademark, service mark, slogan, logo or domain name that is confusingly similar to, or a reference to, any Red Hat common law or registered trademark, trade name or service mark during or after the Term of this Agreement. At the request of Red Hat, Partner will execute any papers or documents reasonably necessary to protect the rights of Red Hat in the Red Hat Marks and will execute and deliver such other documents as may be reasonably requested by Red Hat. Partner's use of the Red Hat Marks may not state or imply sponsorship or endorsement of Partner by Red Hat. Partner may not disparage Red Hat, Red Hat Marks or Red Hat Products. The right of Partner to use the Red Hat Marks will cease immediately upon the termination or expiration of this Agreement, and Partner must immediately discontinue use of the Red Hat Marks. If Partner becomes aware of any (possible or actual) infringement of the intellectual property rights of Red Hat it will immediately notify Red Hat in writing. This Section 8.4 will survive termination or expiration of this Agreement.

**8.5** Partner agrees that when using the Red Hat Marks in any documentation or Promotional Materials to include the following trademark legend: "[Name of Red Hat trademark] is a trademark of Red Hat, Inc., registered in the U.S. and other countries. Used under license." Red Hat's trademark legend will be no less prominent than the trademark legend for Partner's trademarks.

**8.6 Packaging.** Partner will not change or alter Red Hat packaging that houses Red Hat Products, including the graphic design appearing on such packaging or any labeling, words, logos, trademarks, pictures and collateral or other representations that appear on such packaging ("**Packaging**"). An alteration or change to Packaging includes, without limitation: (i) the application or attachment to Packaging of any material (e.g., labels, notes, seals, stamps, manuals, booklets, brochures, software packages, computer programs, compact discs, digital versatile discs, blue-ray discs, tapes, manuals and toys); and (ii) the marking of Packaging in any way. Any alteration or change to Packaging must be expressly authorized in writing by Red Hat, which authorization may be withheld or granted in Red Hat's sole discretion.

## 9. Additional Requirements

**9.1** Red Hat reserves all rights not expressly granted in this Agreement and all rights not expressly granted to the Red Hat Products and Services (including rights under any trademarks, copyrights, patents, or other intellectual property of Red Hat). Partner will not use the Red Hat Products or Services to create an offering competitive with Red Hat, directly or indirectly, or for the benefit of any other person or entity or permit any third party to make such utilization, unless specifically agreed to in this Agreement. If Red Hat determines that any of the Services or Red Hat Products are being used (in whole or in part) by Partner in any way to (a) avoid paying fees that would otherwise be due hereunder, (b) provide Services to third parties outside of the scope of a Program or (c) create revenue without payment of fees to Red Hat for Red Hat Products or Services, Red Hat may immediately suspend performance and/or terminate the Agreement and any Program, and reserves its rights to exercise any and all

加红帽的商誉。除了根据本协议使用红帽商标的权利之外，合作伙伴不能获得红帽商标的任何权利、所有权或利益，或与红帽商标相关的商誉。接受本协议即表示合作伙伴承认红帽对红帽商标的所有权，其有效性以及与红帽商标相关的商誉。合作伙伴不得对红帽商标的有效性提出异议，也不得协助任何人提出异议。合作伙伴同意不申请注册任何红帽商标，或任何含有红帽商标的域名，不在本协议期限内或之后，使用或注册任何与红帽普通法或注册商标、商品名或服务标识相类似混淆或引用任何红帽普通法或注册商标、商品名或服务标识的商品名、商标、服务标识、标语、标识或域名。如果红帽要求，合作伙伴应签署任何合理必要的文件或文档来保护红帽在红帽商标方面的权利，并签署和提交任何红帽合理要求的其它此类文件。合作伙伴使用红帽商标时不得声称或暗示由红帽为合作伙伴担保或背书。合作伙伴不得贬损红帽、红帽商标或红帽产品。一旦本协议终止或到期，合作伙伴的红帽商标使用权将立即终止；合作伙伴必须立即停止使用红帽商标。如果合作伙伴发现任何（可能或实际发生的）侵害红帽知识产权的行为，应立即以书面形式通知红帽。本协议终止或到期后，第 8.4 节规定依然生效。

合作伙伴同意，无论在任何文件或推广材料中使用红帽商标时，都将包括下列商标说明：“[红帽商标名] 是红帽有限公司在美国及其它国家/地区的注册商标。未经授权，不得使用。” 合作伙伴商标的商标说明不得比红帽的商标说明突出。

**包装。** 合作伙伴不得更改或变更容纳红帽产品的红帽包装，包括此类包装上出现的图形设计或任何标签、文字、标识、商标、图片和附属品，或此类包装上出现的其它表述（以下简称为“**包装**”）。对包装的变更或更改包括，但不限于：(i) 将任何材料（例如，标签、记号、封印、图章、手册、小册子、说明书、软件包、计算机程序、光盘、DVD、蓝光光盘、磁带、手册与玩具等）应用或附着到包装上；以及 (ii) 以任何方式对包装进行标记。变更或更改包装必须经红帽以书面方式明确授权，此项授权可由红帽单方决定撤回或授予。

## 附加要求

红帽保留本协议中未明确授予的所有权利以及所有未明确授予红帽产品和服务的权利（包括红帽任何商标、版权、专利或其它知识产权下的权利）。除非本协议特别约定，否则合作伙伴不得利用红帽产品或服务创造与红帽直接或间接竞争的产品或服务，为任何其他人或实体牟利，或允许任何第三方进行此类利用。如果红帽认定合作伙伴正以任何可达到下列目的的方式使用任何服务或红帽产品（全部或部分）：(a) 避免支付根据本协议需要支付的费用，(b) 向计划之外的第三方提供服务，或 (c) 创造收入但不向红帽支付红帽产品或服务费用，红帽可以立即暂停履约和/或终止本协议及任何计划，同时保留采取根据本协议可得的所有法律和衡平法救济措施的权利。

legal and equitable remedies available to it under this Agreement or otherwise.

**9.2** For each Red Hat Product (or Partner product that incorporates Red Hat Software) that Partner sells to an End User under a Program Appendix, Partner shall purchase the equivalent Red Hat Product with respect to such conditions as the term (1 or 3 years) and support level. For example, if the End User purchases a one year 24x7 support level Red Hat Enterprise Linux product from Partner, Partner shall purchase a one year Premium (24x7) Red Hat Product from Red Hat. Similarly, Partner is only authorized hereunder to resell the complete Red Hat Product it purchased and is not permitted to decouple the Red Hat Product or sell it in parts. For example, Partner will not purchase a 1 year Red Hat Product from Red Hat and then break it down into monthly or hourly increments for resale to the End User. Partner will work with Red Hat to ensure that its resale of the Red Hat Product to End Users is consistent with the guidelines of the Red Hat Products purchased.

**9.3** Without limiting the generality of Section 9.1 or 9.2 above, Partner agrees: (i) not to modify the Red Hat Products in any manner; and (ii) not to use or resell the Red Hat Products in any manner or for any purpose not permitted by this Agreement, including, without limitation, for Partner's own internal or production use, other than as may be expressly permitted in the applicable Program Appendix or by any applicable mandatory rule of law. Should Partner desire to use the Red Hat Products for Partner's own internal or production use other than as expressly permitted in the applicable Program Appendix, Partner agrees to purchase the appropriate Red Hat Product(s) under Red Hat's standard terms for internal use, and to pay the applicable fee for all periods of use. This Agreement establishes the rights and obligations associated with Red Hat's Programs, Products and Services, and is not intended to limit Partner's rights to software code under the terms of an open source license.

## 10. Intellectual Property

Partner acknowledges and agrees that all trademark, copyright, patent, trade secret and all other intellectual and industrial property rights anywhere in the world, including moral rights, and all applications, provisional applications, registrations, continuations and renewals thereof, and all associated goodwill (present or future) in and to the Red Hat Products, are and will, as among the parties, be owned by and vested in Red Hat or its licensors, notwithstanding any use of terms such as "purchase," "sale" or the like within this Agreement.

## 11. No Warranties, Limitation of Liability, Disclaimer of Damages, and Insurance and Indemnity

**11.1 No Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RED HAT PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Partner will make no representations or warranties on behalf of Red Hat regarding the Red Hat Products in connection with the distribution of the Red Hat Products or Services or otherwise.

**11.2 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY TO PARTNER AND ITS AFFILIATES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY ORDER FORM HEREUNDER,

对于合作伙伴根据“计划附约”销售给最终用户的每件红帽产品（或包含红帽软件的合作伙伴产品），合作伙伴应购买等同条件（如 1 或 3 年的服务期限和支持级别）的红帽产品。例如，如果最终用户从合作伙伴处购买了一年的全天候支持级别的红帽 Enterprise Linux 产品，合作伙伴也应从红帽购买一年的高级（全天候）红帽产品。同样，合作伙伴仅被授权本协议转售其购买的完整红帽产品，而不允许分拆销售或部分销售红帽产品。例如，合作伙伴不得从红帽购买完整的一年红帽产品，然后将该产品分解多个小部分按月或按小时转售给最终用户。合作伙伴将协同红帽确保其将红帽产品转售给最终用户的行为符合所购红帽产品的指导方针。

在不限制上文第 9.1 或 9.2 节一般性的原则下，合作伙伴同意：(i) 不以任何方式修改红帽产品；并且 (ii) 不以任何本协议不允许的方式使用或转售红帽产品，或将红帽产品用于任何本协议不允许的用途，包括，但不限于：供合作伙伴自己内部或生产使用，但适用的“计划附约”或任何适用的强制法律规定明确允许的情况除外。如果合作伙伴希望将红帽产品用于适用的“计划附约”明确允许之外的其它合作伙伴内部或生产用途，合作伙伴应同意按照红帽标准的内部使用条款购买相应的红帽产品并就所有使用阶段支付相应费用。本协议旨在确立与红帽计划、产品和服务相关的权利和义务，并无意于限制合作伙伴根据开放源代码许可证条款享有的软件代码权利。

## 知识产权

合作伙伴承认并同意：尽管本协议中使用“购买”、“销售”或类似术语，在协议双方中，世界各地红帽产品中或与之相关的商标、版权、专利、商业秘密和所有其它知识产权和行业产权，包括精神权，及所有的申请、临时申请、登记注册、续约和延期，以及所有相关的商誉，无论现在还是将来，均为红帽或其许可人所有。

## 无担保声明、责任限制、损害免责声明以及保险与赔偿

**无担保声明。**在适用法律允许的最大范围内，红帽产品和服务将按“原样”提供，而不提供任何形式的担保和条件，包括有关适销性、非侵权性及适合特定目的的默示保证。合作伙伴不能代表红帽就红帽产品或服务做出任何与红帽产品经销或其它方面相关的声明或担保。

**责任限制。**在适用法律允许的最大范围内，无论任何事件和情形，红帽及其关联机构对合作伙伴及其关联机构承担的因本协议或由本协议产生的任何订购表引起或与之相关的责任，包括但不限于根据履行或未履行职责的理由确定的责任，无论形式或原因，也无论是合同、侵权（包括但不限于疏忽）、法定还是其它责任，将仅限于直接损坏，



INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, 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 EXCEED THE TOTAL AMOUNT PAID TO RED HAT AND ITS AFFILIATES BY PARTNER AND ITS AFFILIATES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE RED HAT PRODUCT OR SERVICE THAT IS THE SUBJECT MATTER OF THE CLAIM OR U.S. \$5,000.00, WHICHEVER IS HIGHER. THE FORGOING LIMITATION SHALL NOT APPLY TO CLAIMS FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OF RED HAT OR ITS EMPLOYEES.

**11.3 Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY ORDER FORM HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO THE PARTNER OR ITS 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 A RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without limiting the generality of the foregoing disclaimer, Red Hat Products and Services are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Partner agrees that it is solely responsible for the results obtained from the use of the Red Hat Products and Services.

**11.4 Insurance and Indemnity.** Partner shall put in place and at all times maintain during the Term and for two (2) years thereafter, at its own cost and expense, appropriate and sufficient commercial general liability insurance with a reputable insurance company to cover the activities of Partner contemplated hereunder. The premiums for these policies of insurance shall be the responsibility of Partner. Upon request, Partner will provide Red Hat certificates of insurance for all insurance coverage. Partner will indemnify and hold harmless Red Hat from any and all liability, losses, costs, damages or expenses, including reasonable attorney's, solicitor's or legal fees and costs, resulting from or arising out of third party demands or claims against Red Hat relating to any of Partner's actions including, but not limited to, performance or non-performance under this Agreement.

## 12. Publicity and Confidentiality

**12.1 Publicity.** Partner will keep confidential and will not disclose, market or advertise to third parties the terms of this Agreement (including the fees paid hereunder) without the prior written consent of Red Hat. Partner or Red Hat may reference its relationship with the other, in the normal course of business including during earnings calls, discussions with analysts, meetings with the press, customer briefings, general marketing activities, and in regulatory filings. Neither Party will issue formal press releases or other similar activities referencing the other Party

总累计额不超过合作伙伴及其关联机构按照本协议规定, 在第一次引发责任的事件发生前十二 (12) 个月内就涉及的红帽产品或服务支付给红帽及其关联机构的总金额, 或者 5,000.00 美元, 以其中较高者为准。上述限制不适用于由红帽或其雇员的疏忽造成的人身伤害 (包括死亡) 以及个人有形资产损坏而引起的索赔。

**损害免责声明。**即使存在与本协议或由其产生的任何订购表相反的规定, 在适用法律允许的最大范围内, 无论任何情况下, 红帽或其关联机构都不因下列原因对合作伙伴或其关联机构负责: 任何基于第三方索赔的索赔; 任何意外、后果性、特殊、间接、惩戒性或惩罚性的损害, 无论是由侵权行为、合同还是其它情况引起; 或由于以下原因引起或与以下原因有关的损害: 故障、延迟、数据丢失、利润损失、节约成果损失、服务中断、业务或预期利润损失, 即使红帽或其关联机构收到过可能出现此类损害的提醒也是如此。在不限上述免责声明的一般性的原则下, 红帽产品和服务并非为以下用途而特别设计和生产且无意用于下列用途: (a) 核设施的规划、建设、维护、控制或直接运行; (b) 航空器导航、控制或通信系统、武器系统; 或 (c) 直接生命维持系统。合作伙伴同意对使用红帽产品和服务所产生的后果负完全责任。

**保险与赔偿。**在协议期限内和之后的两 (2) 年内, 合作伙伴应当自费向知名保险公司购买并一直保有恰当充分的商业一般责任险, 以覆盖合作伙伴根据本协议意欲开展的活动。这些保单的保费应由合作伙伴负责支付。如若红帽提出要求, 合作伙伴应就所有保险覆盖向红帽提供保险凭证。如果第三方向红帽提出的要求或主张与合作伙伴的行为 (包括但不限于履行或不履行本协议) 有关, 对于由此引起或产生的所有债务、损失、成本、损害或开销, 包括合理的代理费、律师费或法律费用和成本, 合作伙伴都应予以补偿, 使红帽免受损失。

## 公开性与保密性

**公开性。**未经红帽事先书面同意, 合作伙伴应对本协议条款 (包括协议规定支付的费用) 保密, 不得向第三方透露、出售或宣传。合作伙伴或红帽在正常业务过程 (包括在财报电话会议、与分析师讨论、与媒体会面、客户情况介绍、一般性市场活动以及规管文件提交) 中可提及双方关系。未经对方书面同意, 任何一方都不得发布提及另一方的正式新闻稿或进行其它类似活动。

without the written consent of the other Party.

**12.2 Confidential Information.** The parties agree that Confidential Information provided under this Agreement will be held and maintained in confidence and each Party will use at least the same degree of care to protect such Confidential Information that it utilizes to protect its own confidential information, but in no event less than reasonable care. The recipient may use Confidential Information of the other Party only for the purposes for which it was disclosed. Confidential Information may be disclosed only to Affiliates, employees, agents and contractors with a need to know, and to its auditors and legal counsel, provided in each case they are under a written obligation or duty to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. **"Confidential Information"** means all information and materials disclosed by either Party to the other during the Term that is either marked confidential or, by the nature of the information or the circumstances surrounding its disclosure, would reasonably be considered confidential. Confidential Information does not include information that (a) is already known to the receiving Party at the time it is disclosed and has not been obtained wrongfully, (b) becomes known publicly without fault of the receiving Party, (c) is independently developed by the receiving Party, (d) is approved for release in writing by the disclosing Party, (e) is disclosed without restriction by the disclosing Party to a third party, (f) is disclosed pursuant to legal or regulatory obligations beyond the control of the disclosing and receiving Parties, or (g) is licensed under an Open Source License (as defined by the Open Source Initiative ([www.opensource.org](http://www.opensource.org))). Both Parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information.

### 13. Termination

**13.1 Term.** This Agreement begins on the Effective Date and continues until the expiration or termination of all applicable Program Appendices ("**Term**"). The term of each Program Appendix is independent of the term of any other Program Appendix. **"Effective Date"** means the first date when both Parties have fully accepted or signed the Agreement.

**13.2 Termination by Red Hat or Partner.** Red Hat may (without prejudice to any other right or remedy) terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in such Program) for any reason at any time upon thirty (30) days prior notice in writing to Partner. Red Hat or Partner may (without prejudice to any other right or remedy) terminate this Agreement in whole or in part (including any Program Appendix and Partner's participation in such Program) at any time upon notice in writing to the other Party if the other Party is in material breach of any obligation thereunder and (in the case of a remediable breach) such breaching Party fails to remedy the breach within thirty (30) days (except for payment obligations, in which case five (5) days) of being requested in writing to do so unless a shorter cure period is otherwise stipulated under this Agreement or in the applicable Program Appendix, provided, however, that no cure period will be required for a breach of Sections 8, 9.1, 12.2 or 15.3 hereof.

**13.3 Effect of Agreement Termination or Expiration.** Termination or expiration of this Agreement in whole for any reason will immediately terminate Partner's participation in any and all Programs, including eligibility to the Program benefits. Upon such termination or expiration, Partner will immediately (i) cease referring to itself as a Red Hat Partner, or any other title associated with the Program, and using those titles in any communication and

**保密信息。**协议双方同意：本协议所含保密信息应予以保密，各方应以不低于己方保密信息的审慎程度保护此类保密信息，但任何情况下，审慎程度都不得低于合理水平。接受方仅能为为保密信息披露之目的而使用对方的“保密信息”。保密信息只能透露给需要知晓的关联机构、员工、代理机构和承包商以及其审计人员和法律顾问，条件是：在任何情况下，他们都必须遵守书面责任或义务协定，按照严格程度不低于本协议要求的保密标准保存此类保密信息。“**保密信息**”指一方在协议期限内透露给另一方的标记为保密信息，或根据信息的性质或透露的环境被合理地认为是保密信息的所有信息和材料。保密信息不包括以下信息：(a) 透露时接受方已经知晓，但并不是通过不恰当途径获得的信息；(b) 已经公开的信息（但并不是接受方的错误造成的）；(c) 由接受方独立开发的信息；(d) 由透露方以书面形式批准发布的信息；(e) 透露方不限制透露给第三方的信息；(f) 超出透露方和接受方的控制，根据法律规定必须透露的信息，或 (g) 通过开放源代码许可证（如“开放源代码促进会”[www.opensource.org](http://www.opensource.org) 定义）进行许可的信息。双方同意在特定保密信息初次透露后两 (2) 年内承担保密义务。

### 终止协议

**协议期限。**本协议自生效日期开始生效，直到所有适用的“计划附约”到期或终止（简称“**期限**”）。各“计划附约”的期限相互独立。“**生效日期**”指双方完全接受或签署本协议的首日。

**由红帽或合作伙伴终止协议。**红帽可以（在不损害任何其它权利或救济的情况下）随时以任何原因终止本协议的全部或部分规定（包括任何“计划附约”及合作伙伴对此类计划的参与），但必须提前三十 (30) 天以书面形式通知合作伙伴。如果红帽或合作伙伴严重违法本协议规定的义务且（在违约可以补救的情况下）未能在在接到要求补救的书面通知后三十 (30) 天内（不包括付款义务，在此情形下为五 (5) 天内）进行补救，则对方可以（在不损害任何其它权利或救济的情况下）随时通过以书面形式通知该方来终止本协议的全部或部分规定（包括任何“计划附约”及合作伙伴对此类计划的参与），但本协议或适用的“计划附约”另行规定更短的纠正时间时则按另行规定执行，而违反本协议第 8、9.1、12.2 或 15.3 节条款则无需提供补救时间。

**协议终止或到期的效力。**本协议的全部终止或到期，无论以任何原因，都将立即终止合作伙伴对所有计划的参与，包括获得计划收益的资格。协议终止或到期后，合作伙伴应当立即 (i) 停止以红帽合作伙伴及与计划相关的任何其它头衔称呼自己，并停止在任何通讯和宣传中使用这些头衔；(ii) 在适用范围内停止推广、展示、销售和经销红帽产品和/或服务；(iii) 停止使用所有红帽商标；(iv) 根据红帽的选

advertising; (ii) to the extent applicable, cease all promotion, demonstration, sale(s) and distribution of the Red Hat Products and/or Services; (iii) cease all use of the Red Hat Marks, (iv) return or destroy, at Red Hat's option, all printed materials containing such Red Hat Marks, including all documentation and Promotional Materials; and (v) remit all fees due to Red Hat within fifteen (15) days of such termination or expiration; provided, however, if the termination is not the a result of a Partner breach, the Partner will be entitled to sell any of its inventory of Red Hat Products (subject to this Agreement) for which Red Hat has been fully paid and that are required to fulfill any unperformed contracts of Partner outstanding at the date of termination or expiration for a period of no longer than sixty (60) days. All rights and obligations of the Parties under this Agreement and all applicable Program Appendices will terminate immediately, except that the such obligations under Sections 6, 7, 8.4, 10-12, 13.3 - 13.4, 14, 15.1 - 15.2, 15.3.4, 15.3.5, 15.5, 16, and 18 hereof, any Partner payment obligations, and any provision regarding waiver of jury trial in the Exhibits or any applicable Program Appendices hereto, will survive such termination or expiration. Termination of this Agreement shall not affect any agreements between Red Hat and any End User.

**13.4 No Compensation.** In the event of a termination or expiration of this Agreement for any reason or at any time, Red Hat will have no obligation to Partner (except as Red Hat otherwise may be liable to Partner for Red Hat's material breach of this Agreement), or to any employee of Partner, for compensation or for damages of any kind, whether on account of the loss by Partner or such employee of present or prospective sales, investments, compensation or goodwill. Partner hereby indemnifies and holds Red Hat harmless from and against any and all claims, costs, damages and liabilities whatsoever asserted by any employee, agent or representative of Partner under any applicable cancellation, termination, labor, social security, payments under national insurance, or other laws or regulations.

#### 14. Certain Remedies

The parties agree to make a good faith effort to resolve amicably any problem before commencing any proceeding (except where urgent injunctive relief is sought).

#### 15. General Provisions

**15.1 Governing Law and Venue.** The Agreement will be governed by the substantive laws of the People's Republic of China. To the extent permissible by law, the terms of the United Nations Convention on Contracts for the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the Agreement. Any dispute arising out of, or in connection with, or with respect to the validity, interpretation and enforcement of the Agreement, including the breach thereof, will be finally settled exclusively by binding arbitration administered by Hong Kong International Arbitration Center ("HKIAC") in Hong Kong in accordance with Hong Kong Arbitration Ordinance and HKIAC Procedures for Arbitration. The arbitration will be carried out before one (1) arbitrator. The arbitrator shall be appointed by HKIAC in accordance with HKIAC Procedures for Arbitration. The language to be used in the arbitral proceedings shall be English. Any arbitral award will be final and binding on the parties. The expense of arbitration will be borne between the parties as determined by the arbitrators.

**15.2 Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement must be in English, in writing, and will be deemed given when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-

择, 退回或销毁所有含有此类红帽商标的印刷材料, 包括所有文件和宣传推广材料; 以及 (v) 在终止或到期后十五 (15) 天内将所有应付款项汇给红帽, 但如果协议不是因合作伙伴违约而终止, 且合作伙伴已全额付款并必须于履行协议终止或到期之日六十 (60) 天内尚未履行的合约项下的红帽产品, 合作伙伴有权 (根据本协议) 销售其所有库存。双方在本协议和所有适用的“计划附约”下的所有权利和义务都将立即终止, 但本协议第 6、7、8.4、10-12、13.3 - 13.4、14、15.1 - 15.2、15.3.4、15.3.5、15.5、16 和 18 节规定的此类义务, 合作伙伴所有的支付义务, 附录中关于放弃由陪审团审案的所有规定或所有适用的“计划附约”在本协议终止或到期后仍将生效。本协议的终止不应影响红帽和任何最终用户之间签署的任何协议。

**无赔偿责任。** 不论本协议以任何原因或在何时终止或到期, 红帽都不对合作伙伴 (但红帽因严重违反本协议而必须对合作伙伴负责的情况除外) 或合作伙伴的任何员工任何类型的赔偿或损害负责, 无论是合作伙伴还是此类员工的当前或预期销售损失, 投资损失, 赔偿或商誉损失都是如此。合作伙伴雇员、代理或代表依据国家保险法或其它法律法规中适用的解约、终止、劳动、社会安全、薪资等规定提出的所有索赔、成本费用、损害和责任都应由合作伙伴予以补偿, 从而使红帽免受任何损害。

#### 特定救济措施

双方同意在启动法律程序之前, 先通过真诚的努力, 以友好的方式解决问题 (寻求紧急指令性救济的情况除外)。

#### 一般规定

**管辖法律和审判地。** 本协议受中华人民共和国实体法管辖。在法律允许的范围内, 《联合国国际货物销售合同公约》的条款将不适用, 即便本协议管辖国的国内法采用的部分也是如此。任何由本协议的有效性、释义和履行引起或与之有关的争端, 包括违反本协议, 最终都由香港的香港国际仲裁中心 (HKIAC) 依照香港仲裁条例和 HKIAC 仲裁程序管理其仲裁, 通过具有约束力的仲裁来解决。仲裁将由一 (1) 名仲裁员执行。仲裁员应由 HKIAC 依照 HKIAC 仲裁程序指定。仲裁诉讼使用的语言为英语。任何仲裁裁决都将是最终的裁决, 并对双方都具有约束力。仲裁费用将依据仲裁员的决定由双方分担。

**通知。** 本协议规定或准许的所有通知、同意、豁免和其它通讯必须用英文书写, 在以下情况中将被视为送达: (a) 由专人或国家认可的隔日快递服务 (预付费用) 递送至适当地址; (b) 通过传真或电子邮件发送且发送后立即收到了该传输设备提供的发送成功书面确认; 或 (c) 被收



mail with written confirmation of transmission by the transmitting equipment delivered promptly thereafter; or (c) received by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated hereafter (or to such other address, facsimile number, e-mail address or person as a party hereto may designate by notice to the other parties hereto): For Partner: the address/fax number indicated on the Application or at such other address as may be communicated by Partner to Red Hat in writing; For Red Hat Software (Beijing) Co., Ltd.: Contracts Administrator, 8/F Tower A, Beijing Parkview Green Fang Cao Di, No. 9 Dong Da Qiao Road, Chaoyang District, Beijing, P.R.C. 100020, with a copy to General Counsel, Red Hat, Inc., 1801 Varsity Drive, Raleigh, North Carolina 27606; Facsimile: +1 (919) 754-3704.

### 15.3 Compliance with Law and Export Controls.

**15.3.1** As between Red Hat and Partner, Partner will be the importer of record of the Red Hat Products and Services into the countries in which it sells and will be responsible for (a) compliance with all applicable laws, regulations and legal requirements; (b) paying all import duties or tariffs; and (c) obtaining any regulatory approvals and import licenses required by any applicable law.

**15.3.2** Partner will comply with all applicable laws and regulations including all applicable anti-corruption laws and regulations, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act (collectively, the “**Anti-Corruption Laws**”), and will not engage in conduct that would cause Red Hat to violate any law or regulation including the Anti-Corruption Laws. Among other conduct, the Anti-Corruption Laws prohibit Partner, directly or indirectly, from receiving anything of value from, or offering anything of value to, either private parties or government or public officials with the intent that the recipient perform improperly a relevant function or activity or a person be rewarded for improper performance. A government or public official includes employees and officers of a government agency, department or instrumentality as well as the employees or officers of government-owned or government-controlled companies, public international organizations, political parties and candidates for political office. Partner represents and warrants that none of its significant shareholders, owners, partners, officers or directors (“**Partner Officials**”) is a government or public official and that if any of the Partner Officials becomes a government or public official, Partner will immediately notify Red Hat in writing in accordance with the terms of this Agreement. Partner will not permit its resellers or partners to do anything that would violate or cause Red Hat to violate any law or regulation including the Anti-Corruption Laws. If Red Hat believes that Partner (or any of its resellers or partners) has breached or may breach any of the provisions of this Section or a notice is provided pursuant to this Section, Red Hat can immediately terminate the Agreement or stop performing its obligations (including making payments, if applicable) without any liability to Partner.

**15.3.3** Partner agrees that it will not re-export the Red Hat Products, their components or related technical information received from Red Hat except as permitted by the laws and regulations of the United States of America and the laws and regulations of the jurisdiction in which Partner obtained the Red Hat Products or Services, their components or related technical information or that are otherwise applicable. Without limiting the foregoing, Partner will comply with applicable U.S. export laws, regulations and legal requirements. Partner acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical information,

信人接收。如果通知用挂号信寄出，在任何情况下都要求返回回执到下列地址、传真号码或电子邮件地址并进行标记以引起指定人员（通过姓名或职称）的注意（或返回到本协议中其中一方通知另一方的指定的其它地址、传真号码、电子邮件地址或人员）：对于合作伙伴：将“申请”中指出的地址/传真号或合作伙伴可能使用的其它此类地址以书面形式告知红帽；对于红帽软件（北京）有限公司：中国北京市朝阳区东大桥路 9 号北京侨福芳草大厦A座 8 层, 100020, 合同管理员，并将一份副本发送至：General Counsel, Red Hat, Inc., 1801 Varsity Drive, Raleigh, North Carolina 27606; 传真: +1 (919) 754-3704.

### 遵守法律和出口管制。

在红帽和合作伙伴之间，合作伙伴是进口红帽产品和服务并在所销售的国家/地区进行海关登记的进口商，并且负责 (a) 所有适用法律、法规和法定要求的遵守；(b) 支付所有的进口关税；(c) 获得任何适用法律要求的管理审批和进口许可证。

合作伙伴将遵守所有适用法律法规，包括美国的《反海外腐败法》和英国的《反贿赂法案》等反腐败法律法规（统称“**反腐败法**”），不得做出可能会导致红帽违反任何法律或法规（包括反腐败法）的行为。除其它行为外，反腐败法还禁止合作伙伴以使接受方不当履行相关职能或活动为目的，直接或间接从/向私人方或者政府或公职人员收授任何有价之物，或者酬谢某人的不当行为。政府或公职人员包括政府机构、部门或组织的雇员和官员，以及政府所有或者政府控制的公司、国际公共组织、政党以及政治部门候选人的员工或官员。合伙人声明并保证没有重要股东、所有人、合作伙伴、高管或董事（“**合作伙伴高管**”）是政府或公职人员，如果合作伙伴有任何高管变成政府或公职人员，合作伙伴将立即根据本协议之条款以书面形式通知红帽。合作伙伴将不允许其经销商或合作伙伴做什么会违反或导致红帽违反任何法律或法规（包括反腐败法）的事情。如果红帽认为合作伙伴（或其任何经销商或合作伙伴）已经或可能会违反本节的规定或依据本节提供的通知，红帽可立即终止本协议，或停止履行其义务（包括付款，如适用），而不对合作伙伴承担任何责任。

合作伙伴同意，除非按照美利坚合众国及合作伙伴所在国家/地区的法律和法规允许或另行规定而被允许获得红帽产品或服务，以及其组件或相关技术信息，否则不得转口来自红帽的红帽产品、其组件或相关技术信息。在不限制上述条款的条件下，合作伙伴应遵守适用的美国出口法律、法规和法律要求。合作伙伴承认：美国的法律法规可能会限制原产美国的某些商品和技术信息（包括软件）的出口和转口。

including software, of U.S. origins.

**15.3.4** As required by U.S. law, Partner represents and warrants that it: (a) understands that certain of the Red Hat Products, their components and related technical information are subject to export controls under the U.S. Export Administration Regulations ("EAR"); (b) is not located in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR; (c) will not export, re-export or transfer the Red Hat Products, their components or related technical information to (1) any prohibited destination, (2) any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government or (3) any end user who Partner knows or has 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, or unmanned air vehicle systems; (d) understands and agrees that if it is in the United States and exports, re-exports or transfers the Red Hat Products, their components or related technical information to eligible end users, it will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the U.S. Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee; and (e) understands that countries including the U.S. may restrict the import, use or export of encryption products (which may include the Red Hat Products, their components or related technical information) and that it will be solely responsible for compliance with any such import, use, or export restrictions.

**15.3.5** Partner will not export any Red Hat Product, component or related technical information to a third party or to an Affiliate that is located in a country that is engaged in boycotting activities not sanctioned by the U.S. and will not make any sale that is prohibited under the Anti-boycotting Act (50 USCA 2407, Part 760).

**15.3.6** To the extent required by law or to protect the rights of Red Hat, Partner will register this Agreement, at its expense, with any governmental authority requiring such registration, or with which registration is advisable, provided that Red Hat will have the right to review and approve any application for registration prior to its submission to any governmental authority. At Red Hat's option, Red Hat may obtain such registration in its own name. At Red Hat's request, Partner will withdraw any application or registration of this Agreement that it has filed.

**15.3.7** Partner acknowledges that Red Hat may be prohibited from providing Services (including maintenance and support) for Red Hat Products, their components and related technical information if Red Hat has knowledge that a violation of the EAR has occurred. The Parties agree to cooperate with each other with respect to any application for any required licenses and approvals; provided, however, that Partner acknowledges it is Partner's ultimate responsibility to comply with any and all export, import and use laws and that Red Hat has no further responsibility after the initial export to Partner.

**15.4 No Assignment.** This Agreement is only assignable by Partner with Red Hat's prior written consent. Any assignment made by Partner without Red Hat's prior written consent will be void and Red Hat will not be required to recognize the assignment. Red Hat may assign any or all of its rights and delegate or novate any or all its obligations hereunder without the prior approval of Partner. At the request of Red Hat, Partner will execute any papers or documents reasonably necessary to give effect to such assignment or novation. Partner shall promptly notify Red Hat of any material change to its ownership structure.

按照美国法律的要求, 合作伙伴声明并保证: (a) 了解某些红帽产品、其组件和相关技术信息受美国商务部《出口管理条例》(“EAR”) 的出口管制; (b) 不在《出口管理条例》第 740 部分附录 1 中的国家/地区分组 E:1 中列出的国家/地区; (c) 不将红帽产品、其组件或相关技术信息出口、再出口或转让至 (1) 任何禁止目的地, (2) 美国政府的任何联邦机构不允许参与美国出口交易的任何最终用户, 或者 (3) 合作伙伴知道或有理由知道将利用它们设计、开发或生产核武器或生化武器、火箭系统、航天运载器、探测火箭或无人驾驶的空中运载系统的任何最终用户; (d) 理解并同意, 如果其在美国境内向符合要求的最终用户出口、再出口或转让红帽产品、其组件和相关技术信息, 则必须按上述《出口管理条例》第 740.17 (e) 条的规定, 每半年向美国商务部的行业安全局提交报告, 说明各受让人的姓名、地址(包括所属国/地区)等情况; (e) 理解各个国家/地区(包括美国)都可能会限制加密产品(可能包含红帽产品、其组件和相关技术信息)的进口、使用或出口, 理解自己必须全权负责对这些进口、使用或出口限制的遵守。

合作伙伴不得将任何红帽产品、组件或相关技术信息出口到位于参与美国不支持的抵制活动的国家/地区的关联机构; 而且不得从事美国反抵制法 (50 USCA 2407, Part 760) 禁止的任何销售。

在法律允许的范围内, 或者为了保护红帽的权利, 合作伙伴应自费向要求此类注册的政府部门或建议注册的部门注册本协议, 但红帽有权利在注册申请提交到政府部门之前对其进行检查和批准。根据红帽的选择, 红帽可以自己的名义获得此注册。如果红帽要求, 合作伙伴应撤回已针对本协议提出的申请或注册。

合作伙伴承认, 如果红帽知道会违反《出口管理条例》, 则红帽不得为红帽产品、其组件和相关技术信息提供服务。合作伙伴同意在申请所需的执照和批准方面彼此合作, 但合作伙伴承认, 遵守所有出口、进口和使用方面的法律是合作伙伴的根本责任, 红帽在最初出口给合作伙伴后, 不再承担进一步的责任。

**不得转让。**只有在获得红帽的事先书面同意后, 合作伙伴方可转让本协议。如果事先未得到红帽的书面同意, 合作伙伴的任何转让都将无效, 也无法要求红帽承认该转让。红帽可以转让自己在本协议下的部分或所有权利, 并可委托或变更其在本协议下的部分或全部义务, 无需经合作伙伴事前批准。如果红帽要求, 合作伙伴应签署合理必需的文件或文档, 以使此类转让或变更生效。合作伙伴应立即将其所有权结构的任何重大变化通知红帽。

**15.5 Independent Contractor.** Partner and Red Hat are independent contractors for all purposes, without express or implied authority to bind the other. Neither Party nor its employees, agents or subcontractors is entitled to any employee benefits of the other. Partner will be responsible for all costs and expenses incident to performing its business. Nothing in this Agreement shall be deemed to constitute a partnership, or create a relationship of principal and agent between the Parties for any purpose.

**15.6 Force Majeure.** 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. In the event of the occurrence of any of the foregoing, the date of performance will be deferred for a period of time equal to the time lost by reason of the delay. This section does not relieve either Party of its obligation(s) to make payments.

## **16. Miscellaneous.**

(a) All headings contained in this Agreement are inserted for identification and convenience, and will not be deemed part of this Agreement for purposes of interpretation. (b) 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. (c) The delay or failure of either Party to exercise any rights hereunder will not constitute or be deemed 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 or forfeiture is sought to be enforced. (d) This Agreement will constitute the exclusive terms and conditions with respect to the subject matter of this Agreement, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Partner, including subsequent to the date of this Agreement. This Agreement contains the final, complete and exclusive statement of the agreement between the Parties with respect to the transactions contemplated herein and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter of this Agreement are contained herein. In the event of a conflict between the Partner Terms and Conditions in this Exhibit 1 and any applicable Program Appendix, Program Guide(s), End User License Agreement or any other Program literature, the terms will be interpreted in the following order (1) the applicable Program Appendices, (2) the Partner Terms and Conditions, (3) the End User License Agreement, (4) the Program Guide and (5) any other program literature. (e) Except as otherwise provided in Section 2, this Agreement may not be amended, supplemented or modified except by written instrument signed by authorized signatories of the Parties hereto, which instrument makes specific reference to this Agreement. (f) 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 instrument. The Parties may exchange signature pages electronically and such signatures will be effective to bind the Parties. (g) The Parties acknowledge that they have each reviewed and participated in settling the terms of this Agreement. Furthermore, the Parties agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation or construction of this Agreement. (i) This Agreement has been prepared, negotiated and signed in English, and English is the controlling language of this Agreement.

**独立承包商。**就各方面而言，合作伙伴和红帽都是独立的承包商，没有约束另一方的明确或暗示权力。协议一方或其雇员、代理或分包商，都无权享有另一方的员工福利。合作伙伴负责支付开展其业务产生的所有成本和费用。本协议中任何内容都不能视为构成一种合作关系，或为了某种目的而在双方之间建立委托人和代理关系。

**不可抗力。**对于因自然灾害、战争、暴乱、罢工、火灾、洪水、地震、政府限制、恐怖活动或其它超出一方合理控制而造成的不履行或延迟，任何一方都不必承担责任。如果发生上述任何一种情况，协议履行日期延迟的时间要与耽误的时间相等。本节不免除任何一方付款的义务。

## **其它事项。**

(a) 本协议中的所有标题均为为识别与方便起见而插入，不能因出于解释而被视为本协议的一部分。(b) 如果本协议的任何规定由于某种原因被视为无效或无法执行，但经过适当的修改以后，可以成为有效或可执行的规定，那么，此规定应经过必要的修改，使之具备有效性和可执行性后应用。如果此类规定不能如此修改，则双方一致同意这样的无效性不影响本协议其它规定的有效性。(c) 任何一方延迟或未行使本协议下的权利都不构成或认为是放弃或丧失这些权利。除非放弃或者丧失权利的行为得到对方授权代表的书面同意和签字，否则任何放弃均属无效。(d) 本协议将构成与本协议主题相关的全部条款与条件，尽管订购单或合作伙伴使用的其它文件（包括本协议生效以后的文件）中可能包含不同或额外的条款。本协议包括双方就本协议规定交易所达成的最终、完整且唯一的协议表述；先前有关本协议主题所达成的一切书面协议，以及先前或同期达成的一切口头协议，均包含在本协议中。如果附表 1 中的“合作伙伴条款与条件”与任何适用的计划附约、计划指南、最终用户许可协议或任何其它计划文件发生冲突，将按照如下次序对条款进行解释：(1) 适用的计划附约，(2) 合作伙伴条款与条件，(3) 最终用户许可协议，(4) 计划指南，以及 (5) 任何其它计划文件。(e) 除了第 2 节另行规定的内容外，只有经本协议双方授权代表签署明确提到本协议的书面文件后方可修订、增补或修改本协议。(f) 本协议一式两份，且均视为原件，但两份文本共同构成一份且相同的法律文本。双方可通过电子方式交换签字页，签字后即告生效，对双方具有约束力。(g) 双方均承认审查并参与了本协议条款的制定。此外，双方同意：在本协议的起草和解释过程中，不使用容易造成条款含糊不清的编制规则。(i) 本协议起草、商榷和签署均使用英文，英文是本协议的主导语言。

**17. Authorized Signatures.**

A person authorized to enter into this Agreement on Partner's behalf must sign the Agreement and the Partner's corporate seal must be affixed in the space provided in the Partner Acceptance Document. The Partner must then submit ALL PAGES of the originally signed Agreement by registered mail or courier using the information provided in the cover page of the Partner Acceptance Document to facilitate Red Hat countersignature.

**18. Waiver of Jury Trial.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OF OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**19. Acknowledgment of Partner.**

Partner confirms that it intends to become a Partner of Red Hat Programs, has read and fully understand the terms and conditions and obligations contained in the Agreement including the applicable Program Appendix(es) and any terms incorporated via URL, and agrees to be bound by all such obligations as a party to the Agreement which may be amended or modified by Red Hat from time to time.

**授权签字。**

经授权代表合作伙伴签订本协议的人员必须在合作伙伴批准文件中提供的空白处签署本协议并加盖合作伙伴的公司印章。合作伙伴必须利用“合作伙伴批准文件”封面页提供的信息通过挂号信或快递提供已签署协议的原件的所有纸页以方便红帽会签。

**放弃由陪审团审理的权利。**

在适用法律允许的最大范围内，各方放弃由陪审团审理由本协议或因其产生的交易或与之相关的任何法律诉讼的权利。

**合作伙伴的确认。**

合作伙伴确认其有意成为红帽计划的合作伙伴，已阅读并完全理解本协议所载条款与条件及义务（包括适用的“计划附约”和通过 URL 纳入的任何条款），并同意作为协议（可由红帽随时修改或修订）一方受所有此类义务的约束。