



READ THIS PARTNER AGREEMENT (THE "AGREEMENT") CAREFULLY. YOU ("PARTNER") ACCEPT THE TERMS OF THIS AGREEMENT BY (I) INDICATING YOUR ASSENT IN AN ON-LINE TRANSACTION, OR (II) SIGNING IT. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACT AS A RED HAT PARTNER, PARTICIPATE IN THE RED HAT PARTNER PROGRAM (THE "PROGRAM"), OR USE THE RED HAT PARTNER CENTER PORTAL LOCATED AT www.partner.redhat.com ("PARTNER CENTER").

"General Terms" mean Sections 1 – 18 of this Agreement.

- Purpose.** Red Hat has and will design programs for its Partners to promote Red Hat Products, enhance the satisfaction of Red Hat's End Users and augment the expertise and resources of Partners. These programs will be organized into different tracks that will accommodate the needs of different types of partners ("**Tracks**"). Partner's participation in the Tracks is governed by the terms contained in this Agreement and the applicable Track Appendix(ices). Such Track Appendix(ices) may reference one or more Red Hat Program Guides for the applicable Red Hat geographic region, located at www.redhat.com/partners/programs/programguide.html ("**Program Guide**"). The Agreement consists of this Partner Agreement, including all Exhibits hereto, the applicable Track Appendix(ices), and (if applicable) any transaction agreements for the sale of Red Hat Products (each, a "**Procurement Document**"). Certain country unique terms, as identified in the Exhibits hereto, may modify or replace certain sections of the General Terms. "**Red Hat Products**" mean Red Hat branded and/or JBoss branded software, related documentation, and services that are distributed under the Red Hat Marks (defined below). "**End User**" shall be as defined in the applicable Track Appendix(ices).
- Tracks, Application Process, and Acceptance.** Details of the Tracks, membership levels, specializations and qualifications for Partner participation in the Tracks are included in the applicable Track Appendix(ices), which may be amended by Red Hat from time to time. In particular, Red Hat reserves the right to change Tracks, membership levels and specializations at any time. The General Terms, the applicable terms of the Exhibits, and the applicable Track Appendix(ices) set forth the terms and conditions under which Partner is authorized to participate in the applicable Track(s). Following submission by Partner of an application for participation in one or more Tracks, either electronically through the Partner Center or by other mechanism as may be identified for the applicable Territory (each, an "**Application**"), Red Hat will review the Application and upon its acceptance by Red Hat, provide electronic notification to Partner of the specific Partner Track(s), membership level(s), and/or specialization(s) (if applicable) to which Partner is appointed (the "**Acceptance Notice**"). Partner represents and warrants that all information provided to Red Hat in the Application is truthful, complete and accurate. Red Hat may accept or reject any Application, in Red Hat's sole discretion. Alternatively, the Parties may execute this Agreement in hard copy format, which in Red Hat's sole discretion, may be considered acceptance of Partner's Application.

"Red Hat" means the Red Hat entity(ies) listed below, which is determined based on the country in which Partner is incorporated or maintains its principal place of business. For Partners not located within the Americas, Red Hat Inc. is a party to this Agreement only with respect to Sections 8 (Trademarks), 9 (Additional Restrictions), 10 (Intellectual Property), 11 (No Warranty, Limitation of Liability, Disclaimers, Insurance and Indemnity), and any right to use the Red Hat Products under the Agreement, and shall not be considered jointly and severally liable with other Red Hat entities with respect to any other Sections of the Agreement.

Partner Country/Region of Incorporation or Principal Place of Business	Red Hat Entity
The Americas (including North America, Central America and South America except for those countries listed below)	Red Hat, Inc.

Argentina	Red Hat, Inc. and Red Hat Argentina S.A.
Australia and New Zealand	Red Hat, Inc. and Red Hat Asia-Pacific Pty. Ltd.
Brazil	Red Hat, Inc. and Red Hat Brasil Sistemas Ltda.
Chile and Peru	Red Hat, Inc. and Red Hat Canada, Ltd.
Hong Kong S.A.R.	Red Hat, Inc. and Red Hat Ltd., Hong Kong branch
India, Pakistan, and Sri Lanka	Red Hat, Inc. and Red Hat India Pvt Ltd.
Japan	Red Hat, Inc. and Red Hat KK
Korea	Red Hat, Inc. and Red Hat Ltd., Korea Branch
People's Republic of China	Red Hat, Inc. and Red Hat Software (Beijing) Co. Ltd.
Taiwan	Red Hat, Inc. and Red Hat Asia Pacific Pte. Ltd.
All countries in continental Europe, the Middle East or Africa	Red Hat, Inc. and Red Hat Ltd.
All other countries/regions in Asia Pacific not listed above	Red Hat, Inc. and Red Hat Asia Pacific Pte. Ltd.

Red Hat and Partner are hereinafter collectively referred to as the “**Parties**” and may be referred to individually as “**Party**”.

3. **Affiliate Authorizations.** Partner’s Affiliate(s) may only participate in the Program by entering into a separate Partner Agreement with Red Hat. “**Affiliate**” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
4. **Program Fees.** Program fees, if applicable, will be as indicated in the appropriate Program Track Appendix(ices), and will be due and payable as set forth in such Track Appendix(ices), *Exhibit 1 - Payment Instructions*, and *Exhibit 2 - Country Unique Terms*.
5. **Term.** This Agreement begins on the Effective Date and continues until the expiration or termination of all applicable Program Track Appendix(ices) (“**Term**”). The term of each Partner Track Appendix is independent of the term of any other Partner Track Appendix. “**Effective Date**” means the later of a) the date indicated on the Acceptance Notice; or b) the date Red Hat executed a hard copy of this Agreement (if applicable).
6. **Program Changes.** Partner agrees to review the information provided on the Partner Center on a regular basis, including information regarding this Agreement, the applicable Track Appendix(ices), Program Guides, and changes to any of the foregoing. Red Hat reserves the right, in its sole discretion and without any compensation to Partner, to change the Tracks, Program fees, as well as any requirements, benefits or other features of the Program at any time. Any such changes become effective seven (7) days from the date of the written notice, which, notwithstanding Sections 15.2 and 16, may take the form of publication on the Partner Center. If Partner does not consent to such changes, Partner may terminate the Agreement pursuant to Section 13.1 and/or the applicable Track Appendix(ices) pursuant to the terms for terminating such Track Appendix(ices).
7. **Verifications.** During the Term and for at least three (3) 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 business activities related to the Program (“**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 (to which Partner shall respond appropriately), 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, Inc. or a Red Hat Affiliate that are set forth in the applicable Track Appendix(ices) and correspond to Partner’s membership level(s). Red Hat, Inc. 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 the applicable Track Appendix(ices), and in doing so, to follow the standards of quality established by Red Hat, Inc. Partner agrees not to use the Red Hat Marks in combination with any other trade name, trademark or service mark, except as stated in this Agreement, without the prior written approval of Red Hat, Inc. Red Hat reserves the right, in its sole discretion, to terminate this Agreement in the event of any misuse by Partner of any Red Hat Mark.
- 8.3 Partner agrees to adhere to the trade mark usage guidelines found at <http://www.redhat.com/about/corporate/trademark/guidelines> (the “**Red Hat Trademark Guidelines**”) for the depiction of the Red Hat Marks. 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 marketing, advertising and promotional materials. 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, 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 on good or services other than as covered under this Agreement or in a manner inconsistent with the *Red Hat Trademark Guidelines*, shall constitute material breach of this Agreement. If such material breach has not been cured within two (2) business days following receipt of notice from Red Hat, Red Hat shall, notwithstanding Section 13.1, have the right to immediately terminate this Agreement.
- 8.4 All goodwill created by the uses of the Red Hat Marks by Partner is created for the sole benefit of, and accrues to Red Hat. For the avoidance of doubt, Partner 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 attack the Red Hat Marks, nor assist any one in attacking them. Partner agrees not to make any application to register the Red Hat Marks or any domain names containing the Red Hat Marks, and not to use any trade name, service mark or derivation that is confusingly similar to any of the Red Hat Marks 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. 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 will survive termination or expiration of this Agreement.
- 8.5 Partner agrees that when using the Red Hat Marks, including the Shadowman logo, in any advertising, promotional material or on its website to include the following notice: “[Name of Red Hat trademark] is a registered trademark of Red Hat, Inc., in the U.S. and other countries. Used under license.”
- 8.6 **Packaging.** Partner will not change or alter 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, 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 Restrictions

- 9.1 Red Hat reserves all rights not expressly granted in this Agreement and Partner will make no utilization of the Red Hat Products for the benefit of any other person or entity, including, but not limited to, acting as a service bureau, or permit any third party to make such utilization, and Partner will have no other rights or licenses with respect to the Red Hat Products not expressly granted herein

(including rights under any trademarks, copyrights, patents, or other intellectual property of Red Hat).

- 9.2** Without limiting the generality of Section 9.1 above, Partner agrees: (i) not to modify the Red Hat Products in any **unapproved** manner; and (ii) not to use 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 Track Appendix(ices) or by any applicable 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 Track Appendix(ices), Partner agrees to pay the applicable subscription fee for all periods of use.
- 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.** EXCEPT AS OTHERWISE SET FORTH IN *EXHIBIT 2 - COUNTRY UNIQUE TERMS* FOR PARTNERS IN CERTAIN COUNTRIES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RED HAT PRODUCTS 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 otherwise.
- 11.2 Limitation of Liability.** EXCEPT AS OTHERWISE SET FORTH IN *EXHIBIT 2 - COUNTRY UNIQUE TERMS* FOR PARTNERS IN CERTAIN COUNTRIES, FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT'S AND ITS AFFILIATES AGGREGATE AND CUMULATIVE LIABILITY TO PARTNER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY PROCUREMENT DOCUMENT HEREUNDER, 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 BY PARTNER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY 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 PROCUREMENT DOCUMENT HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE SET FORTH IN *EXHIBIT 2 - COUNTRY UNIQUE TERMS* FOR PARTNERS IN CERTAIN COUNTRIES, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY 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 PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 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 in respect of the policies of insurance referred to in this Section 11.4 shall be the responsibility of Partner. Partner will provide Red Hat certificates of insurance for all such insurance coverage upon execution of this Agreement, which will give Red Hat the right to receive written notice from the insurance carrier of any change in policy coverage, endorsements or limits at least thirty (30) days before such change takes effect. Partner will indemnify and hold harmless Red Hat from and in relation to any and all liability, loss, costs, damages or expense, including reasonable attorney's, solicitor's or legal fees and costs, resulting from or arising out of Partner's 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. Red Hat will be permitted to reference its relationship with Partner, including during Red Hat's earnings calls, discussions with analysts, meetings with the press, customer briefings, general marketing activities, and in regulatory filings.

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. 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 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, or (f) is disclosed pursuant to legal or regulatory obligations beyond the control of the disclosing and receiving Parties. 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 Termination by Red Hat or Partner. Red Hat or Partner may (without prejudice to any other right or remedy) terminate this Agreement or any Track Appendix (and Partner's participation in such Track) (a) for any reason at any time upon thirty (30) days prior notice in writing to the other Party; or (b) 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) fails to remedy the breach within fifteen (15) days of being requested in writing to do so unless a shorter cure period is otherwise stipulated under this Agreement or in the applicable Track Appendix(ices), provided, however, that no such cure period will be required for a breach of Sections 8 or 12 hereof or any other breach that cannot be reasonably cured. Termination of this Agreement shall not affect any pre-existing agreements between the Parties, nor any End User Enterprise Agreement. "**Enterprise Agreement**" shall be as defined in the applicable Track Appendix(ices).

13.2 Effect of Agreement Termination or Expiration. Termination or expiration of this Agreement for any reason will immediately terminate Partner's participation in the Program, including all applicable Tracks and 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 advertising; (ii) to the extent applicable, cease all promotion, demonstration, sale and distribution of the Red Hat Products; (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, that Partner will be entitled to sell any of its inventory of Red Hat Products 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. All rights and obligations of the Parties under this Agreement and the applicable Track Appendix(ices) will terminate immediately, except that the such obligations under Sections 7, 11-12, 13.2 - 13.3, 14, 15.1 - 15.2, 15.5, and 16 hereof, any Partner payment obligations, and any provision regarding waiver of jury trial in the Exhibits or applicable Track Appendix(ices) hereto, will survive such termination or expiration. Enterprise Agreements with End Users for any Red Hat Products distributed by Partner prior to termination or expiration will survive in accordance with their terms, provided that the End Users continue to comply with the applicable Enterprise Agreement. Termination of this Agreement will not operate to terminate any special bid or other Procurement Document under this Agreement and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any special bid or other Procurement Document in effect at the time of termination of this Agreement and until such time as the special bid or other Procurement Document expires.

- 13.3 No Compensation.** In the event of a termination or expiration of this Agreement, 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. To the extent permitted by applicable law, Partner, for itself and on behalf of each of its employees, hereby waives any rights which may be granted to it under the laws and regulations of any jurisdiction or otherwise which are not granted to it or them by this Agreement. 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 amicably resolve any problem before commencing any proceeding (except where urgent injunctive relief is sought).
- 15. General Provisions**
- 15.1 Governing Law.** Choice of law and venue for this Agreement will be as set forth in Exhibit 2 - Country Unique Terms. To the extent their exclusion is permissible, 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.
- 15.2 Notices.** Notices and communications under this Agreement 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: 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, unless otherwise provided in *Exhibit 3 - Red Hat Notice Addresses* or at such other address as may be communicated by Red Hat to Partner in writing: Red Hat, Inc., 1801 Varsity Drive, Raleigh, North Carolina 27606; Facsimile: +1 (919) 754-3704. Any notice or communication from Partner to Red Hat will also include a copy sent 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** Partner will be the importer of record of the Red Hat Products 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 laws and other regulations that apply to it. Partner will also comply with the U.S. Foreign Corrupt Practices Act ("**FCPA**"). One of the things the FCPA prohibits is giving anything of value, directly or indirectly, to a "government official" in order to influence his or her official actions. For purposes of the FCPA, "government official" includes employees of government-owned or government-controlled companies, public international organizations, political parties, and candidates for political office. Partner will not permit its resellers or partners to do anything that would violate this Section of the Agreement. None of Partner's significant shareholders, owners, partners, officers, or directors is or will become a government official without Red Hat's prior written approval. If Red Hat believes that Partner has breached or may breach any of the provisions of 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 or any other technical data received from Red Hat except as permitted by the laws and regulations of the United States of America ("**U.S.**") and the laws and regulations of the jurisdiction in which Partner obtained the Red Hat Products or other technical data 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 data, 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 are subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("**EAR**"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations (presently, this includes Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria); (c) will not export, re-export or transfer the Red Hat Products to any prohibited destination, entity or

individual without the necessary export license(s) or authorizations(s) from the U.S. Government; (d) will not use or transfer the Red Hat Products for use in any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the U.S. Government by regulation or specific license; (e) understands and agrees that if it is in the U.S. and exports or transfers the Red Hat Products to eligible End Users, it will, as required by EAR Section 741.17(e), submit semi-annual reports to the U.S. Commerce Department's Bureau of Industry & Security, which include the name and address (including country) of each transferee; and (f) understands that countries other than the U.S. may restrict the import, use or export of encryption products 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 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.
- 15.4** **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 wholly void and invalid, assignee will acquire no rights whatsoever, and Red Hat will not recognize, nor will Red Hat 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.
- 15.5** **Independent Contractor.** Partner is an independent contractor for all purposes, without express or implied authority to bind Red Hat. Neither Partner nor its employees, agents or subcontractors are entitled to any employee benefits of Red Hat. Partner will be responsible for all costs and expenses incident to performing its business. Nothing in this Agreement shall (except as expressly provided) 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. The affected Party will notify the other in writing of such events or circumstances promptly upon their occurrence.
- 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 merged herein. In the event of a conflict between this Partner Agreement and the applicable Track Appendix(ices), Program Guide(s) or any other Program literature, the terms of this Partner Agreement will prevail. e) Except as otherwise provided in Section 6, 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. g) 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 by facsimile and such signatures will be effective to bind the parties. h) 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.

17. **Authorized Signatures** In certain countries, a hard copy of this Agreement must be signed by authorized representatives of Partner and Red Hat. For this reason, Partners who are incorporated in or maintain their principal place of business in any country listed in *Exhibit 4 - Countries Requiring Signature* must print a copy of this Agreement and a person authorized to enter into this Agreement on Partner's behalf must sign the Agreement in the space provided below. The Partner should then submit ALL PAGES of the signed Agreement by email or fax using the information provided below to facilitate Red Hat countersignature. If the country in which Partner is incorporated or maintains its principal place of business is NOT listed in *Exhibit 4 - Countries Requiring Signature*, Partner may assent to this Agreement either by a) accepting this Agreement in an on-line transaction at the Partner Center or b) signing a hard copy of this Agreement and forwarding it to the appropriate Red Hat regional offices provided in *Exhibit 4 – Countries Requiring Signature*. Partners in North America are NOT required to submit a hard copy of the signed Agreement. However, Partners in North America who wish to submit a hard copy of the signed Agreement may submit ALL pages to nacontracts@redhat.com or fax or mail a hard copy to +1 (919) 754-3729 Red Hat, Inc. 1801 Varsity Drive, Raleigh, NC 27606.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement by its duly authorized representatives

Partner <i>(Enter your company's full name in the space provided below.)</i> <hr/>	Red Hat, Inc.
<hr/>	<hr/>
Authorized Signature	Authorized Signature
<hr/>	<hr/>
Title	Title
<hr/>	<hr/>
Date	Date
	Other Red Hat entity (if applicable) <hr/> <hr/> Authorized Signature <hr/> Title <hr/> Date

Exhibit 1 Payment Instructions

Partners who are incorporated in or maintain their principal place of business in the countries listed below shall make submit payment by wire transfer in the currency indicated and according to the information provided below.

Country / Region	Currency	Wire Transfer Payment Information
Default for Countries/Regions not Listed	U.S. Dollar	Account Name: Red Hat, Inc. Account Number: 719532764 Bank Name: JP Morgan Chase Bank, N.A. Bank Address: 2200 Ross Avenue, Dallas, TX 75201 Wire ABA#: 021000021 Swift: CHASUS33
Argentina	Argentinian Peso at the closing rate for US\$ as per the National Bank of Argentina at the date prior to the day of payment	Account name: Red Hat de Argentina SA Account Number: 0/825107/029 Bank Name: Sucursal de Citibank N.A. establecida en la República Argentina Bank Address: Bartolome Mitre 530 (1036) Ciudad Autónoma de Buenos Aires - Argentina Code for wire transfers: 0168888100008251070290
Australia	Australian Dollar	Account Name: Red Hat Asia Pacific Pte. Ltd. Account Number: 0111-940311 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASSGSG
Brazil	Brazilian Real	Account Name: Red Hat Brasil Ltda Account Number: 17818770 Bank Name: Citibank (754) Bank Address: Av. das Nações Unidas, 12.559 São Paulo - SP
Chile and Peru	U.S. Dollar	Account Name: Red Hat, Inc. Account Number: 4665713210 Bank Name: JP Morgan Chase Bank, N.A. Bank Address: 2200 Ross Avenue, Dallas, TX 75201 Wire ABA#: 021000021 Swift: CHASUS33
Hong Kong	Hong Kong Dollar	Account Name: Red Hat Ltd., Hong Kong Branch Account Number: 6839267678 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASHKHH

India	Indian Rupee	Account Name: Red Hat India Private Limited Account Number: 5385001127 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASINBX IFSC Code: CHAS0INBXCUC
Japan	Japanese Yen	Account Name: Red Hat KK Account Number: 0120008131 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASJPJT
Korea	Korean Won	Account Name: Red Hat Ltd., Korea Branch Account Number: 3308602527 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASKRSX
Country / Region	Currency	Wire Transfer Payment Information
Middle East, Israel, and South Africa	U.S. Dollar	Account Name: Red Hat Limited Account Number: 32571502 Bank Name: JP Morgan Chase Bank N.A. IBAN USD: GB37 CHAS 60924232571502 SWIFT: CHASGB2L
People's Republic of China (excluding Hong Kong and Taiwan)	Chinese Yuan Renminbi	Account Name: Red Hat Software (Beijing) Co., Ltd Account Number: 4447000136 Bank Name: JPMorgan Chase Bank (China) Co., Ltd, Beijing Branch Swift: CHASCN22 Bank Code for RMB Collection: 533100000017
Singapore	Singapore Dollar	Account Name: Red Hat Asia Pacific Pte. Ltd. Account Number: 0111-940311 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASSGSG
Taiwan	Taiwan Dollars	Account Name: Red Hat Asia Pacific Pte. Ltd. Account Number: 0111-940311 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASSGSG

United Kingdom	British Sterling Pound	Account Name: Red Hat Limited Account Number: 32571503 Bank Name: JP Morgan Chase Bank N.A. IBAN GBP: GB10 CHAS 60924232571503 SWIFT: CHASGB2L
All other countries/regions in Asia Pacific	US Dollar	Account Name: Red Hat Asia Pacific Pte. Ltd. Account Number: 0151942242 Bank Name: JP Morgan Chase Bank, N.A. Swift: CHASSGSG
All other countries in continental Europe, the Middle East and Africa	EURO	Account Name: Red Hat Limited Account Number: 32571501 Bank Name: JP Morgan Chase Bank N.A. IBAN EURO: GB64 CHAS 60924232571501 SWIFT: CHASGB2L
All other countries in Latin America	US Dollar	Account Name: Red Hat, Inc. Account #: 719533077 Bank Name: JP Morgan Chase Bank, N.A. Bank Address: 2200 Ross Avenue, Dallas, TX 75201 Wire ABA#: 021000021 Swift: CHASUS33

Exhibit 2 Country Unique Terms

1. Governing Law, Forum and Venue for Dispute Resolution.

1.1 For Partners who are incorporated in or maintain their principal place of business in **continental Europe, the Middle East, or Africa** this Agreement will be governed by the substantive laws of England. 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 the courts of London, England.

1.2 For Partners who are incorporated in or maintain their principal place of business in **North America and Latin America**, unless otherwise provided in subsections (i) through (iv) of this Section 1.2, the Agreement will be governed by the substantive laws of the State of New York. 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 the state or federal courts of Wake County, North Carolina. In the event the Uniform Computer Information Transactions Act (UCITA) is enacted, it will not apply to this Agreement, and the governing law will remain as if UCITA had not been enacted.

- i.** Where the Partner is incorporated in or maintains its principal place of business in **Argentina**, this Agreement will be governed by the substantive laws of Argentina. 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 the Ordinary Commercial Court of the city of Buenos Aires, Argentina.
- ii.** Where the Partner is incorporated in or maintains its principal place of business in **Brazil**, this Agreement will be governed by the substantive laws of Brazil. 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 the court of Rio de Janeiro, RJ.
- iii.** Where the Partner is incorporated in or maintains its principal place of business in **Venezuela**, Partner expressly waives any *forum non conveniens* defense. Red Hat shall preserve the right to file any legal action in the Bolivarian Republic of Venezuela to obtain precautionary or final (executive) measures against the Partner's real or personal property or assets, in the case of contract breach by the Partner or contractual damages suffered by Red Hat.
- iv.** Where the Partner is incorporated in or maintains its principal place of business in **Colombia**, 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. The arbitration will be conducted according to the Rules of Commercial Arbitration of the American Arbitration Association in place at the time of commencement of the arbitration proceeding, with the exclusion of (i) any pre-arbitral mediation or conciliation; (ii) the Procedures for Large, Complex Commercial Disputes or (iii) rules for international commercial arbitrations. The arbitration shall have one arbitrator, appointed by the American Arbitration Association. The place of the arbitration shall be the city of Miami, Florida, United States of America. The language of the arbitration shall be English, provided that, in the arbitrator's discretion, evidence submitted in Spanish may be admitted unless reasonably objected by the other Party. The arbitrator's decision shall be made in accordance with the laws 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.

1.3 For Partners who are incorporated in or maintain their principal place of business in **any country in Asia Pacific not identified in subsections (i) through (v) of this Section 1.3**, the Agreement will be governed by the substantive laws, excluding the private international law rules, of Singapore. Notwithstanding the foregoing, a person who is not a party to the Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms. 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 under the Rules of Arbitration of the Singapore International Arbitration Centre by a single arbitrator appointed in accordance with the said Rules. The language to be used in the arbitral proceedings will be English and the place of arbitration will be Singapore. The arbitral award made

and granted by the arbitrator will be final, binding, and incontestable and may be used as a basis for enforcement of the award in the place of residence or business of the parties.

- i. Where the Partner is incorporated in or maintains its principal place of business in **Australia or New Zealand**, the Agreement will be governed by the substantive laws of New South Wales without giving effect to the conflicts of laws provisions thereof. 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 the state courts of New South Wales and the federal courts of the Commonwealth of Australia, each located in Sydney.
- ii. Where the Partner is incorporated in or maintains its principal place of business in **China or Hong Kong**, the Agreement will be governed by the substantive laws of Hong Kong, Special Administrative Region of China. Any dispute arising out of, or in connection with, or with respect to the validity, interpretation and enforcement of this Agreement, including the breach thereof, will finally be finally settled exclusively by binding arbitration, under the Rules of Arbitration of the Hong Kong International Arbitration Centre ("**HKIAC**") in Hong Kong under the Hong Kong Arbitration Ordinance. The arbitration will be carried out before three (3) arbitrators. Each Party will appoint one arbitrator and the third will be chosen by HKIAC in accordance with HKIAC Procedures for Arbitration. The language to be used in the arbitral proceedings will 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.
- iii. Where the Partner is incorporated in or maintains its principal place of business in **India, Sri Lanka or Pakistan** the Agreement will be governed by the substantive laws of India. Any dispute that cannot be resolved within sixty (60) days or such extended period as the Parties may mutually agree in writing arising out of, or in connection with, or with respect to the validity, interpretation and enforcement of this Agreement, including the breach thereof, will be finally settled exclusively by binding arbitration according to the provision of the Indian Arbitration & Conciliation Act, 1996. Each Party shall select an arbitrator and the two arbitrators so selected shall appoint an umpire and the three will arbitrate the matter. The venue of arbitration shall be in Mumbai, India, and all arbitration proceedings shall be conducted in the English language. The English language version of the Agreement shall prevail over any other language version.
- iv. Where the Partner is incorporated in or maintains its principal place of business in **Japan**, the Agreement will be governed by the substantive laws of Japan. Any dispute arising out of, or in connection with, or with respect to the validity, interpretation and enforcement of this Agreement, including the breach thereof, will be finally settled exclusively by the Tokyo District Court of first instance located in Tokyo, Japan.
- v. Where the Partner is incorporated in or maintains its principal place of business in **Korea**, this Agreement will be governed by the substantive laws of England. 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 the courts of Korea located in Seoul, Korea and the courts of England and Wales.

2. Other Country Unique Terms

ASIA PACIFIC

2.1 Australia. For Partners who are contracting with Red Hat Asia Pacific Pty. Ltd. (**Australia**), the following terms apply in addition to any related terms in the Agreement or the applicable Track Appendix(ices):

2.1.1 Australian Taxes. Unless otherwise defined in the Agreement, capitalized expressions in this Section bear the same meaning as those expressions in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. Any amount payable under this Agreement, including all Fees, is exclusive of Taxes. "**Australian Taxes**" means any form of sales, use, value added or other form of taxation, including GST, and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Red Hat. Partner will pay Red Hat an amount equal to any Australian Taxes arising from or relating to this Agreement that are paid by or are payable by Red Hat. Specifically in respect of GST, if a Party makes a Taxable Supply in connection with the Agreement for a

Consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay GST is subject to a valid Tax Invoice being delivered.

- 2.1.2 Warranty Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PARTNER'S EXCLUSIVE REMEDY, AND RED HAT'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, PARTNER MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. ALL STATUTORY OR IMPLIED CONDITIONS AND WARRANTIES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LIABILITY UNDER ANY CONDITION OR WARRANTY WHICH CANNOT LEGALLY BE EXCLUDED IS LIMITED, IN THE DISCRETION OF RED HAT, TO: (A) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND (B) IN THE CASE OF SERVICES, SUPPLYING THE SERVICES AGAIN, OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- 2.2 Japan.** For Partners who are contracting with Red Hat KK (**Japan**), the following terms apply in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.2.1 Payment Terms.** Partner must pay all sums due to Red Hat by the last day of the month following the month in which the invoice was received by Partner without regard for when, and whether, Partner collects payment from End User.
- 2.3 India.** For Partners who are contracting with Red Hat India Private Limited (**India**), the following terms apply in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.3.1 Indian Taxes.** In the event Partner is required to withhold or deduct any portion of the payments due to Red Hat, Partner will not be required to increase the sum payable to Red Hat 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, provided that Partner furnishes tax deduction certification(s) to Red Hat within a reasonable time.
- 2.3.2 Limitation of Liability.** Red Hat's liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by Red Hat's gross negligence; and as to any other actual damage arising in any situation involving nonperformance by Red Hat pursuant to, or in any way related to the subject of the Agreement, Red Hat's liability will be limited to the fees paid by Partner for the individual Red Hat Product that is the subject of the claim.

CONTINENTAL EUROPE, the MIDDLE EAST and AFRICA (ENGLISH LAW)

- 2.4 English Law.** Where the laws of England apply to this Agreement, the following terms apply notwithstanding any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.4.1** In the **European Union**, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Agreement.
- 2.4.2 Warranty Disclaimer.** The express provisions of this Agreement are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose), all of which are hereby excluded to the maximum extent permitted by law.
- 2.4.3** Sections 11.2, 11.3, 13.3, and 16 (b) and (d) of the General Terms shall be replaced in their entirety with the following:

11.2 Limitation of Liability

- i. Nothing in this Agreement shall operate so as to exclude or limit the liability of any Party to any of the other Parties for death or personal injury arising out of negligence, or for any other liability which cannot be excluded or limited by law.
- ii. Subject to subsections 11.2 (i) and 11.2 (v), the total aggregate liability of Red Hat to Partner under or in relation to this Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), and breach of statutory duty, shall not exceed seventy five thousand pounds sterling (£75,000).
- iii. The limitations of liability set out in this Section 11.2 shall not apply in respect of any liability which may arise for bodily injury (including death) and physical damage to Partner's tangible property resulting from the negligence of Red Hat.
- iv. Red Hat shall not be liable to the Partner or its Affiliates for any of the following types of loss or damage arising under or in relation to this Agreement:
 - any loss of profits, business, contracts, anticipated savings, goodwill, or revenue, any wasted expenditure, or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
 - any indirect or consequential loss or damage whatsoever, even if that Party was aware of the possibility that such loss or damage might be incurred by the other.
- v. In no event will either Party or its Affiliates be liable to the other Party or its Affiliates for any claim based upon a third party claim.
- vi. This Section 11.2 shall survive and shall not be rendered ineffective by the termination or expiry of this Agreement for any reason whatsoever.

11.3 Third Party Rights. A person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

13.3 No Compensation. Neither Red Hat nor any reseller of Red Hat who may be engaged by Red Hat to carry out activities which are similar to the activities to be carried out by the Partner under this Agreement following the termination or expiry of this Agreement (a "**Replacement Partner**") shall have any liability for any current or former employees, independent contractors and agents of the Partner engaged in any way in the activities contemplated under this Agreement ("**Partner Staff**") and Partner shall indemnify Red Hat against any and all losses, costs, awards, liabilities and expenses suffered or incurred by Red Hat or any Replacement Partner as a result of any claim or demand made or brought against Red Hat or any Replacement Partner by or on behalf of any member or former member of the Partner Staff on the grounds that his/her employment and/or liabilities in connection with his/her employment, its termination or cessation howsoever arising (including as a result of its termination by Red Hat or any Replacement Partner) have or should have transferred from the Partner to Red Hat or any Replacement Partner pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 1996 or any equivalent legislation in any territory other than the United Kingdom or otherwise on the commencement of this Agreement, during its continuance or on its termination or expiry.

16. (b) If any clause, or part of a clause, of this Agreement, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the clause or paragraph which contains the relevant provision shall not be affected, unless otherwise stipulated under applicable law. If the remainder of the provision is not affected, the parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the clause, or the part of the clause, in ques-

tion.

d) This Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter. Each Party acknowledges that in entering into this Agreement it has not relied upon, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by any person or entity (including any other party to this Agreement) in relation to the subject-matter of this Agreement, except for those rights and remedies available under this Agreement. Nothing in this clause shall exclude or restrict the liability of either Party arising out of fraudulent misrepresentation or fraudulent concealment. In the event of a conflict between this Partner Agreement and the applicable Track Appendix(ices), Program Guide(s) or any other Program literature, the terms of this Partner Agreement will prevail.

NORTH AMERICA (CANADA AND THE UNITED STATES)

- 2.5 Partners selling to US Government End Users.** For Partners who are selling to End Users who are U.S. government entities, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.5.1 U.S. Government Restricted Rights.** Red Hat Products and documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, and the U.S. Government acquires the Red Hat Products and documentation subject to the terms of this Agreement.
- 2.6 United States and Canada.** For Partners who are incorporated in the United States or Canada or maintain their principal place of business in the United States or Canada, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.6.1 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.

LATIN AMERICA (INCLUDING MEXICO)

- 2.7 Brazil.** For Partners who are incorporated in Brazil or maintain their principal place of business in Brazil, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.7.1 Brazilian Taxes.** Partner will be responsible for the filings and payment of any Taxes, in connection with the Agreement and or levied on its object in compliance with the applicable laws.
- 2.7.2 Insurance and Indemnity.** Partner hereby consents to be joined in any action or proceeding in which Red Hat is a defendant and for which Partner is required to indemnify Red Hat pursuant to the provisions of the Agreement.
- 2.7.3 Independent Contractor.** Red Hat is responsible solely for the taxes, withholdings and other payments levied in connection with its own personnel. Partner hereby consents to be joined in any action or proceeding in which Red Hat is a defendant and for which Partner is required to indemnify Red Hat pursuant to the provisions of the Agreement.
- 2.8 Colombia.** For Partners who are incorporated in Colombia or maintain their principal place of business in Colombia, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.8.1 DISCLAIMER OF DAMAGES. IN THE EVENT THAT RED HAT IS OBLIGED TO COMPLY WITH THE GUARANTEE TO SUPPLIERS OR FINAL CONSUMERS BY ANY JUDICIAL OR ADMINISTRATIVE AUTHORITY, THE SUPPLIER MUST REIMBURSE RED HAT ALL PAYMENTS MADE OR THE VALUE OF ALL THE INDEMNIFICATIONS TO WHICH IT WAS**

CONDEMNED.

- 2.9 Ecuador.** For Partners who are incorporated in Ecuador or have their principal place of business in Ecuador, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.9.1 Ecuadorian Taxes.** Partner shall be entitled to withhold or deduct any portion of the payments due Red Hat if such withholding or deduction is (a) required under applicable law or regulation, domestic or foreign, and (b) based on Red Hat's net income. In such case, Partner shall provide Red Hat with receipts and documentation to substantiate such withholding and Partner will not be required to increase the sum payable to Red Hat 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,
- 2.10 Venezuela.** For Partners who are incorporated in Venezuela or have their principal place of business in Venezuela, the following term applies in addition to any related terms in the Agreement or the applicable Track Appendix(ices):
- 2.10.1 End User Agreements.** Partner must require End Users to sign or otherwise assent to Red Hat's Enterprise Agreement in such a manner as to comply with the Venezuelan Consumer and User Protection Law relating to adhesion contracts.
- 2.10.2 Payment Terms.** Partner will be the only party responsible for, and will take upon itself, all risks related with the acquisition of foreign currency in the Bolivarian Republic of Venezuela, including the obligation to access legally acceptable sources parallel to foreign currency exchange official authorities to that effect, even if the resulting exchange rate is higher than the official exchange rate, if necessary to comply with the obligations herein. Partner will reimburse Red Hat for all costs and expenses incurred by Red Hat in connection with the collection of overdue amounts, including judicial and extra-judicial attorneys' fees.
- 2.10.3 Venezuelan Taxes.** Partner shall be responsible for payment of any Taxes arising out of or in connection with this Agreement within or to the Bolivarian Republic of Venezuela, without considering the person formally designated as tax payer or responsible under applicable law. If Partner is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Red Hat, then Partner shall provide Red Hat with receipts and documentation to substantiate such withholding. Partner will not be required to increase the sum payable to Red Hat 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,
- 2.10.4 Trademarks.** Red Hat may grant identical or similar licenses over the same Red Hat Marks to third parties. Red Hat reserves the right to terminate the Agreement unilaterally and without compensation or indemnification as a result of any misuse by Partner of any Red Hat Mark.
- 2.10.5 Termination.** Red Hat or Partner may (without prejudice to any other right or remedy) unilaterally, without judicial request, judicial order or indemnification right of any nature, terminate this Agreement (a) for any reason at any time upon thirty (30) days prior notice in writing to the other party; or (b) at any time upon notice in writing to the other party if the other party is in material breach of any obligation hereunder and does not cure such breach within fifteen (15) days of being requested in writing to do so; provided, however, that no such cure period will be required or granted for a breach of section 8 or 12 of the General Terms.
- 2.10.6 Independent Contractor.** Neither Partner nor its employees, agents or subcontractors are entitled to any employee benefits of Red Hat or under employment subordination to Red Hat. Partner will be responsible for all costs and expenses incident to performing its business, including employment obligations.
- 2.10.7 Notices.** Partner expressly accepts that its notification or its service of process for legal actions filed by Red Hat in the United States of America may be served, via private means, including private courier, within the Bolivarian Republic of Venezuela, in the person of its President, General Manager or equivalent.
- 2.10.8 Violation of Constitutional Right.** If a term, condition or right granted to Red Hat under the Agreement is deemed to be unconstitutional in the Bolivarian Republic of Venezuela because it violates Partner's constitutional rights or warranties, Partner hereby expressly consents to such violation and waives the right to file or petition for constitutional *amparo* actions.

Exhibit 3
Red Hat Notice Addresses

Country	Fax Number	Notice Address
India, Sri Lanka, or Pakistan	912-239878899	Attention: Contracts Administrator Red Hat India Pvt Ltd. B 301 & 304, Delphi, Hiranandani Business Park, Powai, Mumbai 400 076, India
All other countries/regions in Asia Pacific	+65-6490-4203	Attention: Contracts Administrator Red Hat Asia Pacific Pte Ltd 8 Shenton Way, # 10 – 00, Singapore 068811
All countries in continental Europe, the Middle East, and Africa	353-21-2303499	Attention: Contracts Administrator 6700 Cork Airport Business Park Kinsale Road Cork, Ireland
All countries in Latin America (including Mexico) and North America	+1-919-754-3729	Attention: Contracts Administrator Red Hat, Inc. 1801 Varsity Drive, Raleigh, NC USA 27606

Exhibit 4
Countries Requiring Signature

Country	Send executed Agreements to:
Albania, Belgium, Bosnia and Herzegovina, Bulgaria Croatia, Czech Republic, France, Hungary, Italy, Luxembourg, Netherlands, Poland, Romania, Serbia and Montenegro (Former Republic of Yugoslavia), Slovakia, Slovenia or Turkey	contract-administration@redhat.com or mail a hard copy to: Red Hat Ltd. attn. Contract Administration 6700 Cork Airport Business Park Kinsale Road Cork Ireland
China, Japan, Pakistan or Thailand	apaccontracts@redhat.com or fax or mail a hard copy to: FAX: +65 6490 4203 Red Hat Asia Pacific Pte. Ltd. 8 Shenton Way, #10 – 00, Singapore 068811
India	apaccontracts@redhat.com or fax or mail a hard copy to: FAX: +91-22-3987-8899 Red Hat India Private Limited B 301 & 304, Delphi, Hiranandani Business Park, Powai, Mumbai 400 076, India
All countries in Latin America (including Mexico)	latamcontracts@redhat.com or fax or mail a hard copy to: FAX: +1-919-754-3729 Red Hat, Inc. 1801 Varsity Drive Raleigh, NC USA 27606

Reseller Track Appendix

- 1. Authorization.** The Partner Agreement, including this Reseller Track Appendix, and the applicable Red Hat Program Guide set forth the terms and conditions under which Partner is authorized to participate in the reseller Track and/or to acquire and resell Red Hat Products. Upon acceptance by Red Hat into the reseller Track, Red Hat grants Partner a non-exclusive authorization to demonstrate, market, promote and resell the Red Hat Products during the Term (defined below) to End Users (defined below) in the Territory (defined below). Partner shall participate in the reseller Track at the membership level for which Red Hat has approved Partner, as indicated in the Acceptance Notice. Partner will be permitted to sell in multiple Territories only upon mutual written agreement of the parties. Partner's continued authorization is based on its compliance with this Reseller Track Appendix, the Agreement and the applicable Program Guide, and Partner's continued compliance with the Program requirements. This authorization is personal to the legal entity or branch office indicated by Partner in the Application or as otherwise accepted by Red Hat in writing. Partner has no right to delegate its activity hereunder to another reseller, or to appoint sub-resellers or agents for the Red Hat Products without Red Hat's express written consent. Notwithstanding the foregoing, Partner understands and agrees that Red Hat grants Partner authorization to resell the JBoss branded products under the JBoss Reseller/JBoss System Integrator specialization only to the extent that Partner meets the specific requirements for such specialization as provided in the applicable Program Guide. "**Territory**" means the geographic territory in which Partner is permitted to sell as defined in the Acceptance Notice. "**End User**" means a purchaser who has acquired Red Hat Products for its own personal or internal use and without the right to resell, remarket or otherwise distribute Red Hat Products. Notwithstanding the authorization set out in this Appendix, Red Hat shall have no liability for any acts and omissions of any of its Business Partners,
- 2. Restriction of Territory.** If at any time Red Hat reasonably determines that (i) the laws of any country are or become insufficient to protect Red Hat's rights in the Red Hat Products; or (ii) applicable law prohibits Red Hat from distributing the Red Hat Products into a particular country, or (iii) if Red Hat becomes aware of any potential intellectual property claim that may be made in respect of the Red Hat Products in such country, Red Hat reserves the right to suspend Partner's right to distribute the Red Hat Products in such country upon thirty (30) days prior written notice. Partner's rights with respect to such country will only be reinstated upon written notification from Red Hat.
- 3. Fulfillment.** This Reseller Track Appendix authorizes Partner to acquire eligible Red Hat Products from a Red Hat-authorized distributor, reseller or OEM (each, a "**Business Partner**") as specified in the applicable Program Guide. Partner will only be permitted to purchase Red Hat Products directly from Red Hat if Partner receives Red Hat's prior written consent to do so. If Partner acquires Red Hat Products from a Business Partner, Partner will pay the Business Partner for the Red Hat Products and all payment, credit, shipping and other direct purchase terms shall be between Partner and the Business Partner. If Partner acquires Red Hat Products from Red Hat, Partner will pay Red Hat for the Red Hat Products under the terms provided in Section 4, below. Upon receipt of a purchase order from either Partner or Business Partner for Red Hat Products, Red Hat will provide access to a downloadable version of the Red Hat Products to either the Business Partner, Partner, or End User, as directed by the Business Partner or Partner in writing. For any instance where Red Hat has to ship Red Hat Products with physical media directly to Partner, Red Hat will itself or will direct its authorized agent to create and ship the physical media to Partner. Shipment is F.O.B. point of shipment by the method Red Hat deems most advantageous. Transportation and insurance charges, expenses and costs will be invoiced to Partner and are not included in any pricing provided. Risk of loss or damage to the Red Hat Products will automatically pass to Partner when the Red Hat Products are placed with the carrier for shipment to Partner. Red Hat Products are sold without return privileges, unless consented to in writing by Red Hat in its sole discretion.
- 4. Billing, Payment and Taxes.** This Section applies to all Partners, except as otherwise set forth in *Exhibit 2 - Country Unique Terms* for Partners in certain countries. If Partner acquires Red Hat Products from Red Hat, Red Hat will invoice Partner upon Red Hat's receipt of a purchase order for any amounts due to Red Hat; provided, however, that the terms of such purchase order will not amend, supplement or modify the terms of the Agreement, this Reseller Track Appendix or be binding on Red Hat. Partner must pay all sums due to Red Hat net thirty (30) days from the date of invoice, without regard for when, and whether, Partner collects payment from End User. All amounts owed under the Agreement, this Reseller Track Appendix, or the applicable Program Guide are to be paid in the applicable currency and to the account as set forth in *Exhibit 1 - Payment Instructions* that corresponds to the country in which the particular Partner is incorporated or maintains its principal place of business. 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', solicitor's, 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, 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 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. The parties will work together in good faith to minimize adverse tax consequences to Red Hat created by cross-border transactions.

5. **End User Enterprise Agreements.** Partner will require each End User to sign or otherwise assent (in a manner acceptable to Red Hat) to the applicable agreement set forth at www.redhat.com/licenses, as updated by Red Hat from time to time ("**Enterprise Agreement**"), as a condition to the distribution of the Red Hat Products to such End User. To the extent permitted by applicable law, Partner's satisfaction of this obligation may be achieved by, but is not limited to, inclusion of a URL link to the Enterprise Agreement in Partner's agreement or other purchase documentation with End User, or in the alternative by requiring End User to execute a hard copy of the Enterprise Agreement. Partner will not amend or grant any waiver under the Enterprise Agreement without Red Hat's prior written consent. If Partner becomes aware of any violation of an Enterprise Agreement, Partner will notify Red Hat immediately and will reasonably assist Red Hat in its efforts to enforce the terms of the Enterprise Agreement.
6. **Marketing and Distribution.** Subject to the rights and restrictions set forth in this Agreement, Partner will use reasonable efforts to (i) actively market, promote and distribute the Red Hat Products; (ii) make periodic and regular demonstrations showcasing the features of the Red Hat Products; (iii) establish and maintain appropriate marketing and distribution facilities and personnel to create and meet the demand for Red Hat Products and related support among End Users; (iv) represent the Red Hat Products accurately and fairly and at all times avoid deceptive, misleading or unethical business practices; and (v) carry out the promotional and other tasks set forth in the applicable Program Guide. Partner will make no claim, representation, warranty, or guarantee to End Users or third parties relating to the performance or functionality of the Red Hat Products other than as expressly set forth by Red Hat in its published manuals, training materials, software descriptions and specifications, brochures, technical manuals, license agreements, supporting materials, and other printed information. Partner shall determine its own resale prices. Partner agrees that it will promptly report any effort by Red Hat personnel to interfere with its pricing policies directly to a Red Hat officer or manager. Partner agrees to confer periodically with Red Hat, at Red Hat's request, on matters relating to market conditions, sales forecasting, product planning and promotional marketing strategies. Partner will conduct business in its own name and in such a manner that will be reasonably expected to reflect favorably at all times on the Red Hat Products and the good name, goodwill and reputation of Red Hat.
7. **Internal Use of Red Hat Products.** Subject to the terms and conditions of the Agreement, this Reseller Track Appendix and the applicable Program Guide, Red Hat grants to Partner, and Partner accepts, the following rights:
 - 7.1 A non-exclusive, non-transferable right during the Reseller Track Term to use the Red Hat Products subject to, and under the applicable terms of, the standard Red Hat Enterprise Agreement for sales, marketing, sales enablement training of Partner's personnel and demonstration of the functions and features of the Red Hat Products to End Users and prospective End Users at no cost. Any violation of the Enterprise Agreement will be deemed a material breach of this Agreement. Red Hat is under no obligation to provide any technical support to Partner for such internal use of Red Hat Products, except as may be provided in the applicable Program Guide.
 - 7.2 A non-exclusive, non-transferable right during the Reseller Track Term to reproduce or copy the Promotional Materials as reasonably necessary for Partner to fulfill its obligations under this Agreement; provided, however, that such right does not include the right to copy any third-party materials included in the Promotional Materials. "**Promotional Materials**" means any marketing collateral associated with the Red Hat Products that is provided by Red Hat to Partner for distribution to prospective End Users, including any Red Hat-authorized translations of those materials. All Promotional Materials and modified or amended versions of such Promotional Materials will remain or become the property of Red Hat. At the request of Red Hat, Partner will execute any papers or documents reasonably necessary to protect the rights of Red Hat in the Promotional Materials and will execute and deliver such other documents as may be reasonably requested by Red Hat. Partner has no rights to modify the Promotional Materials or documentation.
8. **Red Hat Marks.** The Red Hat Marks that Red Hat is authorized to use under this Reseller Track Appendix, if any, are identified in

the applicable Program Guide and are available electronically on the Partner Center or directly from Red Hat.

- 9. Reseller Track Term.** This Reseller Track Appendix and the authorization granted hereunder begin on the Effective Date and continue for one (1) year (the “**Reseller Track Term**”). This Reseller Track Appendix shall automatically renew upon the anniversary of the Effective Date, and shall continue in full force and effect for successive one (1) year periods unless and until terminated by either party giving to the other written notice of termination at least thirty (30) days before the anniversary date. “**Effective Date**” means either the date indicated on the Acceptance Notice or the date that Red Hat executed either a hard copy of the Agreement referencing this Reseller Track Appendix or a hard copy of this Reseller Track Appendix itself.
- 10. Termination of Reseller Track Appendix by Red Hat or Partner.** Red Hat or Partner may (without prejudice to any other right or remedy) terminate this Reseller Track Appendix pursuant to Section 13.1 of the Agreement. Termination of this Reseller Track Appendix shall not affect any pre-existing agreements between the Parties, nor any End User Enterprise Agreement. Termination of this Reseller Track Appendix for any reason will immediately terminate Partner’s participation in the Reseller Track, including all eligibility for Reseller Track benefits. Unless otherwise authorized under a separate Track Appendix, upon such termination, Partner will immediately (i) cease referring to itself as a Red Hat Business Partner, and using that title in any communication and advertising; (ii) cease all promotion, demonstration, sale and distribution of the Red Hat Products; (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. Partner will remit all fees due to Red Hat under this Reseller Track Appendix within fifteen (15) days of such termination; provided, however, that Partner will be entitled to sell any of its inventory of Red Hat Products 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. All rights and obligations of the Parties under this Reseller Track Appendix will terminate immediately, except that Partner payment obligations under this Reseller Track Appendix will survive such termination. Termination of this Reseller Track Appendix will not operate to terminate the Agreement or any special bid or other Procurement Document under the Agreement and the terms and conditions of the Agreement and this Reseller Track Appendix will continue in full force and effect to the extent necessary to give effect to any special bid or other Procurement Document in effect at the time of termination of this Reseller Track Appendix and until such time as the special bid or other Procurement Document expires.