

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

This is an Agreement between Red Hat, Inc. (“Red Hat”) and the individual or entity which purchased Red Hat Subscription Services from Microsoft Corporation, or its authorized affiliates, for use in the Portal (“You”, “you”, “Your” or “your”).

1. Background and Definitions.

1.1 Definitions. “Instance” means a virtual or physical system on which you or the Service Provider installs or executes all or a portion of the Software. “Portal” means the Service Provider’s online portal through which you purchase and/or receive access to Software and Services. “Software” means the Red Hat branded software, including all modifications, additions and further enhancements, in each case, which are provided by Red Hat and obtained directly or via a Service Provider or another third party. “Services” means access to Software maintenance in the form of Software fixes, updates, upgrades, modifications, images and security advisories, when and if available, provided by Red Hat and delivered to you by the Service Provider. “Service Provider” means Microsoft Corporation, and/or its authorized affiliates. “Subscription Services” refer to the Red Hat Software and Services provided to you for a specific term and made available by a Service Provider.

1.2 Agreement Background. You have purchased the right to access Red Hat Software and Subscription Services from Service Provider for use in the Portal. This Agreement establishes the terms and conditions under which Red Hat will provide those Subscription Services to you in connection with your use in the Portal, which are in addition to the terms contained in the agreement between you and the Service Provider. Red Hat is not responsible for (a) the actions of Service Provider, (b) any additional obligations, conditions or warranties provided by Service Provider or (c) any products and/or services that Service Provider provides to you under agreements between you and Service Provider, including any access, outages or unavailability of the Software or Services on the Portal. In order to provide a positive support experience, Red Hat and Service Provider may collaborate on issues relating to your Subscription Services on the Portal and you consent to Red Hat discussing your Subscriptions Services and related information with the Service Provider for such purposes.

2. Terms of Service

2.1 Software Access and Services. For each Instance purchased from Services Provider for use in the Portal, you will receive access to the Subscription Services. Subscription Services are provided only for your own benefit and use within the Portal. Support services, if any, will be provided to you by the Service Provider.

2.2 Purchase Requirements. During the term of this Agreement as set forth in Section 6, you are required to purchase Services for each Instance from either (i) Service Provider or (ii) Red Hat or a Red Hat authorized business partner. If you are using any of the Services to support or maintain Instances of Red Hat or non-Red Hat software (other than Instances for which you have paid or received subject to a Red Hat authorized program) either within or outside the Portal, then you are required to notify Red Hat of such use and pay Red Hat the standard published software subscription fees for such use (e.g. <https://www.redhat.com/wapps/store/catalog.html>) under the terms of the Red Hat Enterprise Agreement, a copy of which is set forth at www.redhat.com/licenses. Distributing the Subscription Services (or any portion) to a third party outside the Portal or using the Subscription Services to support a third party without paying the respective fees is a material breach of this Agreement even though the open source license applicable to individual software packages may give you the right to distribute those packages (and this Agreement is not intended to interfere with your rights under those individual licenses). For clarification purposes, this Agreement **does not** apply to Software subscriptions purchased from Red Hat directly for use outside the Portal or in conjunction with the Red Hat Cloud Access program (as set forth at <https://www.redhat.com/solutions/cloud/access/enroll.html>). The Red Hat Cloud Access program is the method through which you may migrate Software and subscriptions purchased from Red Hat to use on the Service Provider’s Portal.

3. License.

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

4. Service Provider Specific Services.

Service Provider may offer specific services, offerings or protections related to its Portal, including but not limited to the provision of Services by US only personnel, compliance with certain regulations or regimes or other such Service Provider specific obligations (“Service Provider Offerings”). Other than as specifically agreed to by Red Hat in writing, the Subscription Services are not provided subject to the terms of those Service Provider Offerings, and any Service Provider Offerings solely relate to the Service Provider or the Portal itself and not to the Red Hat Software and/or Services operated on the Portal.

5. Confidentiality.

5.1 Obligations. During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Red Hat or you ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.

5.2 Exclusions. Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

6. Term, Reporting and Inspection.

The Agreement begins on the date that you accept this Agreement or the date you first obtain the ability to access the Subscription Services in the Portal, whichever is earlier, and continues for the period of time you have the ability to access the Subscription Services in the Portal (subject to Section 12). A party may terminate this Agreement for breach if the other party has failed to cure a breach within ten (10) days of written notice by the non-breaching party, provided that you may have other or additional obligations to the Service Provider in order to terminate access to the Subscription Services and the terms of this Agreement shall apply until such access is terminated. During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect and review your facilities and records in order to verify your compliance with this Agreement. Red Hat will give you written notice of any non-compliance, and you will have fifteen (15) days from the date of such notice to make payment to Red Hat for any amounts owed. You acknowledge and consent to Red Hat's receipt of usage information with respect to the Subscription Services from the Service Provider.

7. Limitation of Liability and Disclaimer of Damages

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

7.2 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO YOU OR YOUR AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Representations and Warranties.

Red Hat represents and warrants that, to its knowledge, the Software does not intentionally include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, THE SERVICES AND THE SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE, THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS OR THAT INFORMATION STORED WHEN USING THE SERVICES ON SERVICE PROVIDER'S PORTAL WILL BE SECURE. RED HAT SERVICES MAY BE SUBJECT TO DELAYS, OR OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS; RED HAT IS NOT RESPONSIBLE FOR SUCH DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RED HAT, ITS AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS, SERVICE PROVIDER OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. Without limiting the generality of the foregoing disclaimer, Red Hat Software 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. You agree that you are solely responsible for the results obtained from the use of the Red Hat Software and Services.

- 9. Open Source Assurance.** Purchases of Subscription Services under this Agreement entitle you to participate in Red Hat's Open Source Assurance Program which is described at <http://www.redhat.com/rhel/details/assurance/>. The terms for this optional program are subject to a separate agreement which can be viewed at http://www.redhat.com/legal/open_source_assurance_agreement.html.
- 10. Governing Law/Consent to Jurisdiction.** Any claim, controversy or dispute arising out of or related to this Agreement is governed by the substantive laws of the United States and the State of New York. 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 claim, controversy or dispute arising out of, or in connection with, or with respect to the validity, interpretation and/or enforcement of the Agreement, including the breach, will be settled exclusively in the state or federal courts of Wake County, North Carolina. No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the party first became aware, or reasonably should have been aware, of the basis for the claim.
- 11. Export & Privacy.** As between Red Hat and you, you are solely responsible for complying with any applicable export laws or regulations related to your use of the Subscription Services and you agree not to transmit information, data or technology governed by the International Traffic in Arms Regulations to Red Hat in the course of your use of the Subscription Services. Red Hat may supply you with technical data that may be subject to export control restrictions. Red Hat will not be responsible for compliance by you with applicable export obligations or requirements for such technical data. You acknowledge and agree that to provide the Services it may be necessary for your information, including your personal data, to be transferred to and between Red Hat, its affiliates, business partners, and/or subcontractors, which may be located worldwide.
- 12. Updates to Terms.** Red Hat may modify this Agreement at any time by posting a revised version at http://www.redhat.com/licenses/cloud_CSSA/Red_Hat_Cloud_Software_Subscription_Agreement_for_Microsoft_Azure.pdf, by otherwise notifying you, and/or by requiring you to accept the new revised terms. The modified terms will become effective (i) upon posting or (ii) if we notify you by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to review this Agreement to be aware of the most recent terms. Red Hat last modified this Agreement on the date listed at the bottom of this Agreement.
- 13. Evaluation & Developer Offerings.** Red Hat and/or Service Provider may offer Subscriptions Services to you on the Service Provider Portal for evaluation or development purposes subject to the terms and conditions of this Agreement and any additional restrictions as provided by Service Provider. If you choose to consume Red Hat Subscription Services using Azure credits provided through programs including but not limited to the Azure Free Account, Azure Pass or Microsoft Visual Studio Subscriptions you will automatically be enrolled in Red Hat's Developer Program. If you choose to access, use or consume Red Hat Developer Subscriptions from Red Hat directly such use is subject to the terms and conditions found at <https://developers.redhat.com/terms-and-conditions/>.
- 14. Miscellaneous.**
- (14.1) Notices.** Notices must be in English and in writing. Red Hat may provide notice to you under this Agreement by (i) posting the notice on the Red Hat section of the Service Provider website and/or (ii) sending a message to the email address associated with your account. Notices provided by posting on the Services Provider website will be effective upon posting and notices provided by email will be effective when Red Hat sends the email. You will be deemed to have received any email sent to the email address associated with your account following transmission by Red Hat. To give notice to Red Hat under this Agreement, you must contact Red Hat using a method that provides for positive confirmation of delivery to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Email: legal-notices@redhat.com. Notices provided by overnight courier will be effective one business day after they are sent and email will be effective on the date it was sent. **(14.2) Assignment.** This Agreement is binding on the parties to this Agreement and nothing in this Agreement confers upon any other person any right, of any nature, save for the parties' affiliates. Red Hat may assign this Agreement to its affiliates or subsidiaries or pursuant to a merger or a sale of all or substantially all its assets or stock. **(14.3) Force Majeure.** Except with respect to the payment of fees under this Agreement, neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. **(14.4) Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement; provided, however, that if Section 7 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety. **(14.5) Waiver.** No waiver will be valid unless in writing signed by an authorized representative of the party against whom such waiver is sought. **(14.6) Complete Agreement.** This Agreement represents the complete agreement between the parties with respect to subject matter hereof and all other agreements with respect to the subject matter hereof are merged therein. **(14.7) Amendment.** Except as set forth in Section 12, this Agreement may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement. **(14.8)** The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement. **(14.9) Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT. **(14.10) Independent**

Contractor. Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's provision of Services will be construed to create an employment or agency relationship between the Service Provider and Red Hat, or between you and Red Hat.