

# MUTUAL NONDISCLOSURE AGREEMENT

## NORTH AMERICA



This Mutual Nondisclosure Agreement (the "**Agreement**"), dated as of the date specified below ("**Effective Date**") is made between Red Hat, Inc., a Delaware corporation with its principal office at 1801 Varsity Drive, Raleigh, North Carolina 27606 ("**Red Hat**"), on behalf of itself and its affiliates, and the person or entity specified in the signature block below (the "**Participant**"), on behalf of itself and its affiliates and shall be effective for a period of two (2) years beyond the Effective Date (the "**Term**").

In consideration of the mutual covenants set forth in this Agreement and intending to be legally bound, the parties agree as follows:

- 1. Confidential Information.** "**Confidential Information**" means all information disclosed by either Red Hat or the Participant (the "**Disclosing Party**") to the other party (the "**Recipient**") during the Term, that is either (i) marked confidential, or (ii) disclosed orally and described as confidential at the time of disclosure and is subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure. Any Confidential Information disclosed is provided "AS IS" and without any representation or warranty of any kind. Both parties agree that all Confidential Information received is and will remain the property of the Disclosing Party. No right or license, express or implied, under any patent, copyright, trade secret or other proprietary right is granted under this Agreement.
- 2. Nondisclosure and Use.** For a period of two (2) years after the date of disclosure, the parties agree that (i) Confidential Information will only be used to allow the parties to evaluate, discuss, finalize and implement a consensual business relationship between the parties (the "**Purpose**"); (ii) each will use the same degree of care that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors of the Recipient with a need to know for the Purpose 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.
- 3. Exceptions to Confidentiality.** 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 which is licensed under the GNU General Public 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.
- 4. Independent Development.** Nothing herein will prohibit or restrict the Recipient's right to develop, use or market products or services similar to or competitive with those of the Disclosing Party; provided, however, that the foregoing does not relieve either party from their obligations under this Agreement. The Disclosing Party acknowledges that the Recipient may already possess or have developed or market products, services, concepts, or ideas similar to or competitive with those of the Disclosing Party contained in the Confidential Information.
- 5. General.** Both parties recognize that the communication or transfer of any information received pursuant to this Agreement may be subject to specific government export approval. Both parties will adhere to all applicable laws, regulations and rules relating to the export or re-export of technical data or products. The obligations under this Section will survive any termination or expiration of this Agreement. The validity, interpretation and enforcement of this Agreement will be governed by and will be construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws provisions thereof. No provision of this Agreement is to be interpreted for or against either party on the grounds that one party or the other, or their legal counsel, drafted such provision.

**IN WITNESS WHEREOF**, each of the parties hereto has executed this Agreement by its duly authorized representatives effective as of the Effective Date.

**Participant**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Red Hat, Inc.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Effective Date

In order for Red Hat to process this Agreement, please sign and return this Agreement to Red Hat as follows:

Facsimile: 919-754-3729  
Address: 1801 Varsity Drive  
Raleigh, NC 27606  
Attention: Business Affairs

To Participant: please provide contact information:

Facsimile: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_