

## MASTER SERVICES AGREEMENT

This Statement of Work to provide services for the (insert name of contract), including the attached Appendix 3, and any amendment as made from time to time (the "SOW") is made as of this \_\_\_th day of \_\_\_\_, 20\_\_ (the "Effective Date"), between Red Hat Limited, a company with its principal place of business at Unit 6700, Cork Airport Business Park, Kinsale Road, Cork, Ireland ("Red Hat") and (insert Client name), a company with its principal place of business at (insert Client address)("Client").

**1. Obligations of the Parties.** Red Hat will provide certain consulting services to Client (the "Services") as described in the Appendix 3 to this SOW. ("the Appendix"). Client will (a) carry out its obligations under the Appendix, (b) provide a safe and secure working environment for Red Hat personnel while working on Client's premises, and (c) obtain any third party consents necessary to grant Red Hat access to its software, hardware and systems. In the event that (a) Client fails to timely fulfill its obligations under the Appendix, and this adversely impacts Red Hat's delivery of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations, Red Hat will be entitled to appropriate relief.

**2. Payment and Taxes.** Fees for the Services (the "Fees") are set forth in the Order Form. Fees are stated in GBP, must be paid in GBP, and are exclusive of out-of-pocket expenses unless otherwise explicitly agreed in the Order Form. All payments are non-refundable. Red Hat will invoice Client as set forth in the Appendix. Client will make payment within thirty (30) days of the date of the invoice. Red Hat reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if payment has not been received within sixty (60) days of the invoice date. Fees are exclusive of any Taxes. Client will pay to Red Hat an amount equal to any Taxes arising from or relating to this SOW or the Appendix, including without limitation, sales, service, use or value-added taxes, which are paid by or are payable by Red Hat. "Taxes" means any form of taxation, levy, duty, customs fee, charge, contribution or impost of whatever nature and by whatever authority imposed, including, without limitation, any fine, penalty, surcharge or interest, but excluding any taxes based solely on the net income of Red Hat. Red Hat shall ensure that all invoices (i) quote Client's purchase order number; (ii) are submitted within three (3) months of the Fees being incurred; and (iii) are sent to the address stated as the Bill To Address as set forth in the Purchase Order received from Client. Red Hat acknowledges and agrees that its failure to comply with the foregoing will result in Client rejecting the relevant invoice.

**3. Ownership Rights.** Except for pre-existing confidential information and subject to Section 7, any ideas, methods, concepts, know-how, inventions and improvements developed during the course of the SOW may be used by either party, without an obligation to account, in any way a party deems appropriate, including by or for itself or its clients or customers, notwithstanding anything to the contrary contained in this SOW. Nothing in this SOW will be understood to preclude or limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those delivered to Client. For the avoidance of doubt, nothing in this section shall permit Red Hat to use Confidential Information belonging to Client or Client's customer for any purpose other than providing the Services to Client and to finalize and implement a business relationship with Client.

**4. Term and Termination.** This SOW will commence on the Effective Date and continue for a term of one (1) year, or until the expiration of any statement of work, whichever is longer, unless sooner terminated as provided in this SOW. If either party materially breaches the terms of the SOW and the breach is not cured within thirty (30) days after written notice, then the other party may terminate this SOW at the end of the thirty (30) day period. Without prejudice to any other right or remedy of Red Hat, in the event either party terminates this SOW, Client will pay Red Hat for all Services provided up to the effective date of termination. Either party may terminate this SOW without cause, at any time when there are no other statements of work outstanding. Sections 2, 3, 4, 5, 7, 9 and 11 of this SOW will survive termination.

### 5. Limitation of Liability and Disclaimer of Damages

**SAVE FOR ANY INDEMNIFICATIONS SET OUT IN THIS SOW, FOR ALL OTHER EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS SOW AND ALL STATEMENTS OF WORK, 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 TO EXCEED THE AMOUNT THAT CLIENT PAID TO RED HAT UNDER THE MOST APPLICABLE STATEMENT OF WORK GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SOW OR ANOTHER STATEMENT OF WORK, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO THE CLIENT 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 RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**6. Indemnification.** Red Hat and Client ("Indemnifying Party") each agrees that if a third party brings a claim against the other ("Indemnified Party") for death or bodily injury or damage to real or tangible personal property arising out of the Indemnifying Party's

negligence in the performance of this SOW or if a third party initiates a legal action against Client alleging that Client's use of the Services infringes such third party's intellectual property rights ("Third Party Rights") (such action, a "Claim"), and Client has complied with the terms of this SOW (as amended from time to time) then;

Red Hat shall (i) defend Client against the Claim and (ii) pay costs, damages and/or attorneys fees that are included in a final judgment against Client (without right of appeal) or in a settlement approved by Red Hat; and

If Client's use of the Services is found by a court to infringe Third Party Rights (or Red Hat believes that such a finding is likely), then Red Hat will, at its expense and option: (i) obtain the rights necessary for Client to continue to use the Services; (ii) modify the Services so that it is non-infringing; or (iii) replace the infringing portion of the Services with non-infringing code of similar functionality (subsections (i), (ii) and (iii) are the "IP Resolutions"); provided that if none of the IP Resolutions is available on a basis that Red Hat finds commercially reasonable, then Red Hat may terminate the SOW under which the Services have been delivered, and Red Hat will refund any payment made related to the relevant infringing Services.

Notwithstanding the foregoing, Red Hat will have no obligations under this clause with regard to any Claim that is based upon (I) a modification of the Services made by Client (other than at Red Hat's written direction); (II) Red Hat's compliance with any designs, specifications or instructions provided by Client; (III) use of the Services in combination with products, data or business methods not provided by Red Hat, if the infringement or misappropriation would not have occurred without the combined use; (IV) any use of the Services other than in accordance with this SOW.

### **Services including Open Source software**

For the avoidance of doubt it is clarified that this Clause 6 only applies to any customized software code developed by Red Hat as part of the Services and that is not licensed under an open source license. It shall not apply to (i) any software code delivered by Red Hat as part of any subscription services (ii) Software provided by Client or any open source software which Red Hat has not developed and which forms the basis for the Services. The indemnities in this Section 6 are contingent upon (i) the Indemnified Party promptly notifying the Indemnifying Party in writing of any claim which may give rise to a claim for indemnification hereunder; (ii) the Indemnifying Party being allowed to control the defense and settlement of such claim; and (iii) the Indemnified Party co-operating with all reasonable requests of the Indemnifying Party (at the Indemnifying Party's expense) in defending or settling a claim. The Indemnified Party will have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing.

**7. Confidentiality.** During the term of this SOW, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this SOW; (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 the information confidential using standards of confidentiality not less restrictive than those required by this SOW. Both parties agree that obligations of confidentiality will exist for a period of five (5) years following termination of this SOW. "**Confidential Information**" means all information disclosed by either Red Hat or Client or Client's customer ("**Disclosing Party**") to the other party ("**Recipient**") during the term of this SOW 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. Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this SOW, 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.

**8. Representations and Warranties** Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel and (b) it has the authority to enter into this SOW with Client.

**EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES IN THIS SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS SOW. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RED HAT, ITS AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.**

**9. Governing Law/Consent to Jurisdiction** The validity, interpretation and enforcement of this SOW will be governed by and construed in accordance with the laws of England and without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. Client hereby consents to jurisdiction of United Kingdom.

**10. Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent to the respective addresses indicated on the first page hereof or to the facsimile numbers set forth below, using a method that provides for positive confirmation of delivery; provided that any notice from Client to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 1801

**11. Assignment.** This SOW is binding on the parties to this SOW, and nothing in this SOW or in any other statement of work confers upon any other person or entity any right, benefit or remedy of any nature whatsoever, save for the parties' Affiliates as expressly provided in Section 5. This SOW is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this SOW to its Affiliate pursuant to a merger or a sale of all or substantially all of such party's assets or stock without the prior approval of the other party.

**12. Subcontracting.** Red Hat may subcontract Services under this SOW without the prior approval of Client; provided, however, that (a) subcontractors must agree to keep any proprietary information received from Red Hat or Client confidential, and (b) Red Hat remains responsible to Client for the performance of its obligations hereunder.

**13. Independent Contractor.** Red Hat is an independent contractor and nothing in this SOW or related to Red Hat's performance of any statement of work will be construed to create an employee relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Red Hat will be solely responsible for payment of applicable taxes, deductions or other payments and benefits for its personnel.

**14. 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.

**15. Non-solicitation.** Neither party shall solicit or hire any personnel of the other who has been engaged in connection with this SOW or any statement of work; provided that either party may hire an individual employed by the other who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

**16. Export Responsibilities.** Red Hat may supply Client with technical data that may be subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for such technical data. Client agrees to comply with all applicable export control restrictions.

**17. Dispute Resolution.** If Client is not satisfied with the Services provided by Red Hat, Client agrees to give Red Hat a written description of the problem(s) and to make a good faith effort to amicably resolve the problem with Red Hat before commencing any proceeding. Red Hat also agrees to make a good faith effort to amicably resolve any problem with Client before commencing any proceeding.

**18. Headings.** All headings contained in this SOW are inserted for identification and convenience, and will not be deemed part of this SOW for purposes of interpretation.

**19. Severability.** If any provision of this SOW 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 SOW; provided, however, that this shall not apply if Section 2 cannot be modified to be valid and enforceable.

**20. Waiver.** 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 is sought to be enforced.

**21. Complete Agreement.** Each statement of work, unless otherwise expressly provided in that statement of work, is deemed to include this SOW. Each statement of work constitutes the exclusive terms and conditions with respect to the subject matter of that statement of work, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions hereunder. Each statement of work constitutes a separate agreement and represents the final, complete and exclusive statement of the agreement between the parties with respect to subject matter of the statement of work and all prior written agreements and all prior and contemporaneous oral agreements with respect to the subject matter of the statement of work are merged therein. In the event of any conflict between this SOW and any statement of work, this SOW will take precedence unless otherwise expressly provided in the statement of work. Any claim relating to the provision of the Services by Red Hat, its Affiliates and their personnel will be made against Red Hat alone.

**22. Amendment.** This SOW and any statement of work may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this SOW or the applicable statement of work.

**23. Counterparts and Facsimile Signature.** This SOW 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.

**24. 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 SOW or the transactions contemplated hereby.

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

Effective Date.

**Client Name**

**Red Hat Ltd.**

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Authorized Signature

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Authorized Signature

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Printed Name

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Printed Name

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Title

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Title