

**RED HAT & DEPARTMENT OF DEFENSE**  
**SOFTWARE LICENSE/SUBSCRIPTION AGREEMENT**  
**NASA SEWP**

This document sets forth the Department of Defense (“**DOD**” or “**Client**”) Software License/Subscription Requirements (the “**Agreement**”). Red Hat’s Enterprise Agreement, Red Hat Enterprise Agreement U.S. Government Supplement, Product Appendix 1 Software and Support Subscriptions, Open Source Assurance Agreement and End User License Agreements (Red Hat Apache-Based, Red Hat GPLv2-Based and Red Hat LGPL-Based) are attached as Attachment A and made a material part hereof by this reference. This document, including Attachment A constitutes the agreement between the Red Hat and the DOD related to the use of Red Hat’s software subscriptions. The terms and conditions set out below, supplement, and to the extent a conflict exists, supersede, and take precedence over the terms and conditions in Attachment A.

- 1. Enterprise Language:** The parties agree that more than one agency of the DoD may acquire Software and Subscription Services as defined in the Enterprise Agreement (collectively “**Products**”) under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the purchaser is a “DoD Department or Agency” as defined by the 48 Code of Federal Regulations, section 202.101 ,the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution Notwithstanding the foregoing, this Agreement shall not be applicable to the Department of Navy, any entity purchasing Products under the Department of Navy’s DON Enterprise Software Blanket Purchase Agreement with DLT Solutions, LLC, N00189-17-A-Q002 (the “**DON ELA**”), the National Geospatial-Intelligence Agency, and the National Security Agency. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the Software, terms of any click through agreement included with the Software, or any other terms purported to apply to the Software, including any Red Hat published policy, or program documentation or customer ordering documents. The information set forth in Appendix 1 is intended to provide information on product lifecycles, support contact information, hardware compatibility and other information related to the use of the subscriptions. The URLs incorporated in Appendix 1 are not intended to impose additional obligations on DOD not set forth in this Agreement.
- 2. Indemnification:** The DOD does not have the authority to and shall not indemnify any entity. The DOD agrees to pay for any loss, liability or expense, which arises out of or relates to the DOD’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DOD is established by a court of law with jurisdiction over the dispute or where settlement has been agreed to by the DOD agency under applicable statutory authority or by the Department of Justice. This provision shall not be construed to limit the DOD’s rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the United States.
- 3. End user:** Red Hat shall not bring any action against an Authorized User (as defined in Section 20 below) in his or her personal capacity. DOD shall be solely responsible for ensuring Authorized User’s compliance with this Agreement.
- 4. Open Source Assurance:** Red Hat shall not knowingly provide Software under this Agreement that infringes on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. To the extent that Red Hat has acquired or will acquire in the future, any intellectual property rights in Products purchased by DOD, Red Hat will provide licensing of those intellectual property rights without additional compensation for the duration of the Product subscriptions.
- 5. Patent, Copyright, Trademark and Trade Secret Protection:** The Licensor shall indemnify DoD in accordance with the Open Source Assurance Agreement. Licensor’s Open Source Assurance Agreement is hereby modified for DoD to comply with Federal Law, to include:

  - a. The Department of Justice has the right to represent the United States pursuant to 28 USC section 516.
  - b. The DoD has the right to continued use of all software, regardless of possible or actual infringement, pursuant to 28 USC section 1498. No injunctive relief is allowed. However, if DoD chooses to continue use after notified by Licensor to discontinue use, DoD will be responsible for any costs related to that continued use.
  - c. DoD will not indemnify or otherwise agree to assume or to pay any portion of the fees and costs of defending allegations,

pursuant to the Anti-Deficiency Act.

d. The Licensor will provide its Open Source Assurance Agreement for the entire period of this agreement.

e. Federal Law applies as stated in paragraph 34 below.

f. Additionally, Licensor's obligations under this provision are not subject to the Limitation of Liability.

g. Paragraph D of the Red Hat Enterprise Agreement U.S. Government Supplement (included in Attachment A) is deleted.

- 6. Delivery:** Red Hat's delivery of the Software to DOD shall be by electronic download or as otherwise specified in Red Hat Business Partner's orders, FOB Destination.
- 7. Continued Performance:** If the Red Hat believes the Client to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in FAR 52.212-4 subparagraph (d).
- 8. Warranty:** Red Hat warrants for one (1) year from the date on which the Subscription Services specified in a Delivery Order Document begins that the Software description is accurate, and of sufficient quality and that the Software will perform in all material aspects the functions described in the documentation when operated in accordance with the documentation on a supported platform. Any alleged failure to comply with this warranty will be addressed through the Software support process set forth in Appendix 1.
- 9. Publicity/Advertisement:** Red Hat must obtain DOD approval prior to mentioning the DOD or a DOD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
- 10. Territory:** Any Department of Defense (DOD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCOUS), regardless of where Software was acquired.
- 11. Virus, Malicious, Mischievous or Destructive Programming:** Red Hat warrants that the Products as delivered by Red Hat at the time of delivery, to Red Hat's knowledge, do not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products. The DoD's exclusive remedy, and Red Hat's sole obligation, for any breach of the foregoing warranty will be the re-performance or re-delivery of the deficient Product.
- 12. Limitation of Liability:**
- a) The Licensor's liability to the DoD under this Agreement, as it relates to the Licensor's software shall be as stated in the Licensor's Enterprise Agreement, Section 12.2 or \$250,000, whichever is greater.
  - b) This limitation does not apply to damages for:
    - (i) bodily injury;
    - (ii) death;
    - (iii) intentional injury;
    - (iv) damage to real property or tangible personal property for which the Licensor is legally liable.
    - (v) Licensor's indemnity of the DOD for patent, copyright, trade secret or trademark protection, which is hereby capped at \$500,000.
- 13. Backup for User Documentation:** DOD may make a reasonable number of copies of the Software documentation ("User Documentation") for DOD's internal business purposes. DOD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DOD is also responsible for reporting to Red Hat if DOD learns of the misuse or mishandling of User Documentation provided under the contract to DOD personnel, contractors or Government employees. To the extent the User Documentation is provided under a Creative Commons license that offers rights less restrictive than the rights provided in this clause, DOD will be subject to the less restrictive rights.
- 14. Product Transfers and Assignments:** DOD is authorized to transfer or assign the Products or DOD's rights in the Products among or between government agencies using the form set forth in Exhibit A. In addition to the rights set forth in Appendix 1, DOD may transfer Products to contractors acting on DOD's behalf using the form set forth in Exhibit B. DOD may authorize any portion of the Software to be copied onto or accessed from another Authorized User's computer, except

as may be explicitly provided in this Agreement.

15. **Functionality Replacement and Extended Support.** Without prejudice to Red Hat's right to determine Product planning and Product lifecycles, if Red Hat reduces or replaces the functionality contained in any Product ordered under this Agreement and provides this functionality as a separate or renamed product during the term of this Agreement, Red Hat shall permit its authorized distributor to incorporate the new or revised product at no additional cost until the expiration of the then current subscription term of the original Product purchased by the Client.
16. **Substitution and Technology Refreshment.** In the event Red Hat schedules Products for replacement, improvement and/or substitution, Red Hat shall permit its authorized distributor to incorporate the new or revised Products on its order under the appropriate line items. Improvements of Product include new releases, updates, upgrade including additional features and functionality, and successor or upgrade Products. Red Hat further agrees to provide updated technical bulletins, user's guides, and documentation, as appropriate, applicable to such replacements, improvements, or substitutions at no additional cost.
17. **Rights of Survivorship of the Agreement.** This Agreement is governed by the provisions of 31 U.S.C. 3727, 41 U.S.C. 6305 and FAR subpart 32.8 – Assignment of Claims. This Agreement shall survive unto Licensor, its Successor, rights and assigns. The Software and agreement terms and conditions as covered under this Agreement shall survive this Agreement, notwithstanding the acquisition or merger of Licensor by or with another entity.
18. **Audit Responsibilities:** DOD will maintain, and promptly provide to Red Hat or Red Hat's Business Partner upon its request, accurate records regarding use of the Products by or for the DOD. If the DOD becomes aware of any unauthorized use of all or any part of the Products, the DOD will notify Red Hat promptly, providing reasonable details. DOD will perform a self-audit upon the request of Red Hat, which request may not occur more often than annually, and report the number of Product units used by the DOD (hereinafter "the Product Count"). DOD shall notify Red Hat of the Product Count no later than 90 calendar days after the request that the DOD perform a self-audit. This paragraph sets out the sole audit right under this Agreement.
19. **Embedded Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party embedded software terms and conditions that are contrary to Federal law.
20. **Additional Functionality:** Any additional functionality provided on Red Hat's Products shall not impose additional license terms and/or fees on the Government during the applicable Product subscription term.
21. **US Government Configuration Baseline.** Red Hat shall comply with the below requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov> as applicable to the Products to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of Software shall not alter the configuration settings from the approved USGCB configuration.
  - a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.
  - b) Publisher shall also certify that any subsequent product/module for the life of the Agreement is/are fully functional and operate correctly as intended on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with USGCB standards as they evolve.
  - c) DOD buyers may require compliance with additional baseline configuration requirements mutually agreed upon and set forth in a Product order.
22. **Section 508 of the Rehabilitation Act Compliance.** General information regarding the Section 508 Act can be found at the web site [www.section508.gov](http://www.section508.gov). Voluntary Product Assessment Templates (VPATs) published by Red Hat will be available Red Hat's website.
23. **Temporary Use of Software During Times of Conflict and/or Natural Disaster.** As part of Temporary Expeditionary Deployments ("TEDs"), during the term of this Agreement, a Purchasing Group may temporarily deploy and install or use on, or access from desktops or servers, Products in addition to those previously ordered pursuant to this Agreement at no

additional cost ("**TED Subscriptions**") as set forth below. TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.

The Purchasing Group may access Products equal to the quantity purchased for use in support of a TED event. After the TED, or six (6) calendar months, whichever is shorter ("**Temporary Use Period**"), unless a different time period is agreed to in writing by Red Hat, the DOD will provide a written certification that the TED Products have either been removed from service, or payment has been made under this Agreement to purchase additional subscriptions equal to the number of TED Products not removed from service. DOD agrees to use the TED Products in accordance with the terms contained in this clause.

- 24. Software Asset Management & ISO-IEC 19770:2015 Series:** Red Hat will maintain a consistent naming and versioning convention for its Software to make Software identification possible.
- 25. Authorized Users:** An Authorized User includes, but is not limited to DOD government employees (military, civilian, reserves, national guard), contractors, non-human devices or partial devices operated by Authorized Users.
- 26. Use of Products in 3<sup>rd</sup>-Party Cloud Environments:** Red Hat software products may be utilized in cloud or non-cloud computing environments, including 3<sup>rd</sup> party cloud (public or private) providers. DOD will comply with Red Hat's Enterprise Agreement Appendix 1, including Appendix 1.J, for Products hosted in 3<sup>rd</sup>-party clouds.
- 27. Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. This Agreement provides the DOD all rights concerning data sharing, data access, data transfer and data manipulation for authorized users associated with the DOD missions. The parties agree that as long as one party has a valid subscription, the transfer of data or the sharing of data is unrestricted. Authorized Users are permitted to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters using the Products.
- 28. Cold Back-Up for Disaster Recovery.** For each subscription the ordering DOD department or agency ("**Purchasing Group**") has purchased, the Purchasing Group, for no additional cost, will be able to deploy the same product on a "cold" back-up server at a pre-designated, dormant, operational location solely for Disaster Recovery purposes during the term of its coverage.
- 29. Parallel Operations and Testing.** For no additional cost, DOD shall have the ability to run software subscriptions on parallel systems for up to 90 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. DOD will ensure that the duplicate instances required during the system migration and/or hardware refresh period are uninstalled once the parallel operation is no longer required. DOD will only request the ability to run the same number of instances that are currently identified on the device subject to the parallel operation. If DOD requires more Instances on the device being used during the Parallel Operation than the number of Instances that reside on such device, DOD will acquire the necessary subscriptions from Red Hat's authorized partner.
- 30. Re-imaging and Gold Disk rights.**
  - a) **Re-Imaging for Use Under Separate Agreements.** If a Purchasing Group has Products from an original equipment manufacturer (OEM), through a retail source or under any Red Hat program other than this Agreement, it may use copies made from the media provided under this Agreement in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions. The Purchasing Group must have obtained a separate license/subscription from the separate source for each copy being replaced. The product, language, version, type and all components (in the case of product suites) of the copies made from the media provided under this Agreement must be identical to the product, language, version, type and all components of the copies they replace. The use of any copies made under this subsection is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

b) **Gold Disks for Use by Purchasing Groups under this Agreement.** A Purchasing Group may reproduce the Products in object code or source code on DOD gold disks, such as the "DOD Unified Master Gold Disk" ("UMGD") and distribute the gold disks to Authorized Users via government networks and other electronic or physical media for access and use in accordance with the terms of this Agreement. The Purchasing Group must purchase a valid subscription for each Product deployed using such gold disks.

31. **License copies for training and evaluation:** During the term of this Agreement (including any renewal term), a Purchasing Group may (i) run up to 20 complimentary copies of any Product in a dedicated training facility on their premises; and (ii) run up to 10 complimentary copies of any Product for a 90-day evaluation period subject to Section 2.1 of Appendix 1.

32. **Finality of Terms:** This Agreement and any Exhibits and attachments to this Agreement will be the sole document governing the granting of licenses/subscriptions between DOD and Red Hat. There shall be no changes to this Agreement unless agreed to by both parties in writing.

33. **Software Titles Incorporated by this License Agreement:** All subscriptions offered by Red Hat identified in Appendix 1 will be incorporated into this Agreement. Additional software subscriptions acquired through Red Hat's in-house development or corporate acquisition may be added through a mutually agreed upon bilateral modification.

34. **Unenforceable Provisions:** If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision that: (a) allows for the automatic termination of license rights or technical support services; (b) allows for the automatic renewal of services and/or fees; (c) materially change government obligations; (d) increases government prices; (e) decreases overall level of service; (f) limits any other Government rights addressed elsewhere in this contract; (g) requires governing law to be anything other than Federal law; and/or (h) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying Red Hat or any other party.

35. **Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing Environment:**  
The DoD can deploy and use any quantity of its perpetual or term Licensor Software Subscriptions in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DOD Licensor Software Subscriptions is limited to the mission and business of the DoD. The DoD retains all ownership responsibilities of the Software Subscriptions. The DoD shall maintain records of Software Subscription deployments.

DoD can transfer its perpetual and term Licensor Software Subscriptions between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, limitation, or change in functionality. The DoD shall have the right to determine the version level for transfers.

Should the DOD use a 3<sup>rd</sup> party cloud service provider who is not certified by Red Hat, the DOD acknowledges that services and potential loss of Red Hat software functionality is a possibility. Support for Red Hat software in a noncertified 3<sup>rd</sup> party cloud service provider will be at Red Hat's sole discretion.

IN WITNESS WHEREOF, Red Hat has executed and approved this Agreement on the date indicated below.

Red Hat's Acceptance

DoD's Acceptance

Mark Lubas



Dennis J. FELLIN

Name

April 21, 2020

Name

VP, Accounting

CPA

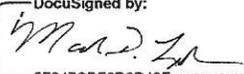
Title

Title

April 21, 2020

4/22/2020

Date

DocuSigned by:  
  
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Signature

Date

  
Signature

**Exhibit A**  
**Notice of Assignment to Participating DOD Element**

The following form shall be used for subscription transfers between Participating DOD Elements:

**NOTICE OF ASSIGNMENT TO PARTICIPATING DOD ELEMENT**

**RE:** Assignment to {assignee agency name} (“Assignee”) of Red Hat Subscriptions currently held by {assignor agency name} (“Assignor”).

**Effective Date:** {insert date}

**To whom it may concern:**

As of the Effective Date, Assignor wishes to assign the subscriptions listed below to Assignee.

Software Subscriptions to transfer:

Order #: {insert order reference}

Product Description: {complete product description}

Quantity: {insert quantity}

Term: {product start and end date}

The Assignee contact for this subscription transfer is:

{contact name}

{contact email address}

{contact physical address}

As of the Effective Date, all the benefits and obligations of the Red Hat Subscriptions detailed herein shall transfer to Assignee subject to the terms of the Basic Ordering Agreement, – [contract #] and the Order under which the Red Hat Subscriptions were purchased.

{Assignor agency}

{Assignee Agency}

Signature: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

Name: \_\_\_\_\_  
Contracting Officer

Contracting Officer  
Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit B**  
**Notice of Assignment to Participating DOD Element**

The following form shall be used for subscription transfers between Participating DOD Elements and Contractors acting on DOD's behalf:

**NOTICE OF ASSIGNMENT TO CONTRACTOR PROVIDING SERVICES ON DOD'S BEHALF**

**RE:** Assignment to {full legal name of Contractor} ("Assignee") of Red Hat Subscriptions currently held by {assignor agency name} ("Assignor").

**Effective Date:** {insert date}

**To whom it may concern:**

As of the Effective Date, Assignor wishes to assign the subscriptions listed below to Assignee.

Software Subscriptions to transfer:

Order #: {insert order reference}

Product Description: {complete product description}

Quantity: {insert quantity}

Term: {product start and end date}

The Assignee contact for this subscription transfer is:

{full legal name of Contractor}

{contact name}

{contact email address}

{contact physical address}

As of the Effective Date, Assignor agrees to transfer the Red Hat Subscriptions detailed herein to Assignee. Assignee agrees, as of the effective date, to assume the benefits and obligations of the transferred Red Hat Subscriptions subject to the subscription agreement set forth at <http://www.redhat.com/licenses>.

{Assignor agency}

{Full Legal Name of Contractor}

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Contracting Officer

Contracting Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_