

# Licenční smlouva č. 24/600/0311

Smluvní strany:

**Česká republika – Generální ředitelství cel**

se sídlem: Budějovická 7, 140 96, Praha 4

IČ: 71214011,

DIČ: CZ71214011

bankovní spojení: ČNB Praha 1,

číslo účtu: 1020011/071

Jednající:

Spojení:

(dále jen „**nabyvatel**“)

a

**TALGO Consulting s.r.o.**

se sídlem: Branická 213/53, Braník, 147 00 Praha 4

IČ: 28995317, DIČ: CZ28995317

společnost zapsaná v obchodním rejstříku vedeném Městským soudem v Praze,  
oddíl C, vložka 158659

bankovní spojení: MONETA Money Bank, a.s.,

číslo účtu: 201437970/0600

zastoupená: **Mgr. Alžběta Ambrožová**, jednatel

(dále jen „**poskytovatel**“)

uzavírají v souladu s ustanovením § 2358 a násl. zákona č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů (dále jen „**OZ**“) s přihlédnutím k zákonu č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů (autorský zákon), ve znění pozdějších předpisů (dále jen „**autorský zákon**“) a zákona č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích) ve znění pozdějších předpisů (dále jen „**ZOK**“), a zákonem č. 134/2016 Sb., o zadávání veřejných zakázek, ve znění pozdějších předpisů, tuto

**licenční smlouvu**

(dále jen „**Smlouva**“)

**Smluvní strany, vědomy si svých závazků v této Smlouvě obsažených a s úmyslem býti touto Smlouvou vázány, dohodly se na následujícím znění Smlouvy:**

## **Čl. 1 Úvodní ustanovení**

- 1.1 Poskytovatel prohlašuje, že je právnickou osobou řádně založenou a existující podle českého právního řádu, splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.
- 1.2 Poskytovatel prohlašuje, že je oprávněným prodejcem produktů pro zálohování a obnovu dat Vertitas NetBackup a operačního systému RedHat Linux.
- 1.3 Poskytovatel prohlašuje, že je držitelem certifikátu nebo potvrzení výrobce dokládajícím, že je partnerem společnosti Veritas a RedHat v České republice (nebo potvrzením, které je s tímto ekvivalentní).
- 1.4 Výše uvedený profesní kvalifikační předpoklad se v plném rozsahu vztahuje i na případné subdodavatele, pokud dodavatel zamýšlí jimi plnit příslušnou část zakázky.
- 1.5 Poskytovatel dále prohlašuje, že má dostatečné množství certifikovaných specialistů, aby mohl nabyvateli řádně poskytovat konzultace spojené s používáním dodaných produktů. Poskytovatel prohlašuje, že je ve smyslu § 5 OZ odbornou osobou v dané oblasti.
- 1.6 Poskytovatel se dále zavazuje, že po celou dobu účinnosti Smlouvy bude disponovat dostatečným množstvím certifikovaných specialistů v místě plnění, tak aby mohl nabyvateli řádně poskytovat konzultace spojené s používáním dodaných produktů.

## **Čl. 2 Předmět smlouvy**

- 2.1 Předmět této smlouvy je definován v Příloze č. 1 – Technická specifikace a krycí list (dále jen „Příloha č.1“), a to co do množství, druhu a délky poskytnutí softwaru (dále jen „Software“).
- 2.2 Poskytovatel se touto Smlouvou zavazuje zajistit nabyvateli v souladu s autorským zákonem a OZ právo užití software (dále jen „Licence“) způsobem, v rozsahu a za podmínek stanovených v této Smlouvě.
- 2.3 Poskytovatel se zavazuje dodat nabyvateli licenční klíče, které budou zaslány na požadovaný e-mail nabyvatele a provést ve spolupráci s nabyvatelem činnosti související s implementací Licencí dle Přílohy č.1.
- 2.4 Zdrojové kódy k Software nejsou předmětem dodávky.
- 2.5 Nabyvatel se zavazuje za řádně poskytnuté plnění uhradit poskytovateli odměnu za Licenci ve výši a za podmínek stanovených v této Smlouvě.
- 2.6 Licence poskytovaná poskytovatelem je účinná dle požadavků uvedených v Příloze č.1

## **Čl. 3 Místo a doba plnění**

- 3.1 Místem dodání Software se rozumí Primární informační centrum na adrese sídla zadavatele, Budějovická 7, 140 96 Praha 4 a záložní informační centrum umístěné v objektu SPCSS, s.p., Na Vápence 915/14, 130 00 Praha 3. Dodáním Software se rozumí

předání aktivačních klíčů k Licencím. Převzetí klíčů potvrdí poskytovateli oprávněná osoba nabyvatele uvedená v odstavci 3.3 smlouvy.

3.2 Poskytovatel se zavazuje dodat nabyvateli Software do 30 kalendářních dnů od účinnosti této Smlouvy.

3.3 Oprávněnou osobou nabyvatele za převzetí plnění je:



#### **Čl. 4 Odměna a platební podmínky**

4.1 Odměna za předmět plnění (za poskytnutí Software a zajištění Licence) byla stanovena na základě výsledků veřejné zakázky - „Prodloužení Supportu/subcripce zálohovacího SW NetBackup“, a celkově činí:

**9 299 431,00 Kč bez DPH**

**11 252 311,51 Kč včetně 21 % DPH**

(dále jen „Odměna“)

4.2 Odměna za Licenci zahrnuje též cenu přenosového média, pokud je Software na něm dodáván, a veškeré náklady související s dodáním do místa plnění.

4.3 Poskytovatel je oprávněn vystavit fakturu na úhradu Odměny po dodání Software, přičemž dodáním se rozumí postup uvedený v bodu 3.1 Smlouvy.

4.4 Splatnost řádně vystaveného daňového dokladu – faktury obsahující náležitosti dle příslušných právních předpisů činí 30 dnů ode dne doručení nabyvateli do sídla uvedeného v této smlouvě nebo do datové schránky s následujícími parametry: ID datové schránky „Generální ředitelství cel“: 7puaa4c.

4.5 Faktura(y) musí obsahovat náležitosti daňového dokladu podle § 435 OZ, podle § 7 zákona č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích), podle zákona č. 563/1991 Sb. o účetnictví, ve znění pozdějších předpisů a podle § 29 zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů a odkaz na tuto smlouvu.

4.6 Faktura musí obsahovat také evidenční čísla této Smlouvy. Pokud faktura nebude obsahovat stanovené náležitosti dle této Smlouvy nebo v ní nebudou správně uvedené údaje, je nabyvatel oprávněn vrátit ji ve lhůtě 10 (slovy: deseti) pracovních dnů od jejího obdržení poskytovateli s uvedením chybějících náležitostí nebo nesprávných údajů. V takovém případě bude faktura poskytovatelem opravena a nová lhůta splatnosti v délce 30 dnů začne plynout doručením opravené faktury zpět nabyvateli. V případě, že nabyvatel fakturu vrátí, přestože faktura je správná a předepsané náležitosti obsahuje, zůstává v platnosti původní lhůta splatnosti faktury a pokud nabyvatel fakturu nezaplatí v původním termínu splatnosti, je v prodlení.

- 4.7 Peněžní závazek nabyvatele se považuje za včas splněný dnem připsání příslušné částky ve prospěch účtu poskytovatele. Platba faktur(y) bude provedena bezhotovostním převodem na bankovní účet poskytovatele, jenž je uveden v této Smlouvě.
- 4.8 Platby budou probíhat výhradně v Kč a rovněž veškeré cenové údaje budou v této měně.
- 4.9 Smluvní strany si dojednaly, že nabyvatel je oprávněn provést zajišťovací úhradu daně z přidané hodnoty ve smyslu u § 109a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů, na účet příslušného správce daně, jestliže se poskytovatel stane ke dni uskutečnění zdanitelného plnění nespolehlivým plátcem daně ve smyslu § 106a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů.

## **Čl. 5 Ochrana obchodního tajemství a důvěrných informací**

- 5.1 Obě smluvní strany berou na vědomí, že tato Smlouva a veškerá práva, povinnosti a závazky z ní vyplývající, jsou považovány za důvěrné a smluvní strany se zavazují zachovávat o nich mlčenlivost. To neplatí, je-li poskytnutí informace třetí osobě nezbytné pro plnění závazků z této Smlouvy.
- 5.2 Smluvní strany tímto souhlasně prohlašují, že nepovažují za porušení ochrany obchodního tajemství ve smyslu ustanovení § 504 OZ a ustanovení § 1730 odst. 2 OZ situace, pokud smluvní strana poskytne v rozsahu nezbytně nutném důvěrné informace dle této Smlouvy svým právním, účetním nebo daňovým poradcům za předpokladu, že jsou tyto osoby vázány zákonnou nebo smluvní povinností mlčenlivosti alespoň v rozsahu stanoveném v této Smlouvě.
- 5.3 V případě přístupu k osobním údajům, které jsou v rámci Celní správy ČR zpracovávány, se tímto poskytovatel zavazuje k tomu, že při své činnosti bude postupovat v souladu s Nařízením Evropského parlamentu a Rady (EU) 2016/679 a zákona č. 110/2019 Sb., o zpracování osobních údajů v platném znění, zejména:
- a) přijme taková opatření, která zajistí náležité zabezpečení zpřístupněných osobních údajů, včetně jejich ochrany pomocí vhodných technických nebo organizačních opatření před neoprávněným či protiprávním zpracováním a náhodnou ztrátou, zničením nebo poškozením,
  - b) bude se zpřístupněnými osobními údaji nakládat pouze v rozsahu nezbytně nutném k plnění předmětu díla,
  - c) bude zachovávat mlčenlivost ohledně zpřístupněných osobních údajů.
  - d) V případě zapojení třetí strany do plnění předmětu díla je poskytovatel povinen tuto stranu smluvně zavázat k plnění výše uvedených povinností v oblasti ochrany osobních údajů.



## **Čl. 6 Servisní a reklamační podmínky, řešení vad a záruky**

- 6.1 Záruka na Software je poskytována ze strany poskytovatele autorských práv Software a vyplývá z užívacích práv k provozování dodaného Software dle licenčních podmínek, které jsou nedílnou součástí a Přílohou č.2 této smlouvy.
- 6.2 Nabyvatel odpovídá za užívání licencovaného Software v souladu s licenčními podmínkami (užívacími právy) vztahujícím se k danému Softwaru.
- 6.3 Software je produkt společnosti Veritas a RedHat. Případné reklamace nebo nároky z odpovědnosti za vady Software nebo ze související odpovědnosti za škodu bude uplatňovat nabyvatel přímo vůči společnosti Veritas nebo RedHat a základě Přílohy č.2 této smlouvy.

## **Čl. 7 Sankční ujednání**

- 7.1 Pro případ prodlení nabyvatele se zaplacením faktury je nabyvatel povinen zaplatit poskytovateli úrok z prodlení dle nařízení vlády č. 351/2013 Sb., ve znění pozdějších předpisů.
- 7.2 V případě prodlení poskytovatele s předáním Software vzniká nabyvateli nárok na smluvní pokutu ve výši 0,05 % z Odměny za každý započatý den prodlení.
- 7.3 Smluvní strany prohlašují, že celková předvídatelná výše škody, která může z porušení povinností odpovědné smluvní strany při plnění této Smlouvy vzniknout poškozené smluvní straně a kterou může nebo mohla odpovědná smluvní strana v době vzniku této Smlouvy při vynaložení obvyklé péče předvídat, v žádném případě nepřesáhne částku 3,000.000 Kč.
- 7.4 Žádná ze smluvních stran neodpovídá za škodu způsobenou porušením svých povinností vyplývajících z této Smlouvy, bylo-li způsobeno okolnostmi vylučujícími odpovědnost ve smyslu § 2913 odst. 2 OZ.
- 7.5 Sankce i náhrada způsobené škody jsou splatné do 30 kalendářních dnů ode dne doručení písemné výzvy k zaplacení společně s příslušným daňovým dokladem - fakturou smluvní straně, která je povinná příslušnou sankci nebo náhradu škody zaplatit.
- 7.6 Není-li dále stanoveno jinak, zaplacení jakékoliv sjednané smluvní pokuty nezavazuje povinnou smluvní stranu povinnosti splnit své závazky a rovněž jí nezavazuje povinnosti uhradit náhradu škody vzniklé v souvislosti s porušením jejího závazku v plné výši.
- 7.7 Smluvní strany si výslovně ujednaly, že k jiným než zde uvedeným a dále např. ústně sjednaným smluvním sankcím, jakož i k smluvním sankcím sjednaným dodatečně nebude přihlíženo.
- 7.8 Smluvní strany si vyloučily aplikaci § 1806 OZ, tzn. že úroky z úroků nelze požadovat.

## **Čl. 8 Rozhodné právo a řešení sporů**

- 8.1 Práva a povinnosti smluvních stran vyplývající z této Smlouvy se řídí autorským zákonem a OZ.

- 8.2 Smluvní strany se zavazují vyvinout maximální úsilí k odstranění vzájemných sporů vzniklých na základě Smlouvy nebo v souvislosti s ní, včetně sporů o její výklad či platnost a usilovat o smírné vyřešení těchto sporů nejprve prostřednictvím jednání kontaktních osob nebo pověřených zástupců.
- 8.3 Smluvní strany podle § 89a zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů určují jako místně příslušný soud Obvodní soud pro Prahu 1; v případě, že podle procesních předpisů je k rozhodování věci v prvním stupni příslušný krajský soud, určují smluvní strany jako místně příslušný soud Městský soud v Praze.

## **Čl. 9 Trvání Smlouvy**

- 9.1 Tato smlouva nabývá platnosti podpisem zástupců obou smluvních stran a účinnosti zveřejněním v registru smluv.
- 9.2 Smluvní strany si výslovně ujednaly, že poskytovatel není oprávněn tuto smlouvu vypovědět po dobu platnosti Licence zakoupené nabyvatelem.
- 9.3 Nabyvatel i poskytovatel jsou oprávněni od této Smlouvy odstoupit v případě jejího podstatného porušení druhou smluvní stranou. Odstoupení se provádí písemným oznámením a je účinné jeho doručením na adresu uvedenou v této smlouvě.
- 9.4 Za podstatné porušení se považuje:
- 9.5 ze strany poskytovatele prodlení při plnění termínu předání Software stanoveného v bodu 3.2 této Smlouvy delším než 30 (slovy: třicet) dnů,
- 9.6 ze strany nabyvatele zejména prodlení při hrazení smluvní ceny poskytovateli delším než 30 (slovy: třicet) dnů nebo porušení kterékoliv licenční podmínky vztahující se k nakládání se Software.

## **Čl. 10 Závěrečná ustanovení**

- 10.1 Tato Smlouva představuje úplnou dohodu smluvních stran o předmětu této Smlouvy a nahrazuje veškerá předešlá ujednání smluvních stran ústní i písemná.
- 10.2 Tuto Smlouvu je možné měnit pouze písemnou dohodou smluvních stran ve formě vzestupně číslovaných dodatků této Smlouvy, podepsaných za každou smluvní stranu osobou nebo osobami oprávněnými zastupovat jménem smluvních stran. Smluvní strany si dále ujednaly, že k jiným formám nebude přihlíženo a nebudou jimi vázány.
- 10.3 Pokud by se kterékoliv ustanovení této Smlouvy ukázalo být neplatným nebo nevynutitelným nebo se jím stalo po uzavření této Smlouvy, pak tato skutečnost nepůsobí neplatnost ani nevynutitelnost ostatních ustanovení této Smlouvy, nevyplyvá-li z donucujících ustanovení právních předpisů jinak. Smluvní strany se zavazují takové neplatné či nevynutitelné ustanovení nahradit platným a vynutitelným ustanovením, které je svým obsahem nejbližší účelu neplatného či nevynutitelného ustanovení.

- 10.4 Poskytovatel výslovně souhlasí s tím, že nabyvatel tuto Smlouvu uveřejní na svém profilu v plném znění v souladu se zákonem č. 134/2016 Sb., o zadávání veřejných zakázek, ve znění pozdějších předpisů.
- 10.5 Smluvní strany si ujednaly, že závazky vyplývající z této Smlouvy se promlčují ve lhůtě 10 let ode dne, kdy Smluvní strana mohla poprvé toto právo uplatnit.
- 10.6 V souladu se zákonem č. 340/2015 Sb., o registru smluv, se strany dohodly, že nabyvatel zašle tuto Smlouvu správci registru smluv k uveřejnění ve lhůtě, stanovené tímto zákonem. Osobní údaje stran před odesláním budou anonymizovány v souladu se zákonem č. 110/2019 Sb., o zpracování osobních údajů, ve znění pozdějších předpisů.
- 10.7 Smluvní strany si výslovně ujednaly, že tuto Smlouvu nelze postoupit na řad. Žádná ze smluvních stran není oprávněna vtělit jakékoliv právo plynoucí jí ze Smlouvy nebo z jejího porušení do podoby cenného papíru.
- 10.8 V případě rozporu mezi touto Smlouvou a jejími přílohami, případně dalšími licenčními podmínkami má vždy přednost ustanovení této Smlouvy.
- 10.9 Nedílnou součástí Smlouvy tvoří tyto přílohy:

**Příloha č. 1:**

**Technická specifikace a krycí list**

**Příloha č.2:**

**Licenční podmínky**

- 10.10 Tato Smlouva je uzavřena ve dvou (2) stejnopisech, z nichž každá strana obdrží po jednom (1) vyhotovení.

**Smluvní strany prohlašují, že si tuto Smlouvu přečetly, že s jejím obsahem souhlasí a na důkaz toho k ní připojují svoje podpisy.**

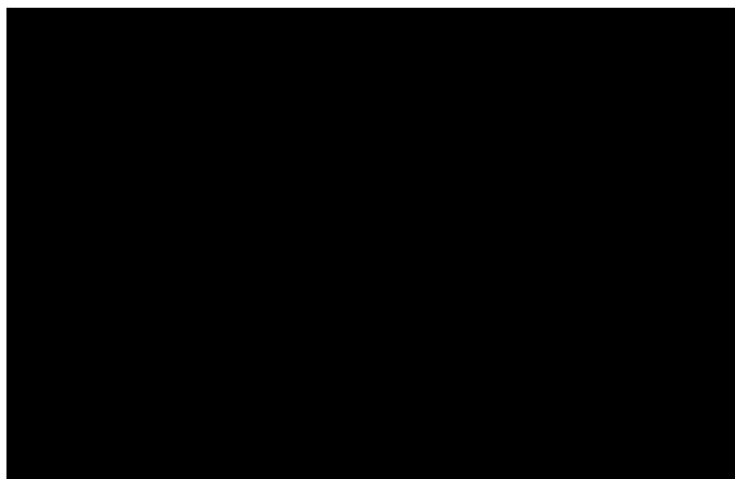
**Poskytovatel:**

**Nabyvatel:**

V Praze dne 1.7. 2024

Mgr. Alžběta  
Ambrožová

Digitálně podepsal  
Mgr. Alžběta  
Ambrožová  
Datum: 2024.07.10  
12:21:45 +02'00'



**Příloha č.1 - Technická specifikace a krycí list**

|  |   |  |
|--|---|--|
| <b>KRYCÍ LIST NABÍDKY</b>  |   |  |
| Veřejná zakázka  |   |  |
| Název:   | <b>Zajištění Supportu/subscripcie zálohovacího SW NetBackup</b> |  |
| veřejná zakázka zadávaná v otevřeném řízení dle § 56 zákona č. 134/2016 Sb., o zadávání veřejných zakázek, ve znění pozdějších předpisů  |   |  |
| Zadavatel  |   |  |
| Název:   | Generální ředitelství cel                                       |  |
| Sídlo:   | Budějovická 7, 140 96 Praha 4                                   |  |
| IČO:   | 71214011  |  |
| Dodavatel  |   |  |
| obchodní firma/název/jméno a příjmení:   | TALGO Consulting s.r.o.   |  |
| sídlo/místo podnikání dodavatele:  | Branická 213/53, Braník, 147 00 Praha 4                         |  |
| korespondenční adresa:   | Branická 213/53, Braník, 147 00 Praha 4                         |  |
| jméno a podpis osoby/osob oprávněné/ oprávněných jednat jménem či za dodavatele:   | Mgr. Alžběta Ambrožová, jednatel                                |  |
| IČO:   | 28995317  |  |
| DIČ:   | CZ28995317  |  |
| kontaktní osoba:   |   |  |
| telefonní spojení:   |   |  |
| e-mailová adresa:  |   |  |
| bankovní spojení:  | MONETA Money Bank a.s., č.ú. 201437970/0600                     |  |
| malý a střední podnik ve smyslu doporučení Komise 2003/361/ES  | ANO   |  |
| Čestné prohlášení k vázanosti Závažným vzorem smlouvy  |   |  |
| Výše uvedený dodavatel tímto čestně prohlašuje, že plně a bezvýhradně akceptuje Závažný vzor smlouvy, který tvoří Přílohu č. 2 Zadávací dokumentace a je si vědom toho, že bude-li vybrán k uzavření smlouvy na veřejnou zakázku, bude s ním uzavřena smlouva v souladu s tímto Závažným vzorem smlouvy. |   |  |
| Dodavatel dále uvádí kontaktní údaje pověřeného zaměstnance:<br>Tel., mob. a mail:   |   |  |
| Osoba oprávněná jednat za dodavatele   |   |  |
| Podpis oprávněné osoby   | Dne 4.6.2024  |  |
| Titul, jméno, příjmení   | Mgr. Alžběta Ambrožová  |  |
| Funkce   | jednatel  |  |

# TECHNICKÁ SPECIFIKACE NABÍZENÉHO PLNĚNÍ

## Místo plnění VZ

Místem plnění je „primární informační centrum“ (PIC), které je umístěné v sídle zadavatele, tj. Budějovická 7, 140 96 Praha 4, a „záložní informační centrum“ (ZIC) umístěné v SPCSS (Státní pokladna centrum sdílených služeb) Na Vápence 915/14, 130 00 Praha 3.

## Popis současného stavu

Centrální systém zálohování („CSZ“) je používán pro zálohování a archivaci širokého spektra dat využívaných napříč celní správou ČR („CS“), od aplikačních dat až po data Celně technických laboratoří. Typově se jedná nejčastěji o data relačních databází, souborová data file serverů a v neposlední řadě kamerové záznamy („KZ“). Největší objem dat zálohovaných prostřednictvím CSZ jsou data tzv. Informačního centra CS, které zajišťuje zejména provoz „core business aplikací“, z nichž některé jsou prvkem KII. Informační centrum CS je tvořeno primárním a záložním informačním centrem, tzn. CSZ slouží pro zálohování dvou datových center v geograficky oddělených lokalitách. CSZ je tvořen dvěma částmi, z nichž každá slouží k zálohování různých dat z pohledu jejich retenční doby. První část zajišťuje potřeby „běžného“ provozního zálohování dat aplikací provozovaných CS, a je využívána pro zálohy s krátkou retencí (cca týdny). Druhá část CSZ zajišťuje požadavky v oblasti tzv. archivních záloh, tj. záloh s dlouhou retencí.

První část CSZ byla vybudována v roce 2015 jako součást implementace záložního datového centra Celní správy ČR („CS“). Druhá část CSZ vznikla rozšířením zálohovacího systému v roce 2018 z důvodu značného nárůstu požadavků na zálohy s dlouhou retencí a začleněním dat Celně technických laboratoří do CSZ. Zálohy vytvářené CSZ jsou automaticky replikovány mezi oběma lokalitami (primární a záložní) tak, aby byla zajištěna plná redundance lokalit i z pohledu zálohování a obnovy dat. Zálohování probíhá v režimu B2D2T (backup-to-disk-to-tape) s replikací na disk do druhé lokality. Zálohy na disk a replikace mezi lokalitami jsou realizovány v deduplikované podobě z důvodu minimalizace zatížení propojení obou lokalit.

HW vrstva CSZ je tvořena management servery, media servery a páskovými knihovnami, kde část této infrastruktury je sdílená částmi pro tvorbu záloh s krátkou a dlouhou retenční dobou. O sdílený HW se jedná zejména v oblasti páskových knihoven.

Jako zálohovací software je používán Veritas Netbackup. Pro zálohy s krátkou retencí je používán kapacitní licenční model. V současné době zakoupená licence pokrývá 70 TB zdrojových dat. Část využívaná pro zálohy s dlouhou retencí je licencována v klasickém „serverovém“ licenčním modelu.

Pro další provoz systému je nutné zajistit prodloužení stávající podpory použitého licenčního modelu zálohovacího SW do 30.9.2025.

U operačního systému RED HAT je nutné zajistit podporu pro tři servery po dobu dvou let.

Tak jak je detailně specifikováno v části Technické požadavky tohoto dokumentu.



## Obecné požadavky

| specifikace požadavku   | splňuje<br>Ano / Ne | popis skutečného plnění požadavku   |
|---|---------------------|---|
| V rámci požadované podpory výrobce musí být zajištěno:<br>- Přístup k technické podpoře poskytované telefonicky během regionálních pracovních hodin<br>- Přístup na webové stránky technické podpory výrobce SW v režimu 24x7<br>- Přístup k hot fixům a opravám<br>- Přístup k aktualizacím verzí softwaru | ANO                 | V rámci požadované podpory výrobce bude zajištěno:<br>- Přístup k technické podpoře poskytované telefonicky během regionálních pracovních hodin<br>- Přístup na webové stránky technické podpory výrobce SW v režimu 24x7<br>- Přístup k hot fixům a opravám<br>- Přístup k aktualizacím verzí softwaru |
| Kontaktní body podpory:<br>- webový portál<br>- telefoní kontakt  | ANO                 | Kontaktní body podpory:<br>- webový portál<br>- telefoní kontakt  |
| Implementace:<br>- Implementace musí zahrnovat začlenění pořízených licencí do existujícího systému centrálního zálohování<br>- Instalace bude provedena technickými specialisty se specializací na dodávaný SW.  | ANO                 | Implementace:<br>- Implementace bude zahrnovat začlenění pořízených licencí do existujícího systému centrálního zálohování<br>- Instalace bude provedena technickými specialisty se specializací na dodávaný SW.  |
| Servisní (implementační) zásahy budou realizovány vyškolenými technikami s certifikací na servis podporované výpočetní techniky dle této přílohy. Vyškolený technik musí mít platný certifikát pro práci na zařízení, na kterém bude aktuálně vykonávat servisní činnost.                                   | ANO                 | Servisní (implementační) zásahy budou realizovány vyškolenými technikami s certifikací na servis podporované výpočetní techniky dle této přílohy. Vyškolený technik musí mít platný certifikát pro práci na zařízení, na kterém bude aktuálně vykonávat servisní činnost.                               |
| Objednatel bude mít možnost eskalovat vzniklé chyby podporovaného SW či problém vzniklý na tomto, k výrobcí tohoto SW.  | ANO                 | Objednatel bude mít možnost eskalovat vzniklé chyby podporovaného SW či problém vzniklý na tomto, k výrobcí tohoto SW.  |
| Objednatel bude mít možnost ověřit stav a platnost prodloužené podpory na webu výrobce nebo u obchodního zastoupení výrobce.  | ANO                 | Objednatel bude mít možnost ověřit stav a platnost prodloužené podpory na webu výrobce nebo u obchodního zastoupení výrobce.  |

## Technické požadavky

Předmětem poptávky je zajištění technické podpory stávajících licencí produktů:

- Veritas NetBackup do 30.9.2025.

- Red Hat na dva roky

Úroveň a délka požadované podpory je specifikována popisem položky, případně i kódem položky a kontraktem dle této tabulky:

| č. | kod položky | popis položky  | obnova<br>kontraktu do | kontrakt       | Počet | Nabídková cena<br>za kus v Kč bez DPH | Nabídková cena<br>v Kč bez DPH |
|----|-------------|--|------------------------|----------------|-------|---------------------------------------|--------------------------------|
| 1  | 23369-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP PLATFORM BASE COMPLETE ED WITH FLEXIBLE LICENSING XPLAT 1 FRONT END TB PLUS ONPREMISE STANDARD PERPETUAL LICENSE GOV | 30.09.2025             | IE000000186600 | 30    | 76 162                                | 2 284 860                      |
| 2  | 10915-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP PLATFORM BASE COMPLETE ED XPLAT 1 FRONT END TB ONPREMISE STANDARD PERPETUAL LICENSE GOV                              | 30.09.2025             | IE000000017985 | 40    | 162 785                               | 6 511 400                      |
| 3  | 11142-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP OPT LIBRARY BASED TAPE DRIVE XPLAT 1 DRIVE ONPREMISE STANDARD PERPETUAL LICENSE GOV                                  | 30.09.2025             | IE000000142468 | 2     | 29 565                                | 59 130                         |
| 4  | 11466-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP STD CLIENT XPLAT 1 SERVER ONPREMISE STANDARD PERPETUAL LICENSE GOV   | 30.09.2025             | IE000000142468 | 2     | 5 857                                 | 11 714                         |
| 5  | 11694-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP CLIENT APPLICATION AND DB PACK WLS 1 SERVER HARDWARE TIER 3 ONPREMISE STANDARD PERPETUAL LICENSE GOV                 | 30.09.2025             | IE000000142468 | 1     | 21 756                                | 21 756                         |
| 6  | 14410-M3-25 | ESSENTIAL 36 MONTHS RENEWAL FOR NETBACKUP SERVER WLS 1 SERVER HARDWARE TIER 2 ONPREMISE STANDARD PERPETUAL LICENSE GOV   | 30.09.2025             | IE000000142468 | 1     | 21 756                                | 21 756                         |

|   |  |             |   |         |         |
|---|--|-------------|---|---------|---------|
| 7 | Subscripce pro Red Hat Enterprise Linux Server, Standard (Physical or Virtual Nodes)       | na dva roky | 3 | 29 605  | 88 815  |
| 8 | Implementace (začlenění) pořízených licencí do existujícího systému centrálního zálohování |             | 1 | 300 000 | 300 000 |

Pozn: "Nabídková cena v Kč bez DPH" je vypočtena jako součin sloupce "Počet" a "Nabídková cena za kus v Kč bez DPH"

|  |               |                         |
|--|---------------|-------------------------|
| <b>Celková nabídková cena v Kč bez DPH</b> |               | <b>9 299 431,00 Kč</b>  |
| <b>Sazba DPH v %</b>                       | <b>21,00%</b> | <b>1 952 880,51 Kč</b>  |
| <b>Celková nabídková cena v Kč s DPH</b>   |               | <b>11 252 311,51 Kč</b> |



## **Příloha č.2 – Licenční podmínky**

- VERITAS SOFTWARE LICENSE AGREEMENT
- THE RED HAT ENTERPRISE AGREEMENT



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- 12. U.S. GOVERNMENT COMMERCIAL LICENSE RIGHTS.** This Section 12 applies only to U.S. Government entities. The Licensed Software is commercial computer software in accordance with FAR 12.212 and DFARS 227.7202. Any use, modification, reproduction, release, performance, display or disclosure of the Licensed Software or Documentation shall be solely in accordance with the terms of this License Agreement. Any additional rights can only be granted to a U.S. Government entity through a mutually acceptable written addendum to this License Agreement.
- 13. EXPORT REGULATIONS.** The export or re-export of the Licensed Software and related technical data and services (collectively "Controlled Technology") is subject to applicable export laws and regulations including, but not limited to, the U.S. Export Administration Regulations, the European Union Council Regulations, and the Singapore Strategic Goods Control Act. The export or re-export of Controlled Technology in violation of the foregoing laws and regulations is strictly prohibited. Controlled Technology may also be subject to various import, distribution and/or use restrictions requiring action on Your behalf prior to use of the Controlled Technology. Controlled Technology is prohibited for export or re-export to Cuba, North Korea, Iran, Syria, Russia, Belarus, the Crimea Region of Ukraine, the Donetsk People's Republic (DNR) region of Ukraine and the Luhansk People's Republic (LNR) region of Ukraine and to any other country or region subject to relevant trade sanctions. Controlled Technology is further prohibited for export or re-export to any person or entity named on relevant lists maintained by the U.S. government (including, but not limited to, lists published by the U.S. Department of Commerce, the U.S. Department of State, and the U.S. Department of Treasury), in addition to lists published by the authorities in applicable foreign jurisdictions. You may not export any Controlled Technology for use in connection with chemical, biological, or nuclear weapons or missiles capable of delivering such weapons. Furthermore, You may not export any Controlled Technology to





any military entity, or to any other entity for any military purpose, unless subject to a valid license specifically permitting such export. You agree to comply with all applicable export or import control laws and regulations, and You represent that You are not under the control of, located in, or a resident or national of any prohibited country or region and are not a prohibited person or entity.

- 14. DATA COLLECTION.** Veritas collects and uses Collected Data to enable, optimize and provide the Licensed Software, Updates and Upgrades, and/or maintenance/support to You (and may engage third parties to do so as well), to administer and enforce its license agreements with You, to make recommendations regarding usage of the Licensed Software and other Veritas solutions, and/or to improve Veritas' products and services in general, including by reviewing aggregate data for statistical analyses. By installing and/or using the Licensed Software (including Updates and Upgrades), You agree that Veritas may, and You have obtained all the necessary consents and rights for Veritas to, collect, use, retain, disclose and/or process Collected Data for the purposes described in this License Agreement and in the applicable Veritas product privacy notices at: <https://www.veritas.com/privacy>. Please note that the use of the Licensed Software may be subject to data protection laws or regulations in certain jurisdictions. You are responsible for ensuring that Your use of the Licensed Software is in accordance with such laws or regulations.

**15. CONFIDENTIALITY.**

**15.1.** "Confidential Information" means the non-public information that is exchanged between the parties, provided that such information is: (a) identified as confidential at the time of disclosure by the disclosing party ("Discloser"), or (b) disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information ("Recipient"), including all non-public information relating to, or derived from the Licensed Software, including technical features, benchmark results, or performance results. A Recipient may use the Confidential Information that it receives from the other party solely for the purpose of performing activities contemplated under this License Agreement. For a period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient shall not disclose the Confidential Information to any third party. A Recipient shall protect it by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its agents and independent contractors with a need to know in order to fulfil the purpose of this License Agreement, who have signed a nondisclosure agreement at least as protective of the Discloser's rights as this License Agreement.

**15.2.** This provision imposes no obligation upon a Recipient with respect to Confidential Information which: (a) is or becomes public knowledge through no fault of the Recipient; (b) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (c) is rightfully received by the Recipient without any duty of confidentiality; (d) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (e) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser's Confidential Information as required by law or court order provided: (i) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure; and (ii) discloses only as much of the Confidential Information as is required. Upon request from the Discloser or upon termination of the License Agreement, the Recipient shall return all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same.

**15.3.** Each party will retain all right, title, and interest to such party's Confidential Information. The parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser shall be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions hereof.

- 16. TERMINATION.** This License Agreement shall terminate upon Your breach of any term contained herein. You may terminate this License Agreement for Veritas's material uncured breach which still remains uncured (if such breach is capable of being cured) thirty (30) days after receiving written notice of such breach; this does not apply to intellectual property claims or warranty claims for which an exclusive stated remedy is provided under this License Agreement. Upon termination due to Your breach or expiration of this License Agreement, You must immediately discontinue use of and destroy all copies of the Licensed Software in Your possession or control, including any master copy, and (within ten (10) days of Veritas' written request) certify in writing to Veritas through a corporate officer that all such copies have been destroyed.

- 17. SURVIVAL.** The following provisions of this License Agreement survive termination of this License Agreement: Definitions, License Restrictions and any other restrictions on use of intellectual property, Ownership/Title, Warranty Disclaimers, Limitation of Liability, U.S. Government Commercial License Rights, Export Regulations, Data Collection, Confidentiality, Survival, and General and Your payment obligations accrued prior to termination, including payment obligations for outstanding Subscription Software orders. The license grants for Licensed Software and terms regarding Maintenance/Support purchased prior to termination shall survive such termination, except in the case of Veritas' termination for Your breach, as set forth above.

**18. GENERAL.**

**18.1. ASSIGNMENT.** You may not assign the rights granted hereunder or this License Agreement, in whole or in part and whether by operation of contract, law or otherwise, without Veritas' prior express written consent. Veritas may assign this License Agreement to any party.

**18.2. COMPLIANCE WITH APPLICABLE LAW.** You are solely responsible for Your compliance with, and You agree to comply with, all applicable laws, rules, and regulations in connection with Your use of the Licensed Software.

**18.3. AUDIT.** Veritas may audit Your use of the Licensed Software to verify Your usage complies with Your license agreements with Veritas, including without limitation through collection and use of Collected Data, self-certifications, on-site audits and/or audits done using a third-party auditor. On-site audits will be done upon reasonable notice and during normal business hours, but not more often than once each year. You shall cooperate with Veritas' information and



reporting requests in connection with an audit and pay Veritas for any unauthorized deployments of Licensed Software disclosed by the audit. License fees for such over deployments will be invoiced to and paid by You at the undiscounted license list price in effect as of the audit completion date ("List Price"), unless otherwise mutually agreed. Veritas shall bear the costs of any such audit, except where the audit demonstrates that the List Price value of Your non-compliant usage exceeds five percent (5%) of the List Price value of Your compliant deployments. In such case, in addition to purchasing appropriate licenses for any over-deployed Licensed Software, You shall reimburse Veritas for the fees for the audit.

- 18.4. GOVERNING LAW; SEVERABILITY; WAIVER.** If You are located in the Americas, this License Agreement will be governed by (i) the laws of the State of California, United States of America and (ii) to the extent controlling, federal laws of the United States. If You are located in China, this License Agreement will be governed by the laws of the Peoples Republic of China. Otherwise, this License Agreement will be governed by the laws of England and Wales. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this License Agreement is found partly or wholly invalid or unenforceable under applicable law, such provision shall be reformed and/or construed, if possible, to be enforceable under applicable law; otherwise, such provision shall be excluded from this License Agreement and the remaining provisions of this License Agreement shall remain in full force and effect. A waiver of any breach or default under this License Agreement shall not constitute a waiver of any other subsequent breach or default.
- 18.5. THIRD PARTY PROGRAMS.** This Licensed Software may contain third party software programs ("Third Party Programs") that are available under open source or free software licenses. This License Agreement does not alter any rights or obligations You may have under those open source or free software licenses. Notwithstanding anything to the contrary contained in such licenses, the disclaimer of warranties and the limitation of liability provisions in this License Agreement shall apply to such Third-Party Programs.
- 18.6. CUSTOMER SERVICE.** Should You have any questions concerning this License Agreement, or if You desire to contact Veritas for any reason, please write to: (i) Veritas Technologies LLC, 2625 Augustine Drive, Santa Clara, California 95054, U.S.A., (ii) Veritas Technologies (UK) Limited, 1320 Arlington Business Park, Theale, Reading, Berkshire RG7 4SA, United Kingdom, (iii) Veritas Technologies (Beijing) Co., Ltd., Haidian Branch, Tsinghua Science Park Bldg. 1, No. 1 Zhongguancun East Road, Suite 601 Tower B, Innovation Plaza, Beijing, Haidian District 100084, China.
- 18.7. ENTIRE AGREEMENT.** This License Agreement and any related License Instrument are the complete and exclusive agreement between You and Veritas relating to the Licensed Software and supersede any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This License Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by You, even if signed and returned. This License Agreement may only be modified by a License Instrument that accompanies or follows this License Agreement.



## THE RED HAT ENTERPRISE AGREEMENT EMEA



PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM RED HAT. BY USING RED HAT SOFTWARE OR SERVICES, CLIENT SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE RED HAT SOFTWARE OR SERVICES. THIS AGREEMENT INCORPORATES THE PRODUCT APPENDICES REFERENCED BY URL IN THIS AGREEMENT.

The Agreement (as further described in Section 1.2 below) is between Client and Red Hat Limited ("Red Hat") and addresses unique commercial considerations that apply to Red Hat Products, open source software, and Red Hat's subscription business model.

### 1. The Mechanics of the Agreement

- 1.1 Ordering.** The Agreement applies to Red Hat Products that you purchase or otherwise acquire the right to access or use, including Subscriptions, Professional Services, Training Services, Online Services and other Red Hat offerings, whether obtained directly from Red Hat or from a Business Partner. You may order Red Hat Products directly from Red Hat by submitting an Order Form or from a Business Partner using the Business Partner's ordering procedure. Affiliates of either party may conduct business under the Agreement by signing an Order Form or other document that references these General Terms and may include additional terms relating to pricing, local requirements or other transaction details. Specific pricing established in an Order Form does not extend globally unless specifically agreed by the parties.
- 1.2 Structure.** The Agreement consists of three components (a) these General Terms; (b) the Product Appendices (which may include end user license agreements and supported life cycles) applicable to Your Products; and (c) if applicable, all Order Forms. Certain terms are defined in the Definitions section at the end of the General Terms. If you order Red Hat Products from a Business Partner, any agreement that you enter into with the Business Partner is solely between you and the Business Partner and will not be binding on Red Hat (except to the extent that your agreement with a Business Partner references to this Agreement).

### 2. Term

- 2.1 Agreement Term.** The Agreement begins on the Effective Date and continues until it is terminated as set forth below.
- 2.2 Services Term.** Unless otherwise agreed in writing, a Service that you order will start at the earliest of (a) your first use of the Service; (b) the date you purchased the Service; or (c) the start date contained in the Order Form, and will end at the expiration of the Services Term unless sooner terminated as set forth below. Subscriptions automatically renew for successive terms of the same duration as the original Services Term, unless either party gives written notice to the other party of its intention not to renew at least thirty (30) days before the expiration of the applicable Services Term. Any Services that you order must be consumed during the applicable Services Term and any unused Services will expire.

### 3. Fees and Payment

- 3.1 Payment of Fees.** Section 3.1 applies only to Red Hat Products ordered directly from Red Hat. The payment terms applicable to Red Hat Products purchased from a Business Partner are included in your Business Partner agreement.
- a) Unless otherwise set forth in an Order Form, you agree to pay Fees (1) for Professional Services and Training Services at the time of your order; and (2) for all other Red Hat Products no later than 30 days after the date of Red Hat's invoice. Credit is subject to Red Hat's approval and Red Hat may change credit terms.
  - b) Fees do not include reasonable out-of-pocket expenses, shipping costs, Taxes, or service provider fees (such as payment processor or vendor management) and you agree to pay or reimburse Red Hat for such amounts. You must pay the Fees and expenses without withholding or deduction. If you are required to withhold or deduct any Taxes from the Fees or expenses, then you agree to increase the amount payable to Red Hat by the amount of such Taxes so that Red Hat receives the full amount of all Fees and expenses. All Fees, expenses and other amounts paid under the Agreement are non-refundable. The Software Subscription Fees are for Services; there are no Fees associated with the Software licenses.
  - c) If you are purchasing by credit card, then you (1) authorize Red Hat to charge your credit card for all amounts due; and (2) agree to provide updated credit card information to Red Hat as needed to pay the Fees or other amounts owed.
- 3.2 Basis of Fees.** Fees are determined by counting the Units associated with the applicable Red Hat Product, as described in the Product Appendix and/or Order Form. For example, Subscriptions may be priced based on the number of physical or virtual nodes. You agree to order and pay for the appropriate type and quantity of Red Hat Products based on the Units you use or deploy. If during the term of the Agreement, the number of Units you use or deploy exceeds the number of Units you have ordered and paid for, you will promptly report to Red Hat or a Business Partner the number of additional Units used or deployed and the date(s) on which they were used or deployed. Red Hat (or the Business Partner) will invoice you and you agree to pay for the additional Units. If you purchase Red Hat Products through marketplace, you agree that information relating to your use of Red Hat Products may be shared with Red Hat Affiliates (including IBM) or the applicable Business Partner for billing and metering purposes.

### 4. Termination

- 4.1 Termination for Cause.** Either party may terminate the Agreement (in whole or with respect to any Order Form or Red Hat Product, whether obtained from Red Hat or a Business Partner) by notice to the other party if (a) the other party materially breaches the Agreement, and does not cure the breach within thirty (30) days after written notice (except in the case of a breach of Section 8 in which case no cure period will apply); or (b) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Red Hat may, at its option and without limiting its other remedies, suspend (rather than terminate) any Services if you breach the Agreement (including with respect to payment of Fees) until the breach is remedied.



**4.2 Termination for Convenience.** Either party may terminate the Agreement by notice to the other party at any time if all Services Terms have expired.

**4.3 Effect of Termination; Survival.** The termination or suspension of an individual Order Form, Business Partner order, or any Red Hat Products purchased from Red Hat or a Business Partner will not terminate or suspend any other Order Form, Business Partner order, Red Hat Product or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order Form(s), Business Partner orders and Services will terminate. If this Agreement, any Order Form or Business Partner order is terminated, you agree to pay for all Units that you used or deployed or that were provided by Red Hat up to the effective date of termination. Sections 1.2, 3, 4.3, 5.2, 5.3, 8 (to the extent set forth therein), 9, 10 (to the extent set forth therein) and 11-14 will survive the termination of this Agreement.

## **5. Representations and Warranties**

**5.1** Red Hat represents and warrants that (a) it has the authority to enter into this Agreement; (b) the Services will be performed in a professional and workmanlike manner by qualified personnel; (c) to its knowledge, the Software does not, at the time of delivery to you, include malicious mechanisms or code for the purpose of damaging or corrupting the Software; and (d) the Services will comply in all material respects with laws applicable to Red Hat as the provider of the Services. Client represents and warrants that (a) it has the authority to enter into this Agreement ; and (b) its use of Red Hat Products will comply with all applicable laws, and it will not use the Red Hat Products for any illegal activity.

**5.2** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE RED HAT PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, AND RED HAT DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY THE COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RED HAT AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE RED HAT PRODUCTS WILL BE UNINTERRUPTED, SECURE, ERROR FREE, ACCURATE, COMPLETE, COMPLY WITH REGULATORY REQUIREMENTS, OR THAT RED HAT WILL CORRECT ALL ERRORS. IN THE EVENT OF A BREACH OF THE WARRANTIES SET FORTH IN SECTION 5.1, YOUR EXCLUSIVE REMEDY, AND RED HAT'S ENTIRE LIABILITY WILL BE THE RE-PERFORMANCE OR RE-DELIVERY OF THE DEFICIENT RED HAT PRODUCT, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, TERMINATION OF THE RELEVANT RED HAT PRODUCT, IN WHICH CASE YOU MAY RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT RED HAT PRODUCT AS OF THE EFFECTIVE DATE OF TERMINATION.

**5.3** The Red Hat Products have not been tested in all situations under which they may be used. Red Hat will not be liable for the results obtained through use of the Red Hat Products and you are solely responsible for determining appropriate uses for the Red Hat Products and for all results of such use. In particular, Red Hat Products are not specifically designed, manufactured or intended for use in (a) the design, planning, construction, maintenance, control, or direct operation of nuclear facilities; (b) aircraft control, navigation, or communication systems; (c) weapons systems; (d) direct life support systems; or (e) other similar hazardous environments.

**6. Open Source Assurance.** Purchases of Subscriptions may entitle you to participate in Red Hat's Open Source Assurance Program, which is described at <http://www.redhat.com/rhel/details/assurance/> and provides certain protections in the event of a third party infringement claim. The terms for this optional program are subject to the agreement at [http://www.redhat.com/legal/open\\_source\\_assurance\\_agreement.html](http://www.redhat.com/legal/open_source_assurance_agreement.html).

**7. Red Hat Online Properties.** You may be required to create an account to access Red Hat websites and portals. You will provide accurate information when creating an account. You will not access or create multiple accounts in a manner that is (a) intended to avoid, or has the effect of avoiding, payment of Fees; (b) circumventing thresholds or Unit limitations associated with your account; or (c) intended to violate the Agreement. You are solely responsible for all activities in connection with your account and will notify Red Hat promptly if you become aware of any unauthorized use. Your use and access may also be subject to the Product Appendices applicable to the Red Hat Product.

## **8. Confidentiality**

**8.1** Recipient (a) will not disclose Confidential Information of Discloser to any third party unless Discloser approves the disclosure in writing or the disclosure is otherwise permitted under this Section 8; (b) will use the same degree of care to protect Confidential Information of Discloser as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; and (c) may disclose Confidential Information of the Discloser only to its employees, Affiliates, agents, and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation (or other professional obligation) to keep such information confidential using standards of confidentiality no less restrictive than those required by this Section 8. These obligations will continue for a period of two (2) years following initial disclosure of the particular Confidential Information. A Recipient may disclose Confidential Information if it is required to do so by applicable law, regulation or court order but, where legally permissible and feasible, will provide advance notice to the Discloser to enable the Discloser to seek a protective order or other similar protection.

**8.2** Information is not Confidential Information, if (a) the information is or becomes publicly available other than as a result of the Recipient's breach of this Agreement; (b) the Recipient, at the time of disclosure, knows or possesses the information without obligation of confidentiality or thereafter obtains the information from a third party not under an obligation of confidentiality; (c) the Recipient independently develops the information without use of the Discloser's Confidential Information; (d) the information is generally known or easily developed by someone with ordinary skills in the business of the Recipient; or (e) the information is licensed under an open source license (as defined by the Open Source Initiative (<https://opensource.org>)).

**8.3** Confidential Information that is disclosed prior to termination of this Agreement will remain subject to this Agreement for the period set forth above. Upon written request of the Discloser, the Recipient will promptly return or destroy all Confidential Information, except for Confidential Information stored in routine back-up media not accessible during the ordinary course of business.



## **9. Client Information, Feedback, Reservation of Rights, & Review**

**9.1 Client Information.** If you provide Client Information in connection with your use of or access to Red Hat Products, Red Hat, its Affiliates, and Suppliers may use such Client Information in connection with the Red Hat Products (subject to Section 8 with respect to disclosure of Client Information that constitutes Confidential Information). You represent and warrant that your provision (and Red Hat's use) of Client Information under this Agreement will not require any additional consents or licenses, will comply with applicable law, and will not violate any intellectual property, proprietary, privacy, or other right of any third party. As between Red Hat and you, subject to the rights granted in this Section, you retain all of your rights in and to Client Information. You acknowledge that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, and Suppliers which may be located worldwide.

**9.2 No Personal Data.** Except with respect to Online Services covered by Product Appendix 4, you agree not to provide to Red Hat personal data subject to the General Data Protection Regulation (the "GDPR") or a similar law requiring a contract governing the processing of personal data between you and Red Hat where Red Hat is acting as a processor (as such term is defined in the GDPR or the applicable law) on behalf of You as part of the Services. In the event of a change where Red Hat will act as a processor of personal data, you will notify Red Hat in advance in writing and the parties shall agree on the terms of a data processing addendum, which will amend this Agreement, as is reasonably required to comply with GDPR and similar data protection laws, if applicable.

**9.3 Feedback.** You may voluntarily provide Red Hat with Feedback in connection with Red Hat Products, but have no obligation to do so. If you choose to do so, Red Hat may use Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve, Red Hat Products and other Red Hat offerings without attribution or compensation. You grant Red Hat a perpetual and irrevocable license to use all Feedback for any purpose. You agree to provide Feedback to Red Hat only in compliance with applicable laws and you represent that you have the authority to provide the Feedback and that Feedback will not include proprietary information of a third party.

**9.4 Reservation of Rights.** Red Hat grants to you only those rights expressly granted in the Agreement with respect to the Red Hat Products and reserves all other rights in and to the Red Hat Products (including all intellectual property rights). Red Hat may collect and use for any purpose aggregate anonymous data about your use of the Red Hat Products. Nothing in this Agreement will 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 that might be delivered to you. Nothing will prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under Section 8 of this Agreement.

**10. Review.** While the Agreement is in effect and for one (1) year thereafter, Red Hat or its designee, acting in accordance with Section 8, may inspect your facilities and records to verify your compliance with this Agreement. You agree to (a) respond promptly to requests for information, documents and/or records; (b) grant appropriate access for on-site visits in order to verify your compliance; and (c) reasonably cooperate in connection with any such verification. Red Hat will provide at least ten (10) days prior written notice for any on-site visits, and will conduct on-site visits during regular business hours in a manner that reasonably minimizes interference with your business. If Red Hat notifies you of any noncompliance or underpayment, then you will resolve the non-compliance and/or underpayment within fifteen (15) days from the date of notice. If the underpayment exceeds five percent (5%), then you will also reimburse Red Hat for the cost of the inspection.

## **11. Limitations**

**11.1 DISCLAIMER OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR ITS AFFILIATES, WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY DAMAGES FOR LOST OR DAMAGED DATA, LOST PROFITS, LOST SAVINGS OR BUSINESS OR SERVICE INTERRUPTION, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**11.2 LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RED HAT'S AND ITS AFFILIATES' TOTAL AND AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY RED HAT WITH RESPECT TO THE PARTICULAR RED HAT PRODUCT GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT(S) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM; PROVIDED THAT IN NO EVENT WILL RED HAT'S AND ITS AFFILIATES' TOTAL AND AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES RECEIVED BY RED HAT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THIS LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHER LEGAL THEORY. THESE LIMITATIONS DO NOT EXCLUDE OR LIMIT LIABILITY FOR (A) PERSONAL INJURY OR DEATH TO THE EXTENT THAT SUCH INJURY OR DEATH RESULTS FROM THE NEGLIGENCE OR WILLFUL DEFAULT OF RED HAT, ITS AFFILIATES, OR SUBCONTRACTORS; (B) ANY FRAUDULENT MISREPRESENTATION UPON WHICH THE CLAIMING PARTY CAN BE SHOWN TO HAVE RELIED; OR (C) ANY OTHER LIABILITY WHICH IS NOT PERMISSIBLE AT LAW.

**12. Governing Law and Claims.** The Agreement, and any claim, controversy or dispute arising out of or related to the Agreement, are governed by and construed in accordance with the laws of England without giving effect to any conflicts of laws provision. To the extent permissible, the United Nations Convention on Contracts for the International Sale of Goods will not apply, even if adopted as part of the laws of England. Any claim, suit, action or proceeding arising out of or relating to this Agreement or its subject matter will be brought exclusively in the courts of England and Wales and each party irrevocably submits to the exclusive jurisdiction and venue. No claim or action, regardless of form, arising out of or related to the 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. To the fullest extent permitted, 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 hereby.

## **13. Miscellaneous**

**13.1 Export.** Red Hat may supply you with Controlled Materials. You agree to comply with all applicable export and import laws or regulations, including any local laws in your jurisdiction concerning your right to import, export or use Controlled Materials and agree that Red Hat is not responsible for your compliance. Without limiting the foregoing, you agree that you will not export, disclose, re-export or transfer the Controlled Materials, directly or indirectly, to (a) any U.S. embargoed destination; (b) any party who you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, or sounding rockets,

unmanned air vehicle systems, or any other restricted end-use; or (c) anyone on (or controlled by a person or entity on) a U.S. government restricted persons list, including those who have been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. You will not provide Red Hat with any data or engage Red Hat in any activity subject to the International Traffic in Arms Regulations (ITAR). In addition, you will not, and will not allow third parties under your control to use the Red Hat Products or Services for any activity subject to the ITAR. Red Hat may terminate this Agreement and/or the applicable Order Form without liability to you if (a) you breach (or Red Hat believes you have breached) this paragraph or the export provisions of an end user license agreement for any Software; or (b) Red Hat is prohibited by law or otherwise restricted from providing Red Hat Products to you.

- 13.2 Notices.** Notices must be in English, in writing, and will be deemed given upon receipt, after being sent using a method that provides for positive confirmation of delivery, including through an automated receipt or by electronic log, to the address(es) or email address provided by you. Any notice from you to Red Hat must include a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601, United States; Email: [legal-notices@redhat.com](mailto:legal-notices@redhat.com). Billing notices to you will be addressed to the billing contact designated by you.
- 13.3 Assignment.** Upon written notice, either party may assign this Agreement to (a) an Affiliate; or (b) a successor or acquirer pursuant to a merger or sale of all or substantially all of such party's assets if, in each case, the assignee's financial condition and creditworthiness are deemed sufficient by the non-assigning party and the assignment will not affect the non-assigning party's obligations under the Agreement. Any other assignment will be deemed void and ineffective without the prior written consent of the other party. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 13.4 Waiver.** A waiver by a party under this Agreement is only valid if in writing and signed by an authorized representative of such party. A delay or failure of a party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights.
- 13.5 Independent Contractors.** The parties are independent contractors and nothing in the Agreement creates an employment, partnership or agency relationship between the parties or any Affiliate. Each party is solely responsible for supervision, control and payment of its personnel. Red Hat may subcontract Services to third parties or Affiliates as long as (a) subcontractors agree to protect Confidential Information; and (b) Red Hat remains responsible to you for performance of its obligations.
- 13.6 Third Party Beneficiaries.** The Agreement is binding on the parties to the Agreement and, other than as expressly provided in the Agreement, nothing in this Agreement grants any other person or entity any right, benefit or remedy.
- 13.7 Force Majeure.** Neither party is responsible for nonperformance or delay in performance of its obligations (other than payment of Fees) due to causes beyond its reasonable control.
- 13.8 Complete Agreement and Order of Precedence.** The Agreement represents the complete agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and proposals, whether written or oral, with respect to such subject matter. Any terms contained in any other documentation that you deliver to Red Hat, including any purchase order or other order-related document (other than an Order Form), are void and will not become part of the Agreement or otherwise bind the parties. If there is a conflict between the General Terms, the Product Appendices and/or an Order Form, the General Terms will control unless otherwise expressly provided in the Product Appendices or Order Form.
- 13.9 Counterparts.** The Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by email or electronic signature process and such signatures will be effective to bind the parties to the Agreement.
- 13.10 Severable.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect to the greatest extent permitted by law.

## **14. Definitions**

- 14.1 "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.
- 14.2 "Agreement"** has the meaning set forth in Section 1.2.
- 14.3 "Business Partner"** means a cloud provider, distributor, reseller, OEM or other third party authorized to resell or distribute Red Hat Products.
- 14.4 "Business Partner order"** means an order for a Red Hat Product placed through a Business Partner.
- 14.5 "Client" or "you"** means the person or entity acquiring the right to use or access the Red Hat Products and which is a party to this Agreement.
- 14.6 "Client Information"** means any data, information, software or other materials that you provide to Red Hat under the Agreement.
- 14.7 "Confidential Information"** means information disclosed by the Discloser to the Recipient during the term of the Agreement that (a) is marked confidential; (b) if disclosed orally, is clearly 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; or (c) is of a nature that the Recipient knows is confidential to the Discloser or should reasonably be expected to know is confidential.
- 14.8 "Controlled Materials"** means software or technical information that is subject to the United States Export Administration Regulations.
- 14.9 "Discloser"** is a party disclosing Confidential Information under this Agreement.
- 14.10 "Effective Date"** means earliest of (a) the date of the last signature on this Agreement or an Order Form; (b) your online acceptance of the Agreement; or (c) when you first receive access to a Red Hat Product.
- 14.11 "Feedback"** means any ideas, suggestions, proposals or other feedback you may provide regarding Red Hat Products.
- 14.12 "Fees"** means the amounts paid or to be paid by Client to Red Hat (directly or through a Business Partner) for Red Hat Products.
- 14.13 "General Terms"** means the terms contained in Sections 1 – 14 of this document.
- 14.14 "Online Services"** means Red Hat branded cloud or hosted services offerings.
- 14.15 "Order Form"** means Red Hat's standard ordering document(s) or online purchasing form used to order Red Hat Products.
- 14.16 "Product Appendices"** means (a) the Red Hat Product Appendices set forth here: <https://www.redhat.com/en/about/agreements#prodapps> as such appendices may be updated by Red Hat from time to time; or (b) for Professional Services, that are incorporated into an applicable statement of work.
- 14.17 "Professional Services"** means consulting services provided by Red Hat.
- 14.18 "Recipient"** is the party receiving Confidential Information under this Agreement.

- 14.19 "Red Hat Products"** means Software, Services, and other Red Hat branded offerings made available by Red Hat.
- 14.20 "Service(s)"** means Red Hat branded services offered as Subscriptions, Professional Services, Training Services, Online Services or other services offered by Red Hat.
- 14.21 "Services Term"** means the period during which you are entitled by Red Hat to use, receive access or consume a particular Red Hat Product pursuant to an Order Form or Business Partner order.
- 14.22 "Software"** means Red Hat branded software that is included in Red Hat Product offerings.
- 14.23 "Subscription"** means a time bound Red Hat Product offering.
- 14.24 "Supplier"** means a third party that provides services to Red Hat in order for Red Hat to offer Services to its customers and/or Business Partners.
- 14.25 "Taxes"** means any form of taxation of whatever nature and by whatever authority imposed, including any interest, surcharges or penalties, arising from or relating to this Agreement or any Red Hat Products, other than taxes based on the net income of Red Hat.
- 14.26 "Training Services"** means access to Red Hat training courses, including online courses or courses provided at a site as may be agreed by the parties.
- 14.27 "Unit"** means the basis upon which Fees are determined for Red Hat Products as set forth in Product Appendices or an Order Form.
- 14.28 "Your Products"** means the Red Hat Products that you have purchased, licensed, or otherwise acquired the right to access or use.