



# EULA for Red Hat Marketplace Subscribers

This EULA for Red Hat Marketplace Subscribers (this “EULA”) contains terms and conditions that govern subscriptions to Datadog’s hosted services obtained through the Red Hat Marketplace, operated by IBM (the “Red Hat Marketplace”). This EULA is an agreement between Datadog, Inc., a Delaware (USA) corporation (“Datadog”), and you or the entity or organization that you represent. This EULA replaces and supersedes all previous agreements and other communications (oral or written) between Customer and Datadog relating to the subject matter of this EULA.

If you are entering into this EULA as an individual: (1) all references to “Customer” are to you and (2) you represent and warrant that you are at least 18 years of age, or have otherwise reached the age of “majority” where you reside, and that you have the right, power and authority to enter into this EULA.

If you are entering into this EULA on behalf of an entity or organization that you represent: (1) all references to “Customer” are to that entity or organization and (2) you represent and warrant that you are at least 18 years of age, or have otherwise reached the age of “majority” where you reside, and that you have the right, power and authority to enter into this EULA on behalf of Customer.

**This EULA becomes binding and effective on Customer upon the earliest of: (1) when you access or use Services for which you obtained subscriptions through the Red Hat Marketplace, (2) when you click a “Start Trial”, “Purchase”, “Subscribe”, “I Agree” or similar button or check box referencing this EULA, or (3) when you enter into a Marketplace Order (as defined below) through the Red Hat Marketplace.**

Capitalized terms not otherwise defined in this EULA will have the respective meanings assigned to them in Section 25. Datadog may modify this EULA from time to time, subject to the terms in Section 26 below.

**1. Marketplace Orders.** This EULA governs Customer’s access and use of Datadog’s hosted Services in connection with a Marketplace Order placed with IBM.

**2. Access and Use.**

2.1. Subject to a Marketplace Order and this EULA, Customer may access and use the Services in accordance with the Documentation during the Marketplace Order Term for Customer’s Environment. As between the Parties, Customer controls Customer’s Environment and its individual components (each, a “Customer Component”), whether owned, leased or licensed by Customer, located on Customer’s premises or cloud-based, used by Customer on a software-as-a-service basis or otherwise. Customer will be able to use the Services by establishing integrations or other connections to one or more Customer Components (each, a “Connection”). By implementing a Connection to a Customer Component, Customer hereby grants to Datadog the right, and is expressly instructing Datadog, to access and interoperate with that Customer Component during the Marketplace Order Term in order to provide and support the Services. Customer is responsible for complying with all Red Hat and other applicable third-party terms, policies and licenses governing its access and use of Customer Components and associated data (collectively, “Third-Party Terms”).

2.2. Through Customer’s configuration and use of Connections and Services, Customer has control over the types and amounts of data from Customer’s Environment that are submitted for Processing by the Services (collectively, “Customer Data”). By submitting Customer Data to the Services, Customer hereby grants to Datadog the right, and is expressly instructing Datadog, to Process Customer Data during the Marketplace Order Term in order to provide and support the Services and as otherwise provided in this EULA.

2.3. All rights granted by each Party to the other under this Section 2 are limited, nonexclusive and, except as otherwise provided in this EULA, non-transferable.

**3. Support.** Subject to this EULA, Datadog will provide Support to Authorized Users through the Services and by email. Although resolution times are not guaranteed, Datadog commits to respond to each request for Support from an Authorized User (each, a “Support Request”) within 48 hours. Customer’s sole and exclusive remedy for any alleged failure

by Datadog to provide Support with reasonable skill, care and diligence following a Support Request shall be re-performance of the applicable Support.

**4. APIs and Tools.** One or more APIs will be available to Customer to assist with Customer's implementation of Connections, and Datadog makes client libraries available to facilitate Customer's coding against the API(s). In addition, Authorized Users may install a Datadog-produced software agent on certain Customer Components to support Customer's collection of Customer Data. The code for these libraries and agents (collectively, "*Ancillary Tools*") are available in public repositories at <https://github.com/datadog> and are subject to the applicable open source licenses referenced in those repositories. As between the Parties, Customer determines and controls what APIs and Ancillary Tools (if any) to use in connection with the Services. By using an API or Ancillary Tool in connection with the Services, Customer hereby agrees to do so in accordance with the Documentation and, in the case of the Ancillary Tool, with the applicable open source licenses (provided that if an applicable open source license for an Ancillary Tool contradicts rights or restrictions in the Documentation, the license will take precedence). The Ancillary Tools are not "Services" or "Support" for purposes of this EULA.

**5. Hosting and Other Providers.** Datadog uses third-party hosting providers, other service providers and Datadog Affiliates to support the provision of the Services and Support in the ordinary course of its business, i.e., not specifically for Customer (collectively, "*Ordinary Course Providers*"). Datadog reserves the right to engage and substitute Ordinary Course Providers as it deems appropriate, but shall: (a) remain responsible to Customer for the provision of the Services and Support as provided in this EULA and (b) be liable for the actions and omissions of its Ordinary Course Providers undertaken in connection with Datadog's performance of this EULA to the same extent Datadog would be liable if performing the Services or Support directly. In no event shall providers of Customer Components be deemed Ordinary Course Providers for any purpose under this EULA.

**6. Security and Privacy.**

6.1. As discussed in the Documentation, including at <https://docs.datadoghq.com/security/>, each Party has obligations with respect to the security of the Services and Customer Data. Taking into account the nature and types of Customer Data, Datadog will employ administrative, physical and technical measures in accordance with applicable industry practice to protect the Services and prevent the accidental loss or unauthorized access, use, alteration or disclosure of Customer Data under its control during each Marketplace Order Term.

6.2. Customer is responsible for properly configuring the Services in accordance with the Documentation, enabling single sign-on for Customer's accounts, and securing access passwords, keys, tokens or other credentials used by Customer in connection with the Services (collectively, "*Customer Credentials*"). Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Services and to promptly notify Datadog if Customer believes (a) any Customer Credentials have been lost, stolen or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Services or Customer Data.

6.3. Except for limited Personal Information in Account Data, Datadog does not require Personal Information for Customer's access and use of the Services. Customer shall limit Personal Information in Account Data to only that necessary for the creation and administration of its Datadog accounts. With regard to Customer Data, except as may otherwise be expressly provided in applicable Supplemental Terms, Customer shall not use the Services to Process any Sensitive Information and shall use reasonable efforts to restrict the inclusion of other Personal Information in Customer Data. The Documentation provides further information on both filtering Personal Information from, and masking Personal Information in, data before they are submitted to the Services.

6.4. Datadog may Process information about Customer's configuration and use of the Services ("*Usage Data*"), Customer Data and Account Data: (a) to manage Customer's accounts; (b) to provide and improve the Services and Support, including to address Support Requests and troubleshoot other issues; and (c) to provide Customer and Authorized Users insights, service and feature announcements and other reporting. Customer acknowledges and agrees that Datadog may share information regarding Marketplace Order transactions with IBM and that Datadog will Process Usage Data and Account Data in connection with the calculation of Charges (as defined in Section 9) and associated fees due to IBM. Datadog may also Process Usage Data that has been aggregated and/or anonymized (including, for clarity, that does not allow a third party to identify Customer as the source of the information) to develop new services and features and to

promote Datadog's services, including, for example, through analyses of patterns and trends. Datadog's Processing of Usage Data, Customer Data and Account Data, and any other use of information described in this Section 6.4, shall at all times be subject to Datadog's obligations under this EULA, including those of security under Section 6.1 and confidentiality under Section 11; the DPA (as defined in Section 8.1), if applicable; the Supplemental Terms, if applicable; and, with respect to Account Data, the Privacy Policy.

## **7. Customer Responsibilities and Restrictions.**

7.1. As between the Parties, Customer will be solely responsible for: (a) Customer's Environment, including as necessary to enable Authorized Users' access and use of the Services; (b) Account Data, Customer Data and Customer Credentials (including activities conducted with Customer Credentials), subject to Datadog's Processing obligations under this EULA; (c) providing any required notices to, and receiving any required consents and authorizations from, Customer Component providers, Authorized Users and persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials; and (d) ensuring use of the Services is only for Customer's Environment and in accordance with the AUP, Documentation and applicable Third-Party Terms.

7.2. No provision of this EULA includes the right to, and Customer shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Services; (b) attempt to gain unauthorized access to any Service or its related systems or networks; (c) use any Service to access Datadog Intellectual Property Rights except as permitted under this EULA; (d) modify, copy or create any derivative work based upon a Service or any portion, feature or function of a Service; (e) resell, distribute or otherwise make available any Service to any third party, including as part of a managed services offering; (f) except to the extent limited by Applicable Law, reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the Services or access or use the Services or Documentation in order to (1) copy ideas, features, functions or graphics, (2) develop competing products or services, or (3) perform competitive analyses; (g) remove, obscure or alter any proprietary notice related to the Services; (h) send or store Malicious Code; (i) use or permit others to use the Services in violation of Applicable Law; or (j) use or permit others to use the Services other than as described in the applicable Marketplace Order, Documentation and this EULA.

7.3. Datadog reserves the right to investigate potential violations of the above provisions of this Section 7. In the event Datadog reasonably believes a violation has occurred, in addition to any other remedies available at law or in equity (including termination pursuant to Section 13.2), Datadog will have the right to suspend Authorized Users suspected of the violation from accessing the Services for so long as is reasonably necessary to address the potential violation. Except where Datadog reasonably believes the violations are willful, or in urgent or emergency situations, Datadog will notify Customer of any such suspension in advance (each, a "*Suspension Notice*") and work with Customer in good faith to resolve the potential violation. For clarity, Datadog reserves the right, but does not assume any obligation to Customer (except with respect to the Suspension Notice), to take any of the actions described in this Section 7.3.

**8. Compliance with Applicable Laws.** Each Party agrees to comply with all Applicable Laws with respect to its performance of its obligations and exercise of its rights under this EULA. Without limiting the foregoing:

8.1. Each Party shall comply with Applicable Laws concerning the privacy and protection of Personal Information. Without limiting Section 7.1, Customer will be solely responsible for providing any notices required by Applicable Law to, and receiving any consents and authorizations required by Applicable Law from, persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials. Without limiting Section 6.3 and any applicable Supplemental Terms, if Customer believes Customer Data may include the Personal Information of natural persons located in the European Economic Area, and wishes to execute a Data Processing Addendum ("*DPA*") pursuant to the GDPR, Customer may do so by submitting a request by email to [gdpr@datadoghq.com](mailto:gdpr@datadoghq.com). Promptly following Datadog's receipt of Customer's request, Datadog will send Customer a DPA ready for execution.

8.2. Each Party shall comply with Applicable Laws concerning anti-bribery and anti-corruption, which may include the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010. As of the date of each Marketplace Order, Customer represents that it has neither received nor been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any employee, agent or representative of Datadog, IBM or any of their Affiliates in connection with such Marketplace Order. Customer agrees to promptly notify Datadog if it learns of any violation of the foregoing. This representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law.

8.3. Each Party shall (a) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (“*Export Laws*”), including designating countries, entities and persons (“*Sanctions Targets*”) and (b) not directly or indirectly export, re-export or otherwise deliver Services to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to this EULA under Applicable Laws, including Export Laws.

## 9. Pricing and Charges.

9.1. Customer agrees to the pricing for, and to pay all charges incurred for use of, the Services in accordance with the Marketplace Order, Marketplace Listing and this EULA (collectively, “*Charges*”).

9.2. Datadog reserves the right to terminate any Marketplace Order with no penalty or liability to Customer where IBM fails to timely pay amounts due respect of the Charges or where Customer exceeds any aggregate, predetermined maximum use of the Services.

9.3. All Charges are exclusive of taxes, levies, duties or charges imposed by government authorities (collectively, “*Taxes*”) and, as between the Parties, Customer shall be responsible for all sales, service, value-added, use, excise, consumption and any other Taxes on amounts payable by Customer under Marketplace Orders (other than any Taxes on Datadog’s income, revenues, gross receipts, personnel or assets).

10. **Ownership.** As between the Parties: (a) Customer owns all right, title and interest in and to Customer’s Environment and Customer Data, including in each case all associated Intellectual Property Rights, and (b) Datadog owns all right, title and interest in and to the Services, Documentation and Feedback, including in each case all associated Intellectual Property Rights. Except for the rights expressly granted by one Party to the other in this EULA, all rights are reserved by the granting Party.

## 11. Confidentiality.

11.1. As used in this EULA, “*Confidential Information*” means any information disclosed by one Party, its Affiliates, business partners or their respective employees, agents or contractors (collectively, the “*Discloser*”) that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes without limitation: (a) Customer Data; (b) information relating to the Discloser’s or its Affiliates’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; and (c) third-party information that the Discloser is obligated to keep confidential. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the “*Recipient*”) prior to receiving the same from the Discloser in connection with this EULA; (ii) is independently developed by the Recipient without reference to or use of the Discloser’s Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

11.2. The Recipient shall not (a) use the Discloser’s Confidential Information for any purpose outside the scope of this EULA without the Discloser’s prior written consent or (b) disclose the Discloser’s Confidential Information to any person or entity, except to IBM as provided in Section 6.4 or to the Recipient’s employees, agents, contractors and service providers who (i) are bound by non-use and non-disclosure obligations at least as protective as those contained in this EULA and (ii) have a need to know the Confidential Information for the Recipient to exercise its rights or perform its obligations under this EULA. Notwithstanding the foregoing, the Recipient may disclose the Discloser’s Confidential Information to the limited extent any use or disclosure is required by Applicable Law or a valid and binding order of a governmental body (such as a subpoena or court order), provided that, to the extent permitted under Applicable Law, the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information. In the event of any breach or threatened breach by the Recipient of its obligations under this Section, the Discloser will be entitled to seek injunctive and other equitable relief to enforce such obligations.

## 12. Disclaimers.

12.1. EXCEPT AS EXPRESSLY PROVIDED IN THIS EULA, NEITHER PARTY MAKES ANY WARRANTY OR GUARANTEE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

12.2. EXCEPT AS EXPRESSLY PROVIDED IN THIS EULA, ALL SERVICES, SUPPORT AND ANY OTHER MATERIAL ARE PROVIDED BY DATADOG ON AN "AS IS" AND "AS AVAILABLE" BASIS. DATADOG MAKES NO REPRESENTATION OR WARRANTY, AND HAS NO SUPPORT OBLIGATIONS OR LIABILITY, WITH RESPECT TO ANY CUSTOMER COMPONENT. WITHOUT LIMITING THE OTHER PROVISIONS OF THIS SECTION 12, DATADOG MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, DOCUMENTATION, ANCILLARY TOOLS OR ANY OTHER MATERIAL, OR RESULTS OF THE USE THEREOF, WILL: (a) MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE ERROR FREE OR (e) BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH CUSTOMER COMPONENTS. ANY CHANGES TO CUSTOMER COMPONENTS (INCLUDING THEIR UNAVAILABILITY) OR THIRD-PARTY TERMS DURING A MARKETPLACE ORDER TERM DO NOT AFFECT CUSTOMER'S OBLIGATIONS UNDER THIS EULA.

### **13. Term and Termination.**

13.1. The term of this EULA will continue through the expiration or earlier termination of the last Marketplace Order to be in effect.

13.2. Datadog may terminate Customer's access to the Services and this EULA (a "*Subscription Termination*") if Customer materially breaches a Marketplace Order and/or this EULA, and such breach (if capable of cure) remains uncured 30 days after Datadog provides notice of such breach or pursuant to Section 9.2 or Section 14.2.

13.3. Upon expiration or earlier termination, subject to Section 13.5, all rights granted to Customer with respect to Services will terminate effective as of the effective date of termination and Datadog will have no obligation to provide Services to Customer or Authorized Users after the effective date of the termination.

13.4. In the event of a Subscription Termination pursuant to Section 14.2, Datadog will refund to IBM upon request a pro rata share of any unused amounts prepaid by IBM under the applicable Marketplace Order for the Services on the basis of the remaining portion of the current subscription term (a "*Pro-Rated Refund*"). Datadog will issue the Pro-Rated Refund directly to IBM and any pass-through of some or all of that amount will be between IBM and Customer. In all other cases, and regardless of whether Customer uses the Services at the levels reflected in the Marketplace Order or otherwise, neither IBM nor Customer will be entitled to a refund of any Charges. In no event will any termination, expiration or suspension of Services, this EULA or any Marketplace Order give rise to any liability of Datadog to Customer for refunds or damages.

13.5. Subject to any applicable shorter retention periods specified in the applicable Marketplace Listing, for up to 30 days from the effective date of termination of this EULA, an Authorized User designated by Customer will be permitted to continue to access and download Customer Data that was accessible to Authorized Users through the Services immediately prior to termination. The designated Authorized User's access and use will continue to be subject to the terms of this EULA, provided the Authorized User shall not access or use the Services other than to download Customer Data.

13.6. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this EULA that, by its nature, should survive termination or expiration of this EULA, will survive any expiration or termination of this EULA: 6.4, 7.2, 8 through 15, and 17 through 26.

### **14. Indemnification.**

14.1. Subject to Sections 14.2 and 14.4, Datadog agrees to defend, indemnify and hold harmless Customer, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "*Customer Indemnitees*"), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, "*Losses*") arising out of or related to any legal claim, suit, action or proceeding (each, an "*Action*") by a third party (other than IBM or other parties specified in Section 14.5) alleging use of the Services as permitted under this EULA infringes such third party's United States patent or copyright, or misappropriates such third party's trade secrets (each, a "*Customer Infringement Claim*").

14.2. If the Services become, or in Datadog's opinion are likely to become, the subject of a Customer Infringement Claim, Datadog may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe or misappropriate; or (c) terminate Customer's access to the Services and this EULA and issue a Pro-Rated Refund to IBM. Datadog will have no obligation to indemnify Customer for a Customer Infringement Claim to the extent it arises from any of the following (collectively, "*Customer-Controlled Matters*"): (i) Customer's Environment, including Connections to Customer Components, whether enabled through APIs, Ancillary Tools or otherwise; (ii) Account Data, Customer Data or Customer Credentials (including activities conducted with Customer Credentials), subject to Datadog's Processing obligations under this EULA; or (iii) use of the Services by Customer or an Authorized User in a manner that breaches a Marketplace Order, Marketplace Listing or this EULA. SECTIONS 14.1 AND 14.2 STATE DATADOG'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

14.3. Subject to Section 14.4, Customer agrees to defend, indemnify and hold harmless Datadog, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "*Datadog Indemnitees*"), from and against any and all Losses arising out of or related to any Action by a third party arising out of or relating to Customer-Controlled Matters.

14.4. A Customer Indemnitee or Datadog Indemnitee (each, an "*Indemnitee*") seeking indemnification shall promptly notify the other Party (each, an "*Indemnifying Party*"), in writing of any Action for which it seeks indemnification pursuant to Section 14.1 or 14.3 (as applicable) and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 14.4 will not relieve the Indemnifying Party of its obligations under Section 14.1 or 14.3 (as applicable) except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an Action without the Indemnitee's written consent if such settlement shall require action or payment by the Indemnitee.

14.5. Neither IBM nor its employees, contractors, agents, officer or directors shall be deemed Customer Indemnitees for purposes of this EULA.

**15. Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 15, IN NO EVENT SHALL: (a) DATADOG, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS HAVE ANY LIABILITY TO CUSTOMER OR ANY AUTHORIZED USER FOR ANY LOSSES ARISING OUT OF OR RELATING TO THE RED HAT MARKETPLACE OR CUSTOMER'S AGREEMENT(S) WITH IBM; (b) EITHER PARTY, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THIS EULA; AND (c) EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS EULA EXCEED THE AMOUNTS PAID TO DATADOG BY IBM UNDER THE APPLICABLE MARKETPLACE ORDER(S), INCLUDING PRIOR MARKETPLACE ORDERS FOR THE SAME SERVICES, IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION (COLLECTIVELY, THE "*EXCLUSIONS*") APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE EXCLUSIONS SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14 OR CUSTOMER'S BREACH OF SECTION 7.2. THE PROVISIONS OF THIS SECTION 15 ALLOCATE THE RISKS UNDER THIS EULA BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE EXCLUSIONS IN DETERMINING TO ENTER INTO THIS EULA.

**16. Publicity.** Neither Party shall, except as otherwise required by Applicable Law or stock exchange requirements, issue or release any announcement, statement, press release or other publicity or marketing materials relating to this EULA or otherwise use the other Party's marks or logos without the prior written consent of the other Party; provided, however, that Datadog may (subject its obligations of non-attribution under Section 6.4) include Customer's name and logo in its lists of Datadog customers, its public website and other promotional material. Datadog agrees to promptly cease such uses of Customer's name and logo following Customer's request sent to [logos@datadoghq.com](mailto:logos@datadoghq.com).

**17. Notices.** Subject to change pursuant to this Section: (a) Datadog's physical address for notices is that of its New York, New York, USA headquarters provided at <https://www.datadoghq.com/about/contact/>, Attn: Legal Notice, and its email address for notices is [legal@datadoghq.com](mailto:legal@datadoghq.com) and (b) Customer's physical and email addresses for notices are those designated in the Services. Notices required or permitted to be given under this EULA shall be in writing and shall be deemed to be sufficiently given: (i) one business day after being sent by overnight courier to the Party's physical address; (ii) three business days after being sent by registered mail, return receipt requested, to the Party's physical address; or (iii) one business day after being sent by email to the Party's email address (provided that (1) the sender does not receive a response that the message could not be delivered or an out-of-office reply and (2) any notice for an indemnifiable Action must be sent by courier or mail pursuant to clause (i) or (ii)). Either Party may change its address(es) for notice by providing notice to the other in accordance with this Section.

**18. Assignment.** So long as Customer remains current in the payment of all amounts when due, Customer may assign this EULA together with its assignment of all Marketplace Orders in connection with any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity), or a sale of all or substantially all of Customer's business or assets relating to this EULA to an unaffiliated third party. Subject to the foregoing, Customer may not assign any of its rights or obligations under this EULA, whether by operation of law or otherwise, without Datadog's prior written consent, and any purported assignment in violation of this Section is void. This EULA is binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

**19. U.S. Government Customers.** The Services and Documentation are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services and Documentation. If Customer or any Authorized User is using Services and Documentation on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer and Customer's Authorized Users must immediately discontinue use of the Services and Documentation. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**20. Relationship of Parties.** The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this EULA shall constitute one Party as an employee, agent, joint venture partner or servant of another. Customer acknowledges that neither the Red Hat Marketplace nor IBM is an agent or representative of Datadog, and that Datadog accepts no responsibility for the actions or omissions of the foregoing.

**21. Third-Party Beneficiaries.** This EULA is for the sole benefit of Datadog and Customer and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on IBM or any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this EULA. For clarity, IBM is not a third-party beneficiary of this EULA and Customer is not a third-party beneficiary of any contract between IBM and Datadog.

**22. Force Majeure.** Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this EULA, for any failure or delay in fulfilling or performing any term of this EULA, when and to the extent such failure or delay is caused by acts of God; flood, fire or explosion; war, terrorism, invasion, riot or other civil unrest; embargoes or blockades in effect on or after the date of this EULA; or national or regional emergency (each of the foregoing, a "*Force Majeure Event*"), in each case, provided the event is outside the reasonable control of the affected Party, the affected Party provides prompt notice to the other Party, stating the period of time the occurrence is expected to continue, and the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**23. Governing Law; Venue.** Except to the extent the issue arising under this EULA is governed by United States federal law, this EULA shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to the choice of law rules of that State. Any legal action or proceeding arising under or relating to this EULA shall be brought exclusively in the state or federal courts located in New York, New York, USA, and the Parties expressly consent to personal jurisdiction and venue in those courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods are specifically excluded from application to this EULA.

**24. Miscellaneous.** This EULA, together with the AUP and, as and if applicable, Supplemental Terms and DPA, are the complete and exclusive statement of the agreement between the Parties and supersede all proposals, questionnaires and

other communications and agreements between the Parties (oral or written) relating to the subject matter of this EULA. Any terms and conditions of any other instrument issued by Customer in connection with this EULA which are in addition to, inconsistent with or different from the terms and conditions of this EULA shall be of no force or effect. Additionally, this EULA supersedes any confidentiality or non-disclosure agreement previously entered into by the Parties with respect to the Services or otherwise with respect to the Services. Except as otherwise provided in Section 26, this EULA may be modified only by a written instrument duly executed by authorized representatives of the Parties. The failure of a Party to exercise or enforce any condition, term or provision of this EULA will not operate as a waiver of such condition, term or provision. Any waiver by either Party of any condition, term or provision of this EULA shall not be construed as a waiver of any other condition, term or provision. If any provision of this EULA is held invalid or unenforceable, the remainder of the Terms shall continue in full force and effect. The headings in this EULA is for reference only and shall not affect the interpretation of this EULA. For purposes of this EULA, the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; the word “or” is not exclusive; and the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this EULA as a whole.

**25. Definitions.** Capitalized terms not otherwise defined in this EULA shall have the respective meanings assigned to them in this Section 25.

*“Account Data”* means information about Customer that IBM or Customer provides to Datadog in connection with the creation or administration of Customer’s Datadog accounts, such as first and last name, user name and email address of an Authorized User or Customer’s contact for notices under Section 17. Customer shall ensure that all Account Data is current and accurate at all times during the applicable Marketplace Order Term, and shall in no event include Sensitive Information in Account Data.

*“Affiliate”* means, with respect to a Party, a business entity that directly or indirectly controls, is controlled by or is under common control with, such Party, where “control” means the direct or indirect ownership of more than 50% of the voting securities of a business entity.

*“API”* means an application programming interface referenced in the Documentation that Datadog maintains and makes available to Customer in connection with the Services.

*“Applicable Laws”* means any and all governmental laws, rules, directives, regulations or orders that are applicable to a particular Party’s performance under this EULA.

*“AUP”* means Datadog’s standard Acceptable Use Policy, currently available at <https://www.datadoghq.com/legal/acceptable-use/>.

*“Authorized User”* means an individual employee, agent or contractor of Customer for whom subscriptions to Services have been purchased pursuant to the terms of the applicable Marketplace Order and this EULA, and who has been supplied user credentials for the Services by Customer (or by Datadog at Customer’s request).

*“Customer’s Environment”* means, exclusive of Services, the systems, platforms, services, software, devices, sites and/or networks that Customer uses in Customer’s own internal business operations.

*“Documentation”* means Datadog’s standard user documentation for the Services, currently available at <https://docs.datadoghq.com/>.

*“Feedback”* means bug reports, suggestions or other feedback with respect to the Services or Documentation provided by Customer to Datadog, exclusive of any Customer Confidential Information therein.

*“GDPR”* means the General Data Protection Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing of Directive 95/46/EC.

*“IBM”* means International Business Machines Corporation and its Affiliates.

*“Intellectual Property Rights”* means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

*“Malicious Code”* means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

*“Marketplace Listing”* means the packaged plan and associated features, as detailed on the applicable page on the Red Hat Marketplace, for the hosted Datadog services to which Customer subscribes through a Marketplace Order.

*“Marketplace Order”* means each separate order, subscription or contract for Services pursuant to this EULA: (a) completed and submitted by Customer through the Red Hat Marketplace and accepted by Datadog or (b) entered into by Datadog and Customer pursuant to a private offer through the Red Hat Marketplace.

*“Marketplace Order Term”* means, with respect to each Marketplace Order, the initial subscription term for the Services specified in the applicable Marketplace Order and all renewals pursuant to that Marketplace Order.

*“Party”* means each of Datadog and Customer.

*“Personal Information”* means information relating to an identified or identifiable natural person that is protected by Applicable Laws with respect to privacy where the individual resides.

*“Privacy Policy”* means Datadog’s standard Privacy Policy, currently available at <https://www.datadoghq.com/legal/privacy/>.

*“Process”* means to perform an operation or set of operations on data, content or information, including to submit, transmit, post, transfer, disclose, collect, record, organize, structure, store, adapt or alter; *“Processing”* has a correlative meaning.

*“Red Hat Marketplace”* means the online software and service catalog operated by IBM, currently available at <https://marketplace.redhat.com/>.

*“Sensitive Information”* means the following categories of Personal Information: (a) government-issued identification numbers, including Social Security numbers; (b) financial account data; (c) biometric, genetic, health or insurance data; (d) financial information; (e) data revealing race, ethnicity, political opinions, religion, philosophical beliefs or trade union membership; (f) data concerning sex life or sexual orientation; and (g) data relating criminal convictions and offenses. Without limiting the foregoing, the term *“Sensitive Information”* includes Personal Information that is subject to specific or heightened requirements under Applicable Law or industry standards, such as Social Security numbers in the United States, protected health information under the U.S. Health Insurance Portability and Accountability Act, nonpublic personal information under the U.S. Gramm-Leach-Bliley Act, cardholder data under the PCI Data Security Standard, and special categories of personal data under the GDPR.

*“Services”* means the hosted services to which Customer subscribes through a Marketplace Order that are made available by Datadog online via the applicable login page (currently <https://app.datadoghq.com/>) and other web pages designated by Datadog. Datadog may make such changes to the Services as Datadog deems appropriate from time to time, provided such changes do not materially decrease the features or functionality of the Services as they existed at the effective date of the applicable Marketplace Order. For purposes of this EULA, the term Services does not include alpha, beta or other pre-commercial releases of a Datadog product or service (or feature of functionality of a Service), or any Datadog product or service to which Customer subscribes outside of the Red Hat Marketplace, which are subject to the applicable terms at <https://www.datadoghq.com/legal/>.

*“Supplemental Terms”* means additional terms that apply to certain Customer Data, Services and/or customers, including any applicable Service-Specific Terms, currently available at <https://www.datadoghq.com/legal/service-terms/>.

*“Support”* means Datadog’s standard customer support for the Services, currently described at <https://www.datadoghq.com/support/>.

**26. Changes to this EULA.** Datadog may modify this EULA at any time by posting a revised version to the Red Hat Marketplace, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted; provided, however, that if a Marketplace Order specifies a fixed term of 12 months or longer, the modifications will instead be effective immediately upon the start of the next renewal term, if any. In either case, if Customer objects to the updated EULA, as its sole and exclusive remedy, Customer may choose not to renew, including canceling through the Red Hat Marketplace any terms set to auto-renew. For the avoidance of doubt, each Marketplace Order is subject to the version of the EULA in effect at the time of the Marketplace Order.