

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 those appendices at the end of this Agreement.

This Red Hat Enterprise Agreement, including all referenced appendices and documents located at URLs (the "Agreement"), is between Red Hat New Zealand Limited ("Red Hat") and the purchaser or user of Red Hat software and services who accepts the terms of this Agreement ("Client"). The effective date of this Agreement ("Effective Date") is the earlier of the date that Client signs or accepts this Agreement or the date that Client uses Red Hat's software or services.

1. Scope of Agreement

- 1.1 Framework.** This Agreement establishes a framework that will enable Red Hat to provide Software and Services to Client. "Software" means Red Hat Enterprise Linux, JBoss Enterprise Middleware and other software programs branded by Red Hat, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by Red Hat. The specific services (the "Services") and/or Software that Red Hat will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by Red Hat, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through Red Hat's online store accessible from a Red Hat website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.
- 1.2 Affiliates.** Red Hat and Client agree that Affiliates of Client may acquire Software and Services from Red Hat or its Affiliates by entering an Order Form with Red Hat (or a Red Hat Affiliate) that incorporates the terms and conditions of this Agreement. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Form (for example, to address disparate tax and/or legal regimes in other geographic regions). "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.
- 1.3 Business Partners.** Red Hat has entered into agreements with other organizations ("Business Partners") to promote, market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Red Hat confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. Red Hat is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

2. Obligations of the Parties

- 2.1 On-Site Obligations.** If Red Hat personnel are working on Client's premises, then (a) Client will provide a safe and secure working environment for Red Hat personnel, and (b) Red Hat will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which Red Hat is notified in writing by Client in advance.
- 2.2 Changes to Work and Delays.** Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.
- 2.3 Assistance.** Client may provide Red Hat access to Client information, systems, and software ("Client Information"), and resources such as workspace, network access, and telephone connections as reasonably required by Red Hat in order to provide the Services. Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to Red Hat may affect Red Hat's ability to provide Services, and (b) if reasonable access to Client Information is not provided, Red Hat will be relieved from providing any Services dependent upon such access. Client will obtain any third party consents necessary to grant Red Hat access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

3. Payment

- 3.1 Fees and Expenses.** Fees for the Services (the "Fees") will be identified in an Order Form and are (a) due upon Red Hat's acceptance of an Order Form or, for renewal of Services, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are stated in Australian Dollars, must be paid in New Zealand Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services. Client agrees to pay Red Hat the applicable Fees for each Unit. "Unit" is the measurement of Software or Service usage defined in the applicable Order Form. Any renewal of Subscription Services will be at the same price per Unit listed in the applicable Order Form. "Subscription Services" mean fee-bearing subscriptions for a defined period of time for a certain scope of Services.

3.2 Invoices

- 3.2.1** If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with Red Hat in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, and to the fullest extent permitted by applicable law, any and all payments made by Client pursuant to this Agreement are non-refundable. Red Hat reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.
- 3.2.2** If Client is paying by credit card, Client (a) authorizes Red Hat to charge Client's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to Red Hat for renewal purposes.
- 3.3 Taxes.** Unless otherwise defined in this Agreement, capitalized expressions in this Section 3.3 bear the same meaning as those expressions in the *Goods and Services Tax Act 1985*. Any amount payable under this Agreement, including all Fees, is exclusive of Taxes. "Taxes" means any form of sales, use, value added or other form of taxation, including GST, and any fines, penalties, surcharges or interest, but excluding any taxes based solely on the net income of Red Hat. Client will pay Red Hat an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by Red Hat. Specifically in respect of GST, if a party makes a Taxable Supply in connection with this Agreement for a Consideration which represents its value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay GST is subject to a valid Tax Invoice being delivered. If Client is required to withhold or deduct any portion of the payments due to Red Hat, Client will increase the sum payable to Red Hat by the amount necessary so that Red Hat receives an amount equal to the sum it would have received had Client made no withholdings or deductions.

4. License and Ownership

- 4.1 Software.** Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.
- 4.2 Freedom to Use Ideas.** Subject to Section 9 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Red Hat, without an obligation to account, in any way Red Hat deems appropriate, including by or for itself or its clients or customers.
- 4.3 Marks.** Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any Red Hat, Red Hat Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Red Hat or Red Hat Affiliate trademarks.

5. Reporting and Inspection

- 5.1 Reporting.** Client will notify Red Hat (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. Red Hat (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of the invoice.
- 5.2 Inspection.** During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services, and Client will have fifteen (15) days from the date of this notice to make payment to Red Hat for the applicable Services provided with respect to the underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay Red Hat for the cost of such inspection.

6. Term and Termination

- 6.1 Term and Termination of Agreement.** The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Form and the terms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 6.2 below.

6.2 Term and Termination of Order Form

- 6.2.1** The term of an Order Form begins on the date the Order Form is executed ("Order Form Effective Date") and continues for the term stated in the Order Form. Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Client must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.
- 6.2.2** If Client or Red Hat materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination to the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 9 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat, in the event either party terminates an Order Form, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination.
- 6.3 Survival.** If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5.2, 6.3, 7, 8, 9, 10.2, 12, 13.1, 13.5-13.13, and 14 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

7. Continuing Business

Nothing in this Agreement will preclude or limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Client. The terms of confidentiality in Section 9 will not 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 this Agreement.

8. Limitation of Liability and Disclaimer of Damages

- 8.1 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY RED HAT DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.**
- 8.2 Disclaimer of Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.**

9. Confidentiality

- 9.1 Obligations.** During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Red Hat or Client ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure.
- 9.2 Exclusions.** Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

10. Representations and Warranties

10.1 General Representations and Warranties. Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

10.2 Disclaimer of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY RED HAT "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLIENT'S EXCLUSIVE REMEDY, AND RED HAT'S ENTIRE LIABILITY, WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. ALL STATUTORY OR IMPLIED CONDITIONS AND WARRANTIES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LIABILITY UNDER ANY CONDITION OR WARRANTY WHICH CANNOT LEGALLY BE EXCLUDED IS LIMITED, IN THE DISCRETION OF RED HAT, TO: (A) IN THE CASE OF GOODS, THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS, THE REPAIR OF THE GOODS, THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND (B) IN THE CASE OF SERVICES, SUPPLYING THE SERVICES AGAIN, OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.

11. Open Source Assurance Program

For Software that is Red Hat branded, purchases under this Agreement may entitle Client to participate in Red Hat's Open Source Assurance Program which is described at <http://www.redhat.com.au/rhel/details/assurance/>. The terms for this optional program are subject to a separate agreement which can be viewed at http://www.redhat.com.au/legal/open_source_assurance_agreement.php.

12. Governing Law/Consent to Jurisdiction

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the New Zealand, without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the courts of New Zealand, and each party irrevocably consents to such jurisdiction.

13. Miscellaneous

13.1 Notices. Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 1801 Varsity Drive, Raleigh, North Carolina 27606; Facsimile: (919) 754-3704.

13.2 Assignment. This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 5.1 and 6.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties' Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party's assets or stock.

13.3 Independent Contractor. Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Red Hat may subcontract Services under an Order Form to third parties or Affiliates without the approval of Client; provided, however, that (a) subcontractors agree to protect Client Confidential Information, and (b) Red Hat remains responsible to Client for performance of its obligations hereunder.

13.4 Force Majeure. Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

13.5 Non-solicitation. Client agrees not to solicit or hire any personnel of Red Hat involved with the delivery of Services in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that Client may hire an individual employed by Red Hat who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

- 13.6 Export and Privacy.** Red Hat may supply Client with technical data that is subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section 13.6 or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, Red Hat may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Client. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information and/or Client's personal information (as defined in the *Privacy Act 1993*) to be transferred between Red Hat, its Affiliates, Business Partners and/or subcontractors, which may be located worldwide. Red Hat acknowledges that any use and disclosure of personal information is consistent with Red Hat Inc's privacy policy, as it exists from time to time, which is described at http://www.redhat.com/legal/privacy_statement.html.
- 13.7 Dispute Resolution.** Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party's rights. To the fullest extent permitted by applicable law, no claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.
- 13.8 Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.
- 13.9 Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.
- 13.10 Waiver.** The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.
- 13.11 Complete Agreement.** Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Software, this Agreement will take precedence unless otherwise expressly provided in the Order Form. Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Services by Red Hat, its Affiliates, or their respective personnel, will be made against Red Hat alone.
- 13.12 Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.
- 13.13 Counterparts and Facsimile Signature.** In the event this Agreement is executed with signatures, this 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 facsimile and such signatures will be effective to bind the parties to all the terms contained in this Agreement.
- 14. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 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 UNDER THIS AGREEMENT.**

Red Hat sells subscriptions that entitle you to receive Red Hat services and/or Software during the period of the subscription (generally, one or three years). This Appendix to the Agreement describes the “**Subscription Services**” that Red Hat provides for:

- Software product offerings (these subscriptions are called “**Software Subscriptions**”);
- Support and maintenance services offerings (these subscriptions are called “**Support Subscriptions**”); and
- Software delivery and management services offerings (these subscriptions are called “**Management Subscriptions**”).

The Exhibits to this Appendix provide additional terms concerning the Subscription Services. Whether you purchase Subscription Services from us or through one of our authorized Business Partners, we agree to provide you with the Subscription Services on the terms described in this Appendix, which includes the Exhibits and documents referred to in this Appendix (together, the “**Appendix**”). In exchange, you agree to comply with the terms of this Appendix.

When we use a capitalized term in this Appendix without defining it, the term has the meaning defined in the Agreement to which this Appendix applies, such as the Red Hat Enterprise Agreement. In the event of a conflict, inconsistency or difference between this Appendix and an Exhibit to this Appendix, the terms of the Exhibit control.

1. Subscription Services – An Overview

Subscription Units: We charge you a fee for our Subscription Services based on the total number of Units of Software or other Red Hat Products that you deploy, install, use or execute (as described more fully in Tables 1.1, 1.2 and 1.3 below and elsewhere in the Appendix). For example, Software Subscriptions for Red Hat Enterprise Linux Server are priced based on the number and other characteristics of Systems (e.g. Socket-pairs, Virtual Guests, etc.) on which you install the Software, while Software Subscriptions for JBoss Enterprise Application Platform are priced based on the number of Cores running that Software, in a range called a Core Band.

Use of Software and Subscription Services: While you have subscriptions entitling you to receive Subscription Services for a Red Hat Product, you are required to purchase Subscription Services in a quantity equal to the total number of Units of that Red Hat Product that you deploy, install, use or execute. In addition, if you are using Subscription Services to support or maintain a non-Red Hat Product, then you are required to purchase Subscription Services for each instance of such non-Red Hat Product for which you use Subscription Services. In addition, the Agreement (including pricing) is premised on our understanding that you will use the Subscription Services and Software only for your internal use (which includes Affiliates). Distributing the Software or any portion of the Subscription Services to a third party or using any of the Subscription Services for the benefit of a third party is a material breach of the Agreement even though the open source license applicable to individual software packages may give you the right to distribute those packages (and this Appendix is not intended to interfere with your rights under those individual licenses). The Subscription Services may be used under the terms of this Appendix by third parties acting on your behalf, such as contractors, subcontractors or outsourcing vendors, provided you remain responsible for your obligations under this Appendix, and the activities and omissions of such third parties. Any unauthorized use of the Subscription Services is a material breach of the Agreement, such as (a) only purchasing or renewing Subscription Services based on some, but not all, of the total number of Units of Red Hat Software or other Red Hat Product that you deploy, install, use or execute, (b) providing Software Access or Software Maintenance (each defined below) to third parties, (c) using Production Support or Development Support (each defined below) to provide support to third parties, (d) using Subscription Services in connection with any redistribution of Software, or (e) using Subscription Services to support or maintain any non-Red Hat Software products. For the purposes of this paragraph (for example, in calculating the total number of Units of Software), Software would include versions or copies that have the Red Hat trademark(s) and/or logo file(s) removed. The licenses that are applicable to the individual open source software packages are perpetual (subject to your compliance with their terms), but the other benefits of a Software Subscription will expire if not renewed.

Subscription Start Date: Unless otherwise agreed in an Order Form, the Subscription Services will begin on the date you purchase the Subscription Services.

1.1 Software Subscriptions

Benefits of a Software Subscription: For each Software Subscription that you purchase, Red Hat provides you one or more of the following benefits:

- **Software Access:** Access to the supported versions of the Software.
- **Software Maintenance:** Access to updates, upgrades, corrections, security advisories and bug fixes for the Software, when and if these are available.
- **Support:** Access to Red Hat support for issues relating to Software used for Development Purposes and/or Production Purposes (each of which is defined below).
- **Open Source Assurance:** Purchases under this Appendix for Software Subscriptions may entitle you to participate in Red Hat’s Open Source Assurance Program subject to a separate agreement, which can be viewed at www.redhat.com/legal/open_source_assurance_agreement.html.

Descriptions of Red Hat Software Subscriptions: Table 1.1 below lists the Software Subscriptions offered by Red Hat, the Unit description that is used to measure your use of the Software Subscription(s) and a link to the End User License Agreement that governs

your use of the Software. Be sure to read the information contained at the links in Table 1.1 below so that you understand your rights and obligations. The Exhibits listed in Table 1.1 contain additional information concerning the scope of the Software Subscriptions and how Red Hat provides Subscription Services to you.

Table 1.1

Software Subscription	Unit Description (used to measure your use of Software Subscriptions) and End User License Agreement	Exhibit Containing Additional Terms
Red Hat Enterprise Linux Server Red Hat Enterprise Linux for HPC Compute Nodes Red Hat Enterprise Linux for HPC Head Nodes Red Hat Enterprise Linux for IBM POWER Red Hat Enterprise Linux for SAP Applications Red Hat Enterprise Linux Server Add-Ons: High Availability Load Balancer Resilient Storage Scalable File System Smart Management (requires RHN Satellite) Extended Update Support High Performance Network Red Hat MRG Real-time Red Hat Enterprise Linux Desktop Red Hat Enterprise Linux Workstation	<p>System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine*, blade, node, partition, appliance or engine, as applicable.</p> <p>*Additional terms regarding virtualization are discussed in Exhibit 1.A.</p> <p>End User License Agreement: www.redhat.com/licenses/rhel_rha_eula.html</p>	1.A
Red Hat Enterprise Linux for IBM System z	<p>IFL: An IFL, or an Integrated Facility for Linux, is a mainframe CPU dedicated to Linux workloads.</p> <p>End User License Agreement: www.redhat.com/licenses/rhel_rha_eula.html</p>	1.A
Red Hat Enterprise MRG Messaging Red Hat Enterprise MRG Platform Red Hat Enterprise MRG Execute Node	<p>CPU: a socket that contains a central processing unit or other integrated circuit that executes instructions provided by the Software.</p> <p>End User License Agreement: www.redhat.com/licenses/rhel_rha_eula.html</p>	1.A
Red Hat Enterprise Virtualization for Servers	<p>CPU: a socket that contains a central processing unit or other integrated circuit that executes instructions provided by the Software.</p> <p>End User License Agreement: www.redhat.com/licenses/rhev_eula.html</p>	1.A
JBoss Enterprise Application Platform JBoss Enterprise Web Platform JBoss Enterprise Web Server JBoss Enterprise Web Server Plus JBoss Enterprise SOA Platform JBoss Enterprise Data Services JBoss Enterprise Portal Platform JBoss Enterprise BRMS JBoss Enterprise Middleware add-on option: Management	<p>Core Band: a group of processing cores (16 or 64), where a single “Core” is (a) a physical processing core located in a CPU or (b) a virtual processing core within a virtual machine, in each case, that contains or executes the Software running for Production Purposes.</p> <p>End User License Agreement: www.redhat.com/licenses/jboss_eula.html</p>	1.B
JBoss Developer Studio	<p>System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or</p>	1.C

Software Subscription	Unit Description (used to measure your use of Software Subscriptions) and End User License Agreement	Exhibit Containing Additional Terms
	<p>executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.</p> <p>End User License Agreement: www.redhat.com/licenses/rhel_rha_eula.html www.redhat.com/licenses/jboss_eula.html</p>	

- 1.2 Support Subscriptions.** Table 1.2 below lists the Support Subscriptions offered by Red Hat and the Unit description that is used to measure your use of the Support Subscription(s). The Exhibits listed in Table 1.2 contain additional information concerning the scope of the Support Subscriptions and how Red Hat provides Subscription Services to you.

Table 1.2

Support Subscription	Unit Description (used to measure your use of Support Subscriptions)	Exhibit Containing Additional Terms
Technical Account Management Service	Point of Contact: a Red Hat associate whom you are authorized to contact to request support for a particular team, geography or Red Hat product line.	1.D
Extended Update Support	System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.	1.D
Extended Life Cycle Support	System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.	1.D

- 1.3 Management Subscriptions.** Table 1.3 below lists the Management Subscriptions offered by Red Hat, the Unit description that is used to measure your use of the Management Subscription(s) and a reference or link to the End User License Agreement that governs your use of the Software. Be sure to read the information contained at the links in Table 1.3 below so that you understand your rights and obligations. The Exhibits listed in Table 1.3 contain additional information concerning the scope of the Management Subscriptions and how Red Hat provides Subscription Services to you.

Table 1.3

Management Subscription	Unit Description (used to measure your use of Management Subscriptions) and End User License Terms	Exhibit Containing Additional Terms
Red Hat Network Satellite Server Red Hat Network Satellite Server Starter Pack	<p>System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.</p> <p>End User License Terms: See Exhibit 1.E</p>	1.E
Red Hat Network Proxy Server	<p>System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.</p> <p>End User License Terms: See Exhibit 1.E</p>	1.E
Red Hat Network Smart Management	<p>System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable.</p> <p>End User License Terms: See Exhibit 1.E</p>	1.E
Red Hat Network Monitoring Module	<p>Module: an entitlement to monitor one System.</p> <p>End User License Terms: See Exhibit 1.E</p>	1.E
JBoss Operations Network	Core Band: a group of processing cores (16 or 64), where a single "Core" is (a) a physical processing core located in a CPU or (b) a virtual processing core within a virtual machine, in each case, that contains or executes the Software running for Production Purposes.	1.E

Management Subscription	Unit Description (used to measure your use of Management Subscriptions) and End User License Terms	Exhibit Containing Additional Terms
	End User License Terms: See Exhibit 1.E	
Red Hat Directory Server	System: a system on which you install or execute all or a portion of the Software. A System includes each instance of the Software installed or executed on, without limitation, a server, work station, laptop, virtual machine, blade, node, partition, appliance or engine, as applicable. End User License Agreement: www.redhat.com/licenses/rhds_rhcs_eula.html	1.E

1.4 Software Subscription Lifecycle. During the life cycle of Red Hat Software, the scope of Software Maintenance and Support evolves and, after a number of years, we discontinue providing Software Maintenance and Support for older versions of Software. The details of the Software Maintenance and Production Support life cycle are set forth at www.redhat.com/security/updates. If available, you may purchase Extended Update Support and/or Extended Life Cycle Support, as described in Exhibit 1.D, to extend your Subscription Services for certain versions of Red Hat Enterprise Linux Server Software.

2. Production Support and Development Support Terms

2.1 Definitions. “**Development Purposes**” means using the Software for the specific purpose of developing, prototyping and demonstrating software or hardware that runs with or on the Software. “**Production Purposes**” means using the Software in a production environment, generally using live data and/or applications for a purpose other than development and/or prototyping software or hardware. “**Supported Hardware**” means the hardware and platforms that are listed at hardware.redhat.com.

2.2 Use Cases. Subscription Services are provided for Software only when used for its supported purpose (“**Use Case**”). If you use or deploy the Software in a manner contrary to a supported Use Case, you are responsible for purchasing the appropriate Subscription(s) to cover such usage. For example, if you are using a Red Hat Enterprise Linux Desktop Subscription as a server, you are obligated to purchase a Red Hat Enterprise Linux Server Subscription.

2.3 Support from Business Partner. Some clients obtain support for their Software Subscriptions from an authorized Red Hat Business Partner, in which case the Business Partner provides the support to the client rather than Red Hat. Sections 2.4 through 2.6 apply to you only if you have purchased Subscription Services with Support provided by Red Hat. If you have purchased Subscription Services with support provided by a Business Partner, Sections 2.4 – 2.6 do not apply to you and you should work with your Business Partner to obtain support services.

2.4 Support from Red Hat. Development Support consists of assistance with installation, usage, problem diagnosis and bug fixes for the applicable Software. Requests for architecture, design, development, prototyping, deployments and maintenance are not included within the scope of Development Support, but rather are available on a consulting basis under the terms of a separate agreement.

Production Support consists of assistance with regard to installation, application testing, usage, problem diagnosis and bug fixes for the Software. Production Support does not include assistance with code development, system design, network design, architectural design, optimizations, tuning recommendations, development or implementation of security rules or policies, third party software made available with Red Hat Software (listed at www.redhat.com/licenses/thirdparty/eula.html), supplementary RHN channels or preview technologies.

To access and use Support, you must provide Red Hat with sufficient information to validate your entitlement to the relevant Support. The scope of the Support is based on the level (for example, Self-support, Standard or Premium) and type of Subscription Services you purchased. Certain Support is provided only during Red Hat’s local standard business hours.

2.5 Support Coverage. We do not provide Production or Development Support for Software that (a) you (or a third party) have modified or recompiled, (b) is running on hardware that is not Supported Hardware or (c) is running in an unsupported Use Case as described in an Exhibit. You are responsible for testing the Software before deploying it in your environment. You should also backup your systems on a regular basis and have those backups available if needed for support purposes.

Red Hat will use commercially reasonable efforts to provide Support in accordance with the guidelines shown in Table 2.6 below. Support is provided in the English language and may be available in other languages based on available resources. Red Hat’s Support telephone numbers and local standard business hours (“**Standard Business Hours**”) are listed at <https://access.redhat.com/support/contact/technicalSupport.html>.

2.6 Service Level Guidelines. Support is available in one or more of the following support levels, depending on the Red Hat Product: Self-support, Standard or Premium as shown in the table below.

Table 2.6

	Self-support	Standard	Premium
Hours of Coverage	none	Standard Business Hours	Standard Business Hours 24x7 for Severity 1 and 2
Support Channel	none	Web and Phone	Web and Phone
Number of Cases	none	Unlimited	Unlimited
Software Maintenance	via Red Hat management portal	via Red Hat management portal	via Red Hat management portal
Response Guidelines			
Severity 1 (Urgent): A problem that severely impacts your use of the Software for Production Purposes (such as loss of production data or in which your production systems are not functioning). The situation halts your business operations and no procedural work around exists.	N/A	1 Business Hour	1 hour
Severity 2 (High): A problem where the Software is functioning but your use for Production Purposes is severely reduced. For Production Purposes where the situation is causing a high impact to portions of your business operations and no procedural work around exists.	N/A	4 Business Hours	2 hours
Severity 3 (Medium): A problem that involves partial, non-critical loss of use of the Software for Production Purposes or Development Purposes. For Production Purposes, there is a medium-to-low impact on your business, but your business continues to function, including by using a procedural work around. For Development Purposes, where the situation is causing your project to no longer continue or migrate into production.	N/A	1 Business Day	4 Business Hours
Severity 4 (Low): A general usage question, reporting of a documentation error or recommendation for a future product enhancement or modification. For Production Purposes, there is low-to-no impact on your business or the performance or functionality of your system. For Development Purposes, there is a medium-to-low impact on your business, but your business continues to function, including by using a procedural work around.	N/A	2 Business Days	8 Business Hours



1. Unit of Measure and Purchasing Requirements for Red Hat Enterprise Linux Server

You must purchase the appropriate number and type of Software Subscription(s) for each System that deploys, installs, uses or executes Red Hat Enterprise Linux Server (including Red Hat Enterprise Linux Server for HPC Compute Nodes, for Power and for SAP) based on:

- the number of Socket-pairs and
- the number of Virtual Guests.

A “**Virtual Guest**” is an instance of the Software that is executed or installed on a system that is a virtual machine. When you deploy a guest operating system in a virtualized environment, you are responsible for securing the required license rights for any third party operating systems or other software that you use. A “**Socket-pair**” is up to two sockets occupied by a CPU on a System.

2. Red Hat Enterprise Linux Server Add-Ons

Red Hat Enterprise Linux Server Subscriptions may be purchased with one or more add-on options (“**Add-On(s)**”). The Add-Ons include: High Availability, Load Balancer, Resilient Storage, Scalable File System, Smart Management (requires RHN Satellite), Extended Update Support and High Performance Network.

3. Red Hat Enterprise Linux Server Support Options

Red Hat Enterprise Linux Server Subscriptions may be purchased with various levels of Production Support including Self-support, Standard and Premium Support Levels. Note that not all Production Support options are available for all Red Hat Enterprise Linux Server Subscriptions, configurations or customers. For example, Self-support is available only for (a) up to two-socket Systems; (b) up to one Virtual Guest per System; (c) Systems without Add-Ons (except Smart Management); and (d) customers who do not have a Red Hat Technical Account Manager.

4. Red Hat Enterprise Linux Server Use Cases

Subscription Services are provided for Software only when used for its supported purpose (“**Use Case**”) in accordance with the terms of this Exhibit and Table 4.1 below.

Table 4.1

Software	Supported Use Case
Red Hat Enterprise Linux Server Red Hat Enterprise Linux Server for Mainframe	Server computing, including delivery of services to other logical or physical client or server systems and the execution of multi-user applications. You may combine more than one Red Hat Enterprise Linux Server Software Subscription with the same type of support level on one System to increase the number of Virtual Guests, but may not combine Software Subscriptions to increase the number of Socket-pairs. You may not split or apply one Red Hat Enterprise Linux Software Subscription to two or more Systems.
Red Hat Enterprise Linux for IBM Power	Supports up to 15 logical partitions per System.
Red Hat Enterprise Linux for HPC Compute Nodes Red Hat Enterprise Linux for HPC Head Nodes	High performance computing (“ HPC ”) that consists of a minimum set of four Systems that are networked and managed to perform compute-intensive workloads (“ cluster ”) with all of the following characteristics: (a) the cluster is used for compute-intensive distributed tasks sent to individual compute nodes within the cluster, (b) the cluster works as a single entity or system on specific tasks by performing compute-intensive operations on sets of data (Systems running a database, web application, load balancing or file serving clusters are not considered HPC nodes), (c) the number of management or head nodes does not exceed one quarter of the total number of nodes in the cluster and (d) all compute nodes in the cluster have the same Red Hat Enterprise Linux configuration.
Add Ons: High Availability, Load Balancer, Resilient Storage, Scalable File System, Extended Update Support and High Performance Network	Only supported on active Standard and Premium level Red Hat Enterprise Linux Server Software Subscriptions.
Red Hat Enterprise Linux Server used as a Virtual Guest	Virtual Guests may be pooled or shared on any other System that has the same support level (Self-supported, Standard or Premium) of Software Subscription(s) for Red Hat Enterprise Linux Server, provided that (1) you do not exceed the total number of Virtual Guests associated with the underlying Software Subscriptions and (2) Software Subscriptions that include unlimited Virtual Guests can be shared only with Systems that have the same unlimited Virtual Guest Subscription(s).
Red Hat Enterprise Linux Server used as a Virtual Guest	When you use Red Hat Enterprise Virtualization or third party software as a host operating system or hypervisor, you must purchase separate Software Subscriptions for each host System running the Virtual Guest.

5. Red Hat Enterprise Virtualization for Servers Use Cases

Subscription Services are provided for Red Hat Enterprise Virtualization for Servers only when used for its supported Use Case in accordance with the terms of this Exhibit and Table 5 below.

Table 5

Software	Supported Use Case
Red Hat Enterprise Virtualization for Servers	Server computing on physical hardware solely to support virtual guests. Red Hat Enterprise Virtualization for Servers is designed to run and manage virtual guests and does not support user-space applications.

6. Red Hat Enterprise Linux Desktop Software Subscriptions

Software Subscriptions for Red Hat Enterprise Linux Desktops and Workstations are available as described in Table 6 below. Red Hat Enterprise Linux Desktop and Workstation Software Subscriptions each includes one Red Hat Network system entitlement and one Smart Management Module, each to be used solely with a single Red Hat Enterprise Linux Desktop or Workstation System. Production Support for Red Hat Enterprise Linux Desktop subscriptions is limited to web-based support only for your helpdesk support personnel. Red Hat is not obligated to support your end users directly.

Table 6

	Desktop	Workstation
Maximum CPU processor sockets supported	1	2
Maximum memory supported	8GB	Unlimited
Number of Virtual Guests supported	1	1
Includes open source server applications (e.g., Apache, Samba, or NFS), supported for use on personal systems for testing and development purposes or to share data with peers	No	Yes
Includes the Red Hat Enterprise Linux software development stack	No	Yes

6.1 Red Hat Enterprise Linux Desktop and Workstation Use Cases. Subscription Services are provided for Red Hat Enterprise Linux Desktop and Workstation only when used for its supported Use Case in accordance with the terms of this Exhibit and Table 6.1 below.

Table 6.1

Software	Supported Use Case
Red Hat Enterprise Linux Desktop Red Hat Enterprise Linux Workstation	Personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Note: Deploying the associated Red Hat Network system entitlements or Smart Management Modules on a system other than Red Hat Enterprise Linux Desktop or Workstation, as applicable, is not a supported Use Case.

7. Red Hat Enterprise MRG

MRG Messaging provides a messaging infrastructure among enabled systems. MRG Realtime is a group of Linux kernel features and tools designed to increase the predictability of computing times. MRG Grid bundles MRG Messaging and MRG Realtime and a set of grid management tools as well as the associated Production Support and Software Maintenance for MRG certified systems. MRG Grid is composed of MRG Platform (scheduler) and MRG Execute Nodes. All MRG Software Subscriptions require an equal number of active Red Hat Enterprise Linux Server Subscriptions with matching Standard or Premium Support levels for each System.

7.1 Red Hat Enterprise MRG Use Cases. Subscription Services are provided for Red Hat Enterprise MRG only when used for its supported Use Cases in accordance with the terms of this Exhibit and Table 7.1 below.

Table 7.1

Software	Supported Use Case
MRG Messaging	Only systems running operating environments identified at www.redhat.com/mrg/hardware as MRG Messaging compatible will be supported.
MRG Realtime	Only systems running (a) operating environments identified at www.redhat.com/mrg/hardware as MRG Realtime compatible and (b) hardware systems identified as MRG Realtime certified at hardware.redhat.com will be supported.
MRG Platform	Only systems running operating environments identified at www.redhat.com/mrg/hardware as MRG Grid scheduler compatible will be supported.

Software	Supported Use Case
MRG Execute Node	Only systems (a) running operating environments identified at www.redhat.com/mrg/hardware as MRG Execution Node compatible and (b) that are used as computing nodes managed by MRG Platform will be supported. Only supported on active Standard and Premium level Red Hat Enterprise Linux Server Software Subscriptions.

8. Production Support Contacts

For the Software Subscriptions described in this Exhibit, you may contact Red Hat through your designated Production Support Contacts. You may designate up to the number of contacts described in Table 8 below based on the number of Standard and Premium Software Subscriptions you have purchased. We will provide Subscription Services to you solely by communicating during the Hours of Coverage (set forth in Appendix 1, Table 2.6) with the individual Production Support Contact(s) you appoint.

Table 8

Number of Standard and Premium Software Subscriptions	Production Support Contacts
1 to 50	2
51 to 100	4
101 to 250	6
251 to 500	8
501 to 1000	10
1001 and over	12

You may change your designated support contacts by notifying us in writing and giving us five business days to process the change. The Support Contacts should have “read and write” access to the necessary files, English language communication skills and relevant technical knowledge.

EXHIBIT 1.B
JBoss Enterprise Middleware Software Subscriptions



1. JBoss Enterprise Middleware Software Subscriptions

1.1 JBoss Enterprise Middleware Software Subscription Overview. When you purchase a Software Subscription to JBoss Enterprise Middleware (such as JBoss Enterprise Application Platform), you will receive:

- Software Access for the JBoss Enterprise Middleware Software Subscription that you purchased (such as JBoss Enterprise Application Platform in the example above) and access to certain additional JBoss Enterprise Middleware software code (we refer to this additional code as the “**Supplemental JBoss Software**”), subject to the Supplemental JBoss Software Conditions described in Section 1.2 below;
- Production and Development Support for the JBoss Enterprise Middleware Software Subscription(s) product that you purchased (again, JBoss Enterprise Application Platform in the example above) but not for the Supplemental JBoss Software; and
- Software Maintenance for both the JBoss Enterprise Middleware Software Subscription product that you purchased and for the Supplemental JBoss Software, subject to the Supplemental JBoss Software Conditions below.

1.2 Supplemental JBoss Software Conditions. Software Access and Software Maintenance for Supplemental JBoss Software is intended and available for Development Purposes only and for up to 25 users for each 16 Core Band Subscription of JBoss Enterprise Middleware Software that you purchased. If you deploy or use the Supplemental JBoss Software for Production Purposes or for more than 25 users, you agree to purchase the appropriate Software Subscriptions for each Unit that you deploy or use. Red Hat’s Open Source Assurance Program applies only to the JBoss Enterprise Middleware Software Subscription that you purchased (such as JBoss Enterprise Application Platform in the example above) and does not apply to Supplemental JBoss Software.

1.3 JBoss Enterprise Middleware Management and Support Options. JBoss Enterprise Middleware Subscriptions may be purchased (a) as stand-alone products or, in some cases, as managed offerings and (b) with either Standard or Premium Support.

1.4 JBoss Enterprise Middleware Use Cases. Subscription Services are provided for JBoss Enterprise Middleware Software Subscriptions only when used for its supported purpose (“**Use Case**”) in accordance with the terms of this Exhibit and Table 1.4 below.

Table 1.4

JBoss Enterprise Middleware Software Subscriptions	Supported Use Case
JBoss Enterprise Application Platform	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/application/supportedconfigurations/ will be supported.
JBoss Enterprise Web Platform	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/webplatform/supportedconfigurations/ will be supported.
JBoss Enterprise Web Server	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/webserver/supportedconfigurations/ will be supported.
JBoss Enterprise Web Server Plus	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/webserver/supportedconfigurations/ will be supported.
JBoss Enterprise Portal Platform	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/portals/testedconfigurations/ will be supported.
JBoss Enterprise SOA Platform	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/soa/supportedconfigurations/ will be supported.
JBoss Enterprise BRMS	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/brms/supportedconfigurations/ will be supported.
JBoss Enterprise Data Services	Only systems running operating environments identified by Red Hat at http://www.jboss.com/products/platforms/dataservices/supportedconfigs/ will be supported.

2. JBoss Enterprise Middleware Support Contacts

For the JBoss Enterprise Middleware Software Subscriptions described in this Exhibit, you may contact Red Hat through your designated Support Contacts. You may designate up to the number of contacts set forth in Table 2 below based on the number of Cores you have purchased. We will provide support to you solely by communicating during the Hours of Coverage (set forth in Appendix 1, Table 2.6) with the individual Support Contact(s) you appoint.

Table 2 -- JBoss Enterprise Middleware Support Contacts

Number of Cores Purchased	Support Contacts
16	1
32	2

Number of Cores Purchased	Support Contacts
48	3
64	4
80	5
96	6
112	7
128	8
144	9
160 and over	10

You may change your designated Support Contacts by notifying us in writing and giving us five business days to process the change. The Support Contacts should have “read and write” access to the necessary files, English language communication skills and relevant technical knowledge.

**EXHIBIT 1.C
DEVELOPER SUBSCRIPTIONS**



1. JBoss Developer Studio Subscriptions

JBoss Developer Studio provides an open source development environment that includes Eclipse, Eclipse Tooling and JBoss Enterprise Middleware platforms. JBoss Developer Studio also includes one entitlement to a Red Hat Enterprise Linux Software Subscription, with built-in development tools and access to Software Maintenance, but no Development or Production Support.

If you use any of the Subscription Services or Software associated with JBoss Developer Studio for Production Purposes, you agree to purchase the applicable number of Units of the applicable Software Subscription. Red Hat does not provide Production Support or Development Support for JBoss Developer Studio.

1.1 JBoss Developer Studio Use Cases. Subscription Services are provided for JBoss Developer Studio only when used for its supported Use Cases in accordance with the terms of this Exhibit and Table 1.1 below.

Table 1.1

Software	Supported Use Case
JBoss Developer Studio	Subscription Services for JBoss Developer Studio are available for Development Purposes only.

EXHIBIT 1.D OPTIONAL SUPPORT SUBSCRIPTIONS



1. Technical Account Management (“TAM”) Service

The TAM Service is a Support Subscription that you may purchase in addition to your underlying Standard or Premium Software Subscription in order to receive enhanced Support. The TAM Service does not include support for (1) Self-support Software Subscriptions, (2) any Unit of Software (such as a System, Core, etc.) for which you do not have an active paid Software Subscription or (3) any Software Subscription for which support is provided by a Business Partner. When you purchase a TAM Service, you receive access to a Red Hat support engineer to provide you with:

- access to Red Hat's technology and development plans, including beta testing and bug/feature escalation,
- weekly review calls,
- two on-site technical review visits per year,
- up to four Support Contacts,
- quarterly service performance metrics via the TAM electronic dashboard, and
- a subscription to Red Hat's TAM monthly newsletter.

1.1 TAM Service Coverage.

Each TAM Service Subscription will be limited to certain parameters (that is, a region, a customer team or a product line) and will be listed in the Order Form and, if not listed, the TAM parameters will be established upon the initiation of the TAM Service.

- Regions: North America, EMEA, Asia-Pacific (excluding Japan) or Japan.
- Customer Team: The customer team supported by the TAM, such as your development team, your system administration team, your support team, etc.
- Red Hat Product Line: The supported Red Hat product line, such as the Red Hat Enterprise Linux product line or the JBoss Enterprise Middleware product line.

1.2 TAM Service Level

Hours of Coverage. The TAM Service is offered between 9 a.m. and 5 p.m. during Red Hat Support Standard Business Hours as set forth at <https://access.redhat.com/support/contact/technicalSupport.html> (based on the physical location of the TAM representative).

Engagement of the TAM Representative Outside of Red Hat Standard Business Hours. If you have purchased Premium Red Hat Software Subscriptions, you will receive 24x7 Support for Severity 1 issues through Red Hat's 24x7 Production Support teams and not necessarily from your assigned TAM representative. Red Hat's 24x7 Production Support team will be responsible for addressing issues, but will consult with your TAM representative, as your TAM representative is available, for advice and to gain a better understanding of your infrastructure, environment and specific needs. If you have purchased multiple TAM Service Subscriptions in each of Red Hat's primary Support Regions, you will receive the benefit of extended TAM Service coverage hours, but you should follow the same process and contact the Red Hat 24x7 support numbers at <https://access.redhat.com/support/contact/technicalSupport.html>.

2. Extended Update Support (“EUS”)

EUS Support Subscriptions are incremental add-on subscriptions for certain minor versions of Red Hat Enterprise Linux that provide longer maintenance and support cycles (“**EUS Cycle**”) for those specific versions on Systems covered by EUS Support Subscriptions. EUS provides certain security and priority bug fixes for these specific versions during the associated EUS Cycle as set forth at www.redhat.com/security/updates.

3. Extended Life Cycle Support (“ELS”)

During the life cycle of Red Hat Software, the scope of Software Maintenance and Production Support we provide evolves and, after a number of years, we discontinue providing Software Maintenance and Production Support for older versions of Software. You may purchase a Support Subscription to Extended Life Cycle Support to extend your support for certain releases of Red Hat Software. The details of the Software Maintenance and Production Support life cycle are set forth at www.redhat.com/security/updates.

EXHIBIT 1.E MANAGEMENT SUBSCRIPTIONS



1. Software Delivery Services

- 1.1 Red Hat Hosted Software Delivery Services.** Software Access and Software Maintenance are generally provided to you through a Red Hat-hosted delivery portal, either the Red Hat Network (“RHN”) and/or other Red Hat authorized support portals.
- 1.2 On Premise Software Delivery Options.** RHN Satellite Server provides a delivery mechanism within your network for Software Access and Software Maintenance Services for systems running Red Hat Enterprise Linux (and other Red Hat-branded applications). Each RHN Satellite Server includes one Premium level Software Subscription to Red Hat Enterprise Linux Server, which is supported solely in connection with the RHN Satellite Server. JBoss Operations Network provides a delivery mechanism within your network for Software Access and Software Maintenance Services for systems running JBoss Enterprise Middleware Software.
- 1.3 Management Subscriptions.** You may purchase the following optional Management Subscriptions to manage your Red Hat Software Subscriptions through RHN, RHN Satellite Server or JBoss Operations Network:
- RHN Proxy Server (optional extension of RHN Satellite Server)
 - RHN Smart Management (may be used with or without RHN Satellite)
 - RHN Monitoring Module (may only be used with RHN Satellite Server)
 - JBoss Monitoring Module (may be used with JBoss Operations Network)

2. Certain Use Terms; End User License Terms

For any RHN Satellite Server version 5.1 or earlier, RHN Proxy Server version 5.1 or earlier, and JBoss Operations Network version 1.x or earlier (collectively, “Code”), Red Hat grants you, during the term of the relevant Management Subscription and subject to your compliance with the Agreement, a non-exclusive, non-transferable license to use the Code solely for purposes of using the associated Subscription Services. You may not: (a) modify, copy or create any derivative works of the Code; (b) decompile, disassemble or reverse engineer the Code (except to the extent permitted by applicable law without possibility of contractual waiver); (c) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to the Code (except to the extent permitted herein); (d) use the Code to create a competing service; or (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Code. Upon termination of the subscription period for the applicable Management Subscription, you will promptly destroy all copies of the Code in your possession. The Code (and any media containing the Code) is copyrighted by and is the confidential information of Red Hat or the relevant Red Hat Affiliate, and you will not use or disclose any information regarding the Code, except as permitted by the Agreement. The Code is subject to the export control regulations described in Section 5 of the End User License Agreement located at www.redhat.com/licenses/rhel_rha_eula.html, and you agree to comply with those restrictions in your use of the Code.

You may use Red Hat Network Satellite Server version 5.2 and later, Red Hat Network Proxy Server version 5.2 and later, and JBoss Operations Network version 2.0 (collectively, “Red Hat Applications”) in accordance with the End User License Agreement located at www.redhat.com/licenses/rhel_rha_eula.html.

Notwithstanding the foregoing in this Section 2, if you install or use the optional embedded database with RHN Satellite Server or RHN Proxy Server, then you agree to comply with the terms located at www.redhat.com/licenses/satellite_embedded.html for the embedded database.

3. Supported Uses

Subscription Services are provided for RHN Satellite Server and Red Hat Proxy Server Management Subscriptions only when used for their supported purposes (“Use Case”) in accordance with the terms of this Exhibit and Table 3 below.

Table 3

Software	Supported Use Case
RHN Satellite Server and RHN Proxy Server	Red Hat does not provide Subscription Services for RHN Satellite Server or RHN Proxy Server when used on a System that is not a server.
RHN Satellite Server Starter Pack	Red Hat does not provide Subscription Services for RHN Satellite Server Starter Pack when used to manage more than 50 Systems.

4. Red Hat Directory Server Software Subscriptions

The Service Level(s) (set forth in Appendix 1, Section 2) for Directory Server is determined by the Service Level of the Red Hat Enterprise Linux Subscription for the System running Directory Server.

4.1 Red Hat Directory Server Use Cases. Subscription Services are provided for Red Hat Directory Server only when used for its supported Use Case in accordance with the terms of this Exhibit and Table 4.1 below.

Table 4.1

Software	Supported Use Case
Red Hat Directory Server	A Replica Red Hat Directory Server must have an active Software Subscription for a Master Red Hat Directory Server and Red Hat Directory Server must be installed on a server and not on Red Hat Enterprise Linux Desktop, HPC or Workstation.

APPENDIX 2 LEARNING SERVICES, TRAINING UNITS AND CONSULTING UNITS



Red Hat sells Learning Services, Training Units and Consulting Units. Whether you purchase Learning Services, Training Units or Consulting Units from us or through one of our authorized Business Partners, we agree to provide you with the Learning Services, Training Units or Consulting Units on the terms described in this Appendix. In exchange, you agree to comply with the requirements and terms of this Appendix. When we use a capitalized term in this Appendix without defining it, the term has the meaning defined in the base agreement.

1. Learning Services

“**Learning Services**” means Red Hat’s training courses, including Red Hat’s publicly available courses (“**Open Enrollment Courses**”) and courses provided at a site designated by you (“**On-Site Courses**”).

- 1.1 **Equipment and Facilities.** For On-Site Courses, you will supply the facility and equipment as set forth at www.redhat.com/training/solutions/requirements.html. If Red Hat agrees to provide the training facilities and hardware, you will be liable for any loss or destruction of this equipment and hardware used in connection with the Learning Services.
- 1.2 **Client Responsibilities.** You are responsible for (a) assessing each participant’s suitability for the Learning Services, (b) enrollment in the appropriate course(s) and (c) your participant’s attendance at scheduled courses.
- 1.3 **Rights to Training Materials.** All intellectual property embodied in the training products, materials, methodologies, software and processes, provided in connection with the Learning Services or developed during the performance of the Learning Services (collectively, the “**Training Materials**”) are the sole property of Red Hat or a Red Hat Affiliate and are copyrighted by Red Hat unless otherwise indicated. Training Materials are provided solely for the use of the participants and may not be copied or transferred without the prior written consent of Red Hat. Training Materials are Red Hat’s confidential and proprietary information.
- 1.4 **Delivery Date and Cancellation.** You agree to the cancellation policies and the procedures for scheduling of Learning Services and On-Site Courses available at www.redhat.com/training/cancellation.html.

2. Training Units and Consulting Units

- 2.1 **Training Units.** “**Training Units**” are Red Hat’s training credits that may be redeemed by you for any Learning Services as set forth at www.redhat.com/training/corporate/volume.html and www.redhat.com/training/corporate/units_terms.html.
- 2.2 **Consulting Units.** “**Consulting Units**” are credits that may be redeemed by you for Red Hat Consulting Services under the terms, conditions and policy set forth at www.redhat.com/consulting/consultingunits/cu_terms.html. You may redeem Consulting Units in accordance with the following procedure:
 - Contact a Red Hat sales representative or consulting representative to request Consulting Unit redemption.
 - Red Hat will submit an order form to you that will describe the scope of work to be performed and number of Consulting Units required.
 - You will return the signed order form to Red Hat.
 - Upon Red Hat’s review and approval, Red Hat will return a copy of the signed order form to you.
- 2.3 **Use of Training Units and Consulting Units.** You must use Training Units and Consulting Units within one (1) year of the date of purchase; any unused Units will be forfeited. Training Units and Consulting Units: (a) are non-refundable, (b) are non-transferable, (c) may not be redeemed for cash or credit, (d) must be used as whole credits, (e) cannot be combined with any other discount, special offer or coupon and (f) can be redeemed only in the same geographic region and currency as purchased. United States Government end users (or resellers acting on behalf of the United States Government) may not purchase Training Units or Consulting Units.

3. Payment

Notwithstanding other payment terms, payment for Learning Services, Training Units and Consulting Units must be received in full prior to the delivery of the associated Learning Services or Consulting Services.