

This U.S. Government Supplement ("**Supplement**") and the Red Hat Enterprise Agreement ([www.redhat.com/licenses/us.html](http://www.redhat.com/licenses/us.html)), including its Appendix 1 ([http://www.redhat.com/licenses/rhel\\_us\\_appendix1.pdf](http://www.redhat.com/licenses/rhel_us_appendix1.pdf)) (Note: Red Hat Learning Services, Training Units, and Consulting Units under Appendix 2, [http://www.redhat.com/licenses/rhel\\_us\\_appendix2.pdf](http://www.redhat.com/licenses/rhel_us_appendix2.pdf), are not provided under GSA contracts) ("**Enterprise Agreement**"), establish the terms and conditions enabling Red Hat, Inc. ("**Red Hat**") to provide Red Hat Products to U.S. Government agencies, including any "Ordering Activity", defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM (the "**Client**"). The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity *does not* constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follow:

- 1.0** Enterprise Agreement **Section 2.2, Changes to Work and Delays**, is replaced with the following: "**2.2 Changes to Work and Delays.** Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.243-72 Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987). 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 subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010).

**2.0** Enterprise Agreement **Section 3.0 Fees:**

The following is deleted from **Section 3.1, Fees and Expenses**: "Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services."

**Section 3.2.1 is replaced with the following:** 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 in accordance with FAR 52.212-4(g) and FAR 52.214(i). 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. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable. Consistent with FAR 52.212-4(d), Red Hat may suspend or cancel performance of all or part of the Services if actual payment has not been received."

**Section 3.3, Taxes**, is deleted in its entirety.

**3.0** Enterprise Agreement **Section 5.0, Reporting and Inspection:**

The following is deleted from **Enterprise Agreement Section 5.1, Reporting**, "no later than thirty (30) days from the date of the invoice", and replaced with, "as provided in the Agreement".

Enterprise Agreement **Section 5.2, Inspection**, is replaced with the following: "**5.2 Inspection.** During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, 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 ("Notice"); or (b) If Client security requirements are not met and upon Red Hat's request, Client will run a self-assessment with tools provided by and at the direction of Red Hat ("Self Assessment") to verify Client's compliance with this Agreement. Within thirty (30) days from Red Hat's request, Client will finalize the Self Assessment and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice Client will make payment to Red Hat for the applicable Services provided with respect to the underreported Units."

- 4.0** Enterprise Agreement **Section 6.2.1:** The following is deleted: "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."
- 5.0** Enterprise Agreement **Section 6.2.2** is replaced with the following: "**6.2.2** Termination shall be governed by the FAR 52.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause. 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 and consistent with FAR 52.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, 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."

- 6.0 Enterprise Agreement **Section 8.1:** The following is added to **Section 8.1, Limitation of Liability:** “..., **EXCLUDING REPROCUREMENT COSTS.** This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.”
- 7.0 Enterprise Agreement **Section 9.1:** The following is added to **Section 9.1, Obligations:** “Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.”
- 8.0 Enterprise Agreement **Section 12, Governing Law/Consent to Jurisdiction,** is replaced with the following: “**12. Governing Law/Consent to Jurisdiction.** The validity, interpretation and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.”
- 9.0 Enterprise Agreement **Section 13.2, Assignment** is replaced with the following: “**13.2 Assignment.** Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements.”
- 10.0 Enterprise Agreement **Section 13.4, Force Majeure** is replaced with the following: “**13.4 Force Majeure.** Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010).”
- 11.0 Enterprise Agreement **Section 13.5, Non-solicitation,** is replaced with the following: “**13.5 Reserved.**”
- 12.0 The following is deleted from Enterprise Agreement **Section 13.7, Dispute Resolution,** “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.”, and replaced with, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued.”
- 13.0 The following is deleted from **Section 13.11, Complete Agreement,** “of the State of New York and”.
- 14.0 Enterprise Agreement **Section 14, Waiver of Jury Trial,** is deleted in its entirety.
- 15.0 The **second paragraph of Appendix 1, Exhibit 1.C, Section 1.** is replaced with the following: “If you use any of the Subscription Services or Software associated with JBoss Developer Studio Portfolio Edition for Production Purposes, or use the Red Hat Enterprise Linux Software Subscription entitlement independently of your use of the JBoss Developer Studio Subscription, you will be required 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 Portfolio Edition.”
- 16.0 Red Hat Products purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by “terms of use” (e.g. [https://access.redhat.com/site/help/terms\\_conditions.html](https://access.redhat.com/site/help/terms_conditions.html)) (“**Red Hat Portal Terms of Use**”). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.