

License Agreement -SuSE Linux Openexchange Server (SLOX)

1. Definitions

- 1.1 "EULA" shall mean an End-User License Agreement.
- 1.2 "Modified version" shall mean any modification of SLOX that was not performed by SuSE.
- 1.3 "Open-on-demand programs" shall mean programs and subprograms included in SLOX, for which the source code is only made available to the Licensee on request, subject to the conditions of Section 3.2.
- 1.4 "Productive deployment of the software programs" shall mean the commercial utilization of the software programs by an entrepreneur. The deployment of the software programs for test, research, or evaluation purposes or by a person who is not an entrepreneur shall not be considered as commercial utilization
- 1.5 "SLOX" shall mean SuSE Linux Openexchange Server, consisting of a modular e-mail server with a scheduler and groupware functionality.
- 1.6 "Software program(s)" shall mean one or several software programs that are components of SLOX, were developed independently from each other, and are subject to different EULAs.
- 1.7 "SuSE" shall mean SuSE Linux AG, Nuremberg, Germany
- 1.8 "Entrepreneur" shall mean a natural or an artificial person with the capability to obtain rights or incur liabilities.

2. Licensing

- 2.1 The software programs included in SLOX are merely licensed, not sold.
- 2.2 SuSE grants the Licensee the non-exclusive right to utilize the software programs included in SLOX. The manner and scope of the right to utilize the software programs included in SLOX is governed by the applicable EULAs of the respective software programs.
- 2.3 SLOX includes:
 - 2.3.1 Linux software programs subject to the GNU General Public

License or other Open Source licenses.

- 2.3.2 Software products of SuSE (such as the installation program YaST). Software programs of SuSE are marked as such.
- 2.3.3 Proprietary third-party software products (such as virus scanners). Proprietary third-party software programs are subject to the regulations of the respective manufacturers. Proprietary third-party software programs are marked as such.
- 2.3.4 Open-on-demand software programs. These are subject to the special provision in 3.2.
- 2.4 SuSE can limit the geographical scope of the further distribution of the software programs referred to in Section 2.3.2 by the Licensee at any time. Limitations of this kind will be imposed on the Licensee either in the respective EULA or by means of a separate written notification.
- 2.5 The utilization right pursuant to 2.2 does not imply the right
 - 2.5.1 To resell SLOX, included software programs, or parts thereof under the marks of SuSE;
 - 2.5.2 To transfer the Licensee's claim to technical support and/or maintenance services for SLOX that were granted by SuSE in connection with the delivery of SLOX to third parties.
 - 2.5.3 Infringements of the provisions in Section 2.5.1 and 2.5.2 automatically result in the expiry of the utilization right pursuant to Section 2.2.
- 2.6 In case the Licensee modifies SLOX and/or included software programs, the Licensee shall clearly mark the source code as 'modified version', including a note indicating that SuSE does not provide any support services and does not assume any liability for the modified version. The Licensee shall design the splash screen in such a way that the modification of SLOX is clearly evident. Furthermore, the requirements implied by the GNU General Public License or other Open Source licenses are to be met for the software programs referred to in Section 2.3.1.
- 2.7 The Licensee shall only grant third parties the right to utilize the modified version on the basis of the unmodified conditions specified in this License Agreement - SuSE Linux Openexchange Server.

- 2.8 The modified version may only be transferred to third parties free of license fees, unless SuSE explicitly grants written approval for a transfer subject to license fees.
- 2.9 Every modification the Licensee performs in SLOX and/or the included software programs must be specified in the source code together with the date and the name of the person who performs the modification.
- 2.10 SuSE has the irrevocable right but is not under the obligation to adopt the modifications performed by the Licensee in the official version of SuSE SLOX without paying any remuneration to the Licensee.

3. **Special Provision for Open-on-Demand Programs**

- 3.1 Some of the software programs included in SLOX are open-on-demand programs. These are marked as such in the respective EULAs.
- 3.2 For open-on-demand programs, SuSE will only provide the source code at the written request of the Licensee under the condition that the Licensee issues a written declaration as outlined by SuSE to keep the source code confidential and secret.
- 3.3 The modification or transfer of the open-on-demand programs as source code or in binary form is subject to the prior written approval of SuSE.

4. **Exclusion of Liability for Open Source Software**

The Licensee is aware that the software programs SuSE makes available to the Licensee with SLOX also contains Open Source software, which was and continues to be developed by a large number of individuals. SuSE excludes any liability for any defect of title or any liability for events caused by Open Source Software. The wording of this exclusion of liability is based on the GNU General Public License.

5. **Limitation of claims due to the delivery of SLOX and the grant of license rights**

The Licensee's claims are governed by the following provisions:

5.1 Defects

The scope of SuSE's liability for defects is as follows:

- 5.1.1 At the SuSE's own option, SuSE may repair, replace, or refurbish free of charge ("supplementary performance") the parts

of the delivery that are defective within the limitation period, provided that the cause for this defect already existed at the time of the risk transfer. In the case of software, SuSE may decide to eliminate the defects by providing a new version or release in which only the defect was removed or by providing an upgrade in which the defect was also removed. SuSE will eliminate defects in data media and documentation by delivering faultless copies.

- 5.1.2 The supplementary performance shall not initiate a new limitation period (5.1.3).
- 5.1.3 Claims for defects shall expire after 12 months. However, this does not apply if Article 438, paragraph 1, no. 2, Article 479 paragraph 1, and Article 634a, paragraph 1, no. 2 of the German Civil Code (BGB) provide for longer limitation periods, if the life, body, or health is harmed, if SuSE's breach is intentional or the result of gross negligence, or if a defect was deceitfully concealed. This does not affect the legal provisions regarding the suspension of the expiry, suspension, or recommencement of the limitation periods.
- 5.1.4 The Licensee shall give SuSE notice of defects in writing and without undue delay. The notice must contain the details of the respective delivery.
- 5.1.5 In the event of a notice of defect, the Licensee may withhold payments to an extent that is in reasonable proportion to the encountered defects. The Licensee may only withhold payments if the legitimacy of the asserted complaint can be established beyond doubt. In the event that the defect notified is not justified, SuSE is entitled to demand reimbursement of the expenditure it incurred from the Licensee.
- 5.1.6 SuSE shall be granted a reasonable period for the supplementary performance. If SuSE is not given this opportunity, SuSE will be released from liability for defects.
- 5.1.7 If the supplementary performance fails, the Licensee can rescind the Agreement or request a discount on the payable price, regardless of any damage claims pursuant to Section 5.6.
- 5.1.8 Minor divergences from the stipulated properties, a minor impairment of the usability, and damages that occur after the risk transfer due to (1) incorrect use or treatment, or due to (2) the use of other software that is not compatible with the subject of

the SuSE's delivery, or (3) external effects that are not presumed by the Agreement shall not constitute a basis for claims due to defects. In case the Licensee performs inappropriate modifications or maintenance tasks, these and the ensuing results will not be eligible for claims due to defects.

- 5.1.9 Claims of the Licensee due to expenses for the supplementary performance, including but not limited to travel costs, labor costs, and material costs, are excluded to the extent that the expenses are higher because the supplementary delivery was performed at a different location than the place of performance.
- 5.1.10 Recourse claims of the Licensee against SuSE only exist if the Licensee has not made any agreements with his buyers in excess of the legal claims due to defects. Section 5.1.8 shall apply to the scope of the recourse claim of the Licensee against SuSE pursuant to Article 478, paragraph 2 of the German Civil Code.
- 5.1.11 Claims of a different nature than those regulated in Section 5.1 or additional claims of the Licensee against SuSE due to defects are excluded. Section 6 shall govern issues pertaining to indemnification claims.

5.2 Delivery Times

- 5.2.1 The adherence to the agreed delivery time necessitates the timely reception of all documents required from the Licensee, including but not limited to necessary permits and releases, especially plans, and the Licensee's compliance with the stipulated payment conditions and other obligations. If these requirements are not met in time, the delivery times will be extended to a reasonable extent; this shall not apply if SuSE is responsible for the delay.
- 5.2.2 If the non-compliance with the delivery times is the result of force majeure, such as mobilization, war, civil unrest, or similar events like strike or lockout, the delivery times will be extended to a reasonable extent.
- 5.2.3 If SuSE is in default of delivery, the Licensee can claim a compensation of 0.5 % for every full week of default, up to a maximum of 5 %, for the part of the delivery that the Licensee was not able to utilize due to the default of delivery, provided that the Licensee can produce evidence that he incurred a damage due to this situation.

- 5.2.4 Indemnification claims of the Licensee due to default of delivery

and indemnification claims instead of the service that exceed the limits indicated in Section 5.2.3 are excluded for all delivery delays, even after the expiry of a delivery deadline set by the Licensee. This does not apply to events for which SuSE is liable in any case, such as events of intent or gross negligence or if the life, body, or health was harmed. The Licensee can only rescind the contract if SuSE is responsible for the delivery delay. This does not entail a change of the burden of proof to the disadvantage of the Licensee.

- 5.2.5 The Licensee only has the right to rescind under the condition that he grants SuSE a reasonable grace period for performing the delivery, with a note indicating that he will reject the delivery following the expiry of the period, and the period expires without success.
- 5.2.6 On request of SuSE, the Licensee shall declare within a reasonable period whether he rescinds the contract due to the delivery delay or insists on the delivery.
- 5.2.7 If the Licensee requests that the dispatch or delivery be delayed by more than one month following the notice that the goods are ready for dispatch, SuSE can charge to the Licensee a flat-rate storage fee of 0.5 % for every further month that has commenced, up to a maximum of 5 % of the net price of the delivery.

5.3 Infringement of Intellectual Property Rights, Other Defects of Title

- 5.3.1 Unless otherwise agreed, the delivery made by SuSE in the Federal Republic of Germany shall be free from intellectual property rights and copyrights of third parties ("intellectual property rights"). If a third party asserts legitimate claims against the Licensee due to an infringement of an intellectual property right by the deliveries furnished by SuSE and used in conformity with the Agreement, SuSE shall be liable to the Licensee within the time limit stipulated in Section 5.1.3 as follows:
 - 5.3.1.1 At its own option and expense, SuSE shall either obtain a right to use the delivery, modify the delivery so as not to infringe intellectual property rights, or replace the delivery. If this is not possible for SuSE on acceptable terms, the Licensee shall have a legal right to withdraw from the Agreement or reduce the price.
 - 5.3.1.2 SuSE's obligation to pay compensation for damages is governed by Section 5.6.

- 5.3.1.3 SuSE is only under the aforesaid obligations if the Licensee notifies SuSE in writing without delay regarding the claims made by the third party, does not admit any infringement, and all countermeasures and settlement negotiations are reserved for SuSE. If the Licensee discontinues the utilization of the delivery for the purpose of minimizing damages or other important reasons, he shall notify the third party that the discontinuation of the utilization does not constitute an admission of an infringement of intellectual property rights.
- 5.3.2 Claims of the Licensee are excluded if the Licensee is responsible for the breach of intellectual property rights.
- 5.3.3 Furthermore, claims of the Licensee are excluded if the infringement of intellectual property rights was caused by specific demands of the Licensee, a utilization that SuSE could not foresee, or due to the fact that the delivery was modified by the Licensee or deployed together with products not provided by SuSE.
- 5.3.4 In the event of breaches of intellectual property rights, the claims of the Licensee as regulated in Section 5.3.1.1 shall be subject to the provisions of Sections 5.1.5, 5.1.6, and 5.1.10.
- 5.3.5 In the event of other defects of title, the provisions of Section 4.1 shall apply.
- 5.3.6 The Licensee is aware that the service also contains Open Source software. Due to the specific nature of Open Source software, which is developed by a large number of persons not affiliated with the SuSE, any liability of SuSE for the breach of intellectual property rights or other defects of title in connection with Open Source software is excluded.
- 5.3.7 Claims of the Licensee against SuSE to defects of title of a different nature than those regulated in Section 5.3 or additional claims are excluded.

5.4 Components Provided by the Licensee

The Licensee warrants to SuSE that the utilization and provision of components of the Licensee to SuSE - no matter what the carrier medium may be - does not breach any third-party rights. The Licensee indemnifies SuSE against any third-party claims in this connection.

5.5 Inability, Amendment of the Agreement

- 5.5.1 In case the delivery is impossible, the Licensee may claim compensation for damages, unless SuSE is not responsible for the inability to deliver. However, the Licensee's indemnification claim is limited to 10 % of the value of the part of the delivery that can not be utilized by the Licensee due to the inability to deliver. This does not apply to events for which the SuSE is liable in any case, such as events of wilful misconduct, gross negligence, initial inability, or due to bodily injury; this does not imply a change in the burden of proof to the detriment of the Licensee. This does not affect the right of the Licensee to rescind the Agreement.
- 5.5.2 In case events of force majeure (5.2.2) substantially change the economic importance or the contents of the delivery or have a profound effect on the business of SuSE, the Agreement shall be adapted accordingly with due regard to the principles of good faith. Where this is not economically reasonable, the SuSE is entitled to rescind the Agreement. If SuSE wants to make use of its right to rescind, SuSE shall notify the Licensee about this decision without delay as soon as SuSE realizes the impact of the event, even if SuSE and the Licensee had initially agreed an extension of the delivery time.
- 5.6 Other Indemnification Claims
- 5.6.1.1 Indemnification claims of the Licensee due to any legal grounds, including but not limited to breaches of the contractual obligations or tort, are excluded.
- 5.6.1.2 This does not apply to events for which SuSE is liable in any case, e.g. as provided by the Product Liability Act or in cases of wilful misconduct, gross negligence, or bodily injury, or a breach of substantial contractual obligations.
- 5.6.1.3 Liability for damages arising from the fundamental non-performance of contractual obligations of the Agreement shall be limited to foreseeable damage normally covered by the Agreement, except in cases of wilful misconduct, gross negligence or bodily injury.
- 5.6.2 To the extent that SuSE's liability is excluded or restricted according to the provisions herein, this also applies to the personal liability of SuSE's employees, personnel, staff and other agents, not, however, to SuSE's legally authorized representatives and senior management.

5.6.3 To the extent that the Licensee is entitled to compensation for damages, these shall elapse with the expiry of the applicable time limit for defects pursuant to Section 5.1.3. In the event of claims for wilful misconduct and damages under the Product Liability Act, the legal time limits shall apply.

5.6.4 The aforesaid provisions do not entail a change of the burden of proof to the disadvantage of the Licensee.

6. Termination

Regardless of other rights, SuSE and the manufacturers of the respective software programs are entitled to terminate this License Agreement if the licensee breaches any provisions of this License Agreement or the respective EULAs. In this case the Licensee shall destroy all copies of SLOX and the included software programs.

7. Severability

In case any provision of this License Agreement should be invalid, the validity of the other provisions will not be affected. In such an event, the invalid provision shall be replaced with a valid provision whose economic implication is as close as possible to the invalid provision.

8. Applicable Law

All disputes shall be settled according to the provisions of this License Agreement and the substantive law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April, 1980, shall be excluded.