

License Agreement and Limited Product Guarantee SuSE Linux Enterprise Server (SLES)

Please read this document carefully before you install SLES or individual SLES packages or programs included in this product on your computer. This document contains important information on your rights. By installing software included in the scope of this product you accept the following terms and conditions:

A RIGHTS AND LICENSES

Hereinafter "EULA" stands for end user license agreement, "SLES" stands for SuSE Linux Enterprise Server, and "software programs" stands for all programs included in SLES.

SLES is a modular operating system. Some of the SLES components are created independently and are subject to different copyright regulations.

Every software program has its own end user license agreement. Most Linux programs are subject to Linux EULAs that permit you to copy, modify, and distribute these programs both as source code as well as in binary form. However, please check the respective Linux EULAs that are included in the accompanying online documentation. You should read this license carefully in order to be informed about the rights you are granted.

The installation programs included in SLES and their subprograms (scope depends on the architecture-specific SLES version) - "YaST", "YaST2", "SaX", "SaX2", and "saxtools" (and their program components) - are subject to EULAs that permit copying and modifying both the source code as well as binaries of these programs. The sale of the source code or binaries of these programs is subject to the prior written approval of SuSE Linux AG. Nevertheless, please check the respective Linux EULAs that are included in the accompanying online documentation under "<http://www.suse.de/en/sles/>". You should read this license carefully in order to be informed about the rights you are granted.

THE SOFTWARE PROGRAMS INCLUDED IN THIS PRODUCT, INCLUDING THE SOURCE CODE, DOCUMENTATION, APPEARANCE, STRUCTURE, AND ORGANIZATION, ARE PROPRIETARY PRODUCTS OF SUSE LINUX AG AND OTHER PROVIDERS AND ARE PROTECTED BY COPYRIGHTS AND OTHER LAWS. YOUR RIGHTS TO THESE PROGRAMS AND TO PRODUCTS THAT RESULT FROM COPYING, MODIFYING, OR MIXING PARTS OF THESE PROGRAMS ARE DETERMINED BY THE TERMS AND CONDITIONS OF THE RESPECTIVE END USER LICENSE AGREEMENTS OF THE INDIVIDUAL SOFTWARE PROGRAMS.

The GB18030 font which may be included in this product is Third Party Material and may be used by you for testing purposes only.

YOU MAY ALSO USE WITHOUT A FEE THE SOFTWARE PROGRAMS WHEN HOSTED BY A THIRD PARTY AUTHORIZED BY SUSELINUX AG, TO PROVIDE HOSTING SERVICES USING SLES, AND TO MAKE AVAILABLE TO YOU THIS LICENSE AGREEMENT ON SUSE LINUX AG'S BEHALF.

THE "SUSE" LOGO IS A REGISTERED MARK OF SUSE LINUX AG IN GERMANY AND

IN OTHER COUNTRIES. EVEN IF THIS LICENSE AGREEMENT PERMITS YOU TO COPY, MODIFY, AND DISTRIBUTE THE SOFTWARE, THIS DOES NOT AUTOMATICALLY IMPLY THAT YOU ARE PERMITTED TO DISTRIBUTE THE SOFTWARE USING THE MARKS OF SUSE LINUX AG.

B LIMITED GUARANTEE

PROVIDED NO OTHER PROVISIONS ARE IMPLICITLY CONTAINED IN THIS LICENSE AGREEMENT OR IN AN EULA, THE SOFTWARE PROGRAMS ARE MADE AVAILABLE AND LICENSED TO YOU AS THEY ARE, WITHOUT ANY FURTHER GUARANTEES, CONDITIONS, OR REPRESENTATIONS. ALL KINDS OF DIRECT OR INDIRECT GUARANTEES REGARDING THE MARKETABILITY, THE COMPLIANCE WITH EXISTING REGULATIONS, AND THE SUITABILITY FOR A SPECIFIC PURPOSE ARE EXCLUDED.

SuSE Linux AG guarantees that under normal utilization conditions the data media on which all aforesaid software programs are made available are free of material and manufacturing defects for a period of 30 days starting from the date of delivery. SuSE Linux AG does not guarantee that the functions contained in the software programs meet your requirements, that no errors occur during the utilization of these software programs, or that the software programs exactly match the description in the enclosed documentation.

ANY GUARANTEE OR COMPENSATION IN CONNECTION WITH THIS AGREEMENT APPLIES EXCLUSIVELY TO THE BUYER WHO OBTAINS SLES FROM SUSE LINUX AG OR A CONTRACTUALLY AUTHORIZED RESELLER OF SUSE LINUX AG.

C Limitation of Claims and Liability

Your claims as a licensee of SuSE Linux AG are subject to the following provisions:

1) Defects

SuSE Linux AG is liable for defects as follows:

- 1.1) At SuSE Linux AG's own discretion, SuSE Linux AG 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.
- 1.2) The supplementary performance does not initiate a new limitation period (1.3).
- 1.3) Indemnification claims are subject to a limitation period of 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 Linux AG'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.
- 1.4) The Licensee shall submit complaints regarding defects in writing and without delay to SuSE Linux AG. The complaint must contain the details of the respective delivery.
- 1.5) In the event of complaints, payments of the Licensee may be withheld to an extent that is in reasonable proportion to the encountered defects. The licensee may only withhold payments when making complaints that are clearly justifiable. If the complaint is not justified, SuSE Linux AG is entitled to reclaim the expenses he incurred from the Licensee.
- 1.6) SuSE Linux AG shall be granted a reasonable period for the supplementary performance. If SuSE Linux AG is not provided with this opportunity, he will be free from liability for defects.
- 1.7) If the supplementary performance fails, the Licensee can rescind the contract or request a reduction of the remuneration, regardless of any damage claims pursuant to Section 6.
- 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 (2) due to the use of other software that is not compatible with the subject of SuSE Linux AG's delivery, or (3) external effects that are not presumed by the contract 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.
- 1.9) Claims of the Licensee due to the expenses for 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 delivery was subsequently performed at a different location than the place of performance.

1.10) Recourse claims of the Licensee against SuSE Linux AG only exist if the Licensee has not made any agreements with his buyers in excess of the legal claims due to defects. Section 1.8 applies to the scope of the recourse claim of the Licensee against SuSE Linux AG pursuant to Article 478, paragraph 2 of the German Civil Code.

1.11) Claims of a different nature than those regulated in Section 1 or additional claims of the Licensee against SuSE Linux AG due to defects are excluded. Section 6 governs issues pertaining to indemnification claims.

2) Delivery Times

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 does not apply if SuSE Linux AG is responsible for the delay.

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.

2.3) If SuSE Linux AG 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 substantiate his damage that resulted from this situation.

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 2.3 are excluded for all events of delivery delays, even after the expiry of a delivery deadline set by the Licensee. This does not apply to events for which SuSE Linux AG 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 Linux AG is responsible for the delivery delay. This does not entail a change of the burden of proof to the disadvantage of the Licensee.

2.5) The Licensee only has the right to rescind under the condition that he grants SuSE Linux AG 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.

2.6) On request of SuSE Linux AG, the Licensee will declare within a reasonable period whether he rescinds the contract due to the delivery delay or insists on the delivery.

2.7) If the Licensee requests that the dispatch or delivery is delayed by more than one month following the notice that the goods are ready for dispatch, SuSE Linux AG can charge to the Licensee a flat-rate storage fee of 0.5 % for every additional month that has commenced, up to a maximum of 5 % of the net price of the delivery. This does not affect the parties' right to provide evidence of higher or lower storage expenses.

3) Breach of Protective Rights, Other Defects of Title

3.1) Provided nothing else has been agreed, SuSE Linux AG will perform the delivery in the Federal Republic of Germany free of commercial protective rights and third-party copyrights ("protective rights"). In case a third party makes just claims against the Licensee due to the breach of protective rights by a delivery that was performed by SuSE Linux AG and which is utilized in accordance with the contract, SuSE Linux AG is liable to the Licensee as follows within the period indicated in Section 1.3:

3.1.1) At the discretion and cost of SuSE Linux AG, SuSE Linux AG will obtain a utilization right for the respective delivery, modify it in such a way that the protective right is not breached, or replace it. If this is not possible for SuSE Linux AG under reasonable conditions, the Licensee has legal rescission or reduction rights.

3.1.2) The obligation of SuSE Linux AG to pay compensation for damages is governed by Section 6.

3.1.3) The aforesaid obligations of SuSE Linux AG only exist if the Licensee notifies SuSE Linux AG in writing without delay regarding the claims made by the third party, does not admit any breach, and all protective measures and settlement negotiations are reserved for SuSE Linux AG. 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 must not be construed as an admission of a breach of protective rights.

3.2) Claims of the Licensee are excluded if the Licensee is responsible for the breach of protective rights.

3.3) Furthermore, claims of the Licensee are excluded if the breach of protective rights was caused by specific conditions of the Licensee, a utilization that SuSE Linux AG could not foresee, or due to the fact that the delivery was modified by the Licensee or deployed together with products not delivered by SuSE Linux AG.

3.4) In the event of breaches of protective rights, the claims of the Licensee as regulated in Section 3.1.1 are subject to the provisions of Sections 1.5, 1.6, and 1.10.

3.5) In the event of other defects of title, the provisions of Section 1 apply.

3.6) The Licensee is aware that the service also contains Open Source software ("OSS"). Due to the specific

nature of OSS, which is developed by a large number of persons not affiliated with SuSE Linux AG, any liability of SuSE Linux AG for the breach of protective rights or other defects of title regarding OSS is excluded.

3.7) Claims of a different nature than those regulated in Section 3 or additional claims of the Licensee against SuSE Linux AG due to defects in title are excluded.

4) Components Provided by the Licensee

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

5) Inability to Deliver, Amendment of the Contract

5.1) In case the delivery is impossible, the Licensee may claim compensation for damages, unless SuSE Linux AG 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 SuSE Linux AG is liable in any case, such as events of intent, gross negligence, initial inability, or if the life, body, or health was harmed; this does not entail a change of the burden of proof to the disadvantage of the Licensee. This does not affect the right of the Licensee to rescind the contract.

5.2) In case events of Force Majeure (2.2) substantially change the economic importance or the contents of the delivery or have a profound effect on the operations of SuSE Linux AG, the contract shall be amended appropriately in good faith. If this is not feasible from the economic point of view, SuSE Linux AG is entitled to rescind the contract. If SuSE Linux AG wants to make use of his right to rescind, he shall notify the Licensee about his decision without delay as soon as he realizes the impact of the event, even if SuSE Linux AG and the Licensee had initially agreed an extension of the delivery time.

6) Other Indemnification Claims

6.1.1) Indemnification claims of the Licensee due to any legal grounds, including but not limited to breaches of the contractual obligations or prohibited actions, are excluded.

6.1.2) This does not apply to events for which SuSE Linux AG is liable in any case, such as pursuant to the Product Liability Law or events of intent, gross negligence, if the life, body, or health was harmed, or if substantial contractual obligations were breached.

6.1.3) However, the indemnification for the breach of substantial contractual obligations is limited to predictable damages typical for this type of contracts, unless SuSE Linux AG is liable for events of intent or gross negligence or for harm to the life, body, or health.

6.2) To the extent that the liability of SuSE Linux AG is excluded or limited pursuant to Section 6, this also applies to the personal liability of SuSE Linux AG's employees and other agents, but not to the personal liability of legal representatives and executive employees.

6.3) In case the Licensee is entitled to indemnification claims pursuant to Section 6, these claims will expire at the end of the limitation period for indemnification claims pursuant to Section 1.3. Events of intent and indemnification claims pursuant to the Product Liability Law are subject to the legal provisions for limitation periods.

6.4) The provisions of Section 6 do not entail a change of the burden of proof to the disadvantage of the Licensee.

D General Provisions

In case any provision of this license should be invalid, this will not affect the validity of the other provisions. This license is subject to German Law; the application of the United Nations Convention on the International Sale of Goods dated 11 April 1980 shall be excluded.

Copyright © 2002 SuSE Linux AG All rights reserved. "SuSE Linux" and the "SuSE" logo are trademarks of SuSE Linux AG. "Linux" is a registered mark of Linus Torvalds. All other marks are property of their respective owners.