End User License Agreement
for SUSE products
End User License Agreement for SUSE Liberty Linux products and SUSE Linux Enterprise Server with Expanded Support products

PLEASE READ THIS AGREEMENT CAREFULLY. BY PURCHASING, INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE (INCLUDING ITS COMPONENTS), YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE. 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.

This End User License Agreement (“Agreement”) is a legal agreement between You (an entity or a person) and SUSE LLC (“Licensor”). SUSE Liberty Linux software products or SUSE Linux Enterprise Server with Expanded Support software products for which You have acquired licenses, any media or reproductions (physical or virtual) and accompanying documentation (collectively the “Software”) are protected by the copyright laws and treaties of the United States (“U.S.”) and other countries and is subject to the terms of this Agreement. If the laws of Your principal place of business require contracts to be in the local language to be enforceable, such local language version may be obtained from Licensor upon written request and shall be deemed to govern Your purchase of licenses to the Software. Any add-on, extension, update, mobile application, module, adapter or support release to the Software that You may download or receive that is not accompanied by a license agreement is Software and is governed by this Agreement.

Licensed Use

License Grant

Subject to the following terms, Licensor hereby grants you a perpetual, worldwide license to the Software under the GNU General Public License Version 2 ([http://www.gnu.org/licenses/old-licenses/gpl-2.0.txt](http://www.gnu.org/licenses/old-licenses/gpl-2.0.txt)).

Open Source

Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Software. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a third party other than Licensor. Use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. The license rights for the binary only firmware components are located with the components themselves.

Subscription Services and Support
Licensor has no obligation to provide maintenance or support unless You purchase a subscription offering that expressly includes such services. Licensor sells subscription offerings for the Software that entitles You to fee based technical support and/or internal use of Software updates provided on a specified annual period (“Subscription Offering”) and are subject to the SUSE’s product Terms and Conditions available at https://www.suse.com/products/terms_and_conditions.pdf (“Terms and Conditions”).

Marks
No right or license, express or implied, is granted under this Agreement with respect to any trademark, trade name or service mark of Licensor or its affiliates or licensors (“Mark”). This Agreement does not permit you to distribute the Software or its components using Licensor’s trademarks, regardless of whether the copy has been modified. You may make a commercial redistribution of the Programs only if (a) permitted under a separate written agreement with Licensor authorizing such commercial redistribution, or (b) you remove and replace all occurrences of any Mark.

Ownership
No title to or ownership of the Software is transferred to You. Licensor and/or its third party licensors retain all right, title and interest in and to all intellectual property rights in the Software and Services, including any adaptations or copies thereof. The Software is not sold to You, You acquire only a conditional license to use the Software. Title, ownership rights and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives You no rights to such content.

Warranty and Liability

Limited Warranty
Licensor warrants that the media that the Software is delivered on will be free from defects in materials and manufacture under normal use for a period of thirty (30) days from the date of delivery to you. This warranty extends only to the party that purchases subscription services for the Software from Licensor and/or its affiliates or an authorized distributor. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SAVE FOR THE FOREGOING WARRANTY, THE SOFTWARE IS PROVIDED “AS IS” WITHOUT ANY WARRANTIES OF ANY KIND.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

Consequential Losses
NEITHER LICENSOR NOR ANY OF ITS THIRD PARTY LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT
LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

Direct Damages

IN NO EVENT WILL LICENSOR’S (OR ITS AFFILIATES’) AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR $50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE).

The above exclusions and limitations will not apply to claims relating to death or personal injury caused by the negligence of Licensor or its employees, agents or contractors. In those jurisdictions that do not allow the exclusion or limitation of damages, including, without limitation, damages for breach of any implied terms as to title or quiet enjoyment of any Software obtained pursuant to this Agreement or for fraudulent misrepresentation, Licensor’s liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

General Terms

Audits

Licensor or an Auditor (as defined below) has the right to verify Your compliance with this Agreement. If you use a subscription offering as detailed in the section Subscription Services and Support above, You agree to:

1. Recordkeeping. Keep, and upon Licensor’s request, provide records, sufficient to certify Your compliance with this Agreement based on the applicable license metric, SUSE’s Compliance Charter located at https://www.suse.com/company/legal/compliance-charter and the Terms and Conditions for the Software. This may include without limitation serial numbers, license keys, logs, the location, model (including quantity and type of processor) and serial number of all machines on which the Software is installed or accessed or from which the Software can be accessed, the names (including corporate entity) and number of users accessing or authorized to access the Software, metrics, reports, copies of the Software (by product and version), and network architecture diagrams as they may relate to Your licensing and deployment of the Software and associated support and maintenance;

2. Questionnaire. Within seven (7) days of Licensor’s request, You shall furnish Licensor or its designated independent auditor (“Auditor”) a completed questionnaire provided by Licensor or Auditor, accompanied with a written statement signed by a director of Your Organization certifying the accuracy of the information provided; and

3. Access. Provide representatives of Licensor or Auditor any necessary assistance and access to records and computers to allow an inspection and audit of Your computers and records, during Your normal business hours, for compliance with the applicable Agreement and fully cooperate with such audit.
4. Non-Compliance. In the event that You have, or at any time have had, unlicensed installation, use of, or access to the Software or have otherwise breached this Agreement (a ‘Non-Compliance’), without prejudice to any other rights or remedies Licensor may have, including, without limitation, injunctive relief, You shall, within thirty (30) days’ notice of such Non-Compliance to You, purchase sufficient licenses and or subscriptions and associated support and maintenance to cure the Non-Compliance, by paying Licensor’s current (as of the date of such additional purchase) list license fees and 12-month support and maintenance fees to Licensor for such additional licenses, plus Licensor’s current (as of the date of such additional purchase) list term license and support and maintenance fees and interest (compounded at 1.5% monthly or the maximum rate permitted by applicable law if lower) for such additional licenses for the time period from the commencement of the Non-Compliance until payment of the aforementioned fees, with interest payable even if an invoice was not issued at the time the Non-Compliance occurred. If Your Non-Compliance results in an underpayment of license fees of 5% or greater, You shall also reimburse Licensor for the reasonable cost of such audit in addition to other amounts due.

Law
All matters arising out of or relating to this Agreement will be governed by the substantive laws of the United States and the State of Utah without regard to its choice of law provisions. Any suit, action or proceeding arising out of or relating to this Agreement may only be brought before a federal or state court of appropriate jurisdiction in Utah. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys’ fees. If, however, Your principal place of business is a member state of the European Union, the European Free Trade Association or the United Kingdom, (1) the courts of Ireland shall have exclusive jurisdiction over any action of law relating to this Agreement; and (2) where the laws of such country of Your principal place of business are required to be applied to any such action of law the laws of that country shall apply. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

Entire Agreement
This Agreement, together with any other purchase documents or other agreement between You and Licensor, sets forth the entire understanding and agreement between You and Licensor and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Licensor. NO THIRD PARTY LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

Waiver
No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.
Severability
If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

Export Compliance
You acknowledge that Licensor’s products and/or technology are subject to the U.S. Export Administration Regulations (the “EAR”) and You agree to comply with the EAR. You will not export or re-export Licensor’s products, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who You know or have reason to know will utilize Licensor’s products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems, except as authorized by the relevant government agency by regulation or specific license; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. By downloading or using the Software, You are agreeing to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction which may impact Your right to import, export or use Licensor’s products. Please consult the Bureau of Industry and Security web page https://www.bis.doc.gov before exporting items subject to the EAR. For more information on exporting Software, including the applicable Export Control Classification Number (ECCN) and associated license exception (as applicable), see https://www.suse.com/company/legal/. Upon request, Licensor’s International Trade Services Department can provide information regarding applicable export restrictions for Licensor products. Licensor assumes no responsibility for Your failure to obtain any necessary export approvals.

:version:2021-10-04:002