

# **SUSE® Enterprise Storage 4 Base Configuration and SUSE® Enterprise Storage 4 Expansion Node**

## **SUSE End User License Agreement**

**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 AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SOFTWARE TO OBTAIN A REFUND. 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”). The software product identified in the title of this Agreement for which You have acquired licenses, any media or reproductions (physical or virtual) and accompanying documentation (collectively the “Software”) is 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, 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 governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release.

### **LICENSED USE**

#### **LICENSES.**

The Software and each of its components are owned by Licensor or other licensors and are protected under copyright laws and other applicable laws.

### **SUSE® Enterprise Storage Base Configuration**

Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined below) up to four (4) copies of SUSE® Enterprise Storage deployed on one (1) to two (2) CPU socket server nodes and up to four (4) copies of SUSE® Linux Enterprise Server deployed on the same one (1) to two (2) CPU socket server nodes for the sole purpose of running up to four (4) copies of the SES Object Storage Daemon (as defined in SUSE’s Terms and Conditions available at [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf) (“Terms and Conditions”) component on same server nodes within a specific storage cluster. With respect to the same storage cluster, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined below) up to six (6) copies of SUSE® Enterprise Storage and up to six (6) copies of SUSE® Linux Enterprise Server for the sole purpose of running up to six (6) SES Infrastructure Nodes (as defined in the Terms and Conditions) on the same storage cluster.

### **SUSE® Enterprise Storage Expansion Node**

Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-

transferable, worldwide license to reproduce and use within Your Organization (as defined below) one (1) copy of SUSE® Enterprise Storage deployed on a one (1) to two (2) CPU socket server node and one (1) copy of SUSE® Linux Enterprise Server deployed on the same one (1) to two (2) CPU socket server node for the sole purpose of running one (1) copy of the SES Object Storage Daemon (as defined in the Terms and Conditions) component on one (1) particular storage cluster provided that such storage cluster already has one (1) SUSE® Enterprise Storage Base Configuration actively deployed. With respect to the same storage cluster, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined below) up to one (1) copy of SUSE® Enterprise Storage and up to one (1) copy of SUSE® Linux Enterprise Server for the sole purpose of running up to one (1) SES Infrastructure Node (as defined in the Terms and Conditions) on the same storage cluster.

**"Organization"** means a legal entity, excluding subsidiaries and affiliates with a separate existence for tax purposes or for legal personality purposes. An example of an Organization in the private sector would be a corporation, partnership, or trust, excluding any subsidiaries or affiliates of the organization with a separate tax identification number or company registration number. A public sector example of an Organization would be a specific government body or local government authority.

**THIRD PARTY/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.

**SUBSCRIPTION SERVICES.** 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 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.

## **RESTRICTIONS**

License Restrictions. The Software and each of its components are owned by Licensor and/or its licensors and are protected under copyright law and under other laws as applicable. Title to the Software and any component, or to any copy, modification, or merged portion shall remain with Licensor and other licensors, subject to the applicable license. Licensor reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. Except as this Agreement expressly allows, You may not (1) remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or its documentation; or (2) disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Licensor.

Outsourcing Requirements. Your license to use the Software may be used under the terms of this Agreement by a third party acting on Your behalf, such as a third party cloud provider or outsourcing vendor who manages or hosts (either remotely or virtually) the Software for You, subject to and conditioned upon Your adherence to the following: (1) You remain responsible for all of Your

obligations under this Agreement and enter into an enforceable agreement with the third party that contains terms and conditions to protect Licensor's rights in the Software that are no less restrictive than those contained in this Agreement, including without limitation the Verification section below; (2) You prohibit use of the Software by the third party for any purpose other than Your sole benefit; (3) You are solely responsible to Licensor for any and all breaches of this Agreement by the third party; and (4) You are and will remain current on subscription purchases that cover all installations and deployments of the Software by the third party on Your behalf.

Appliance License. If, either directly from Licensor or from a third party, you have received a hardware, software or other appliance that uses the Software, You acknowledge and agree to use the Software solely for the purpose of running the appliance and not as a general purpose operating system.

## **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.

## **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 sixty (60) days from the date of delivery to you. 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.

Services. Licensor warrants that any Services purchased will be supplied in a professional manner in accordance with generally accepted industry standards. This warranty will be effective for thirty (30) days following delivery of the Services. Upon any breach of this warranty, Licensor's only obligation is to either correct the Services so that they comply with this warranty or at its option refund the amount You paid to Licensor for the portion of the Services that fail to comply with this warranty. You agree to take appropriate measures to isolate and back up Your systems.

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.

Non-Licensor Products. The Software may include or be bundled with hardware or other software programs or services licensed or sold by an entity other than Licensor. LICENSOR DOES NOT WARRANT NON-LICENSOR PRODUCTS OR SERVICES. ANY SUCH PRODUCTS OR SERVICES ARE PROVIDED ON AN "AS IS" BASIS. WARRANTY SERVICE IF ANY FOR NON-LICENSOR PRODUCTS IS PROVIDED BY THE PRODUCT LICENSOR IN ACCORDANCE WITH THEIR APPLICABLE WARRANTY.

EXCEPT AS OTHERWISE RESTRICTED BY LAW, LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF

PERFORMANCE OR TRADE USAGE. LICENSOR MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS, BE COMPATIBLE WITH ALL OPERATING SYSTEMS, OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. Some jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to You. This limited warranty gives You specific rights and You may also have other rights which vary by state or jurisdiction.

## **LIMITATION OF LIABILITY**

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 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**

Term. This Agreement becomes effective on the date You legally acquire the Software and will automatically terminate if You breach any of its terms.

Verification. Licensor has the right to verify Your compliance with this Agreement. You agree to: (1) Implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the Software or Subscription Offerings; (2) Keep records sufficient to certify Your compliance with this Agreement, and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your licensing and deployment of the Software or Subscription Offerings; and (3) Allow a Licensor representative or an independent auditor ("Auditor") to inspect and audit Your (including any subsidiaries or affiliates or contractors with access), computers and records, during Your normal business hours, for compliance with the licensing terms for Licensor's software products and/or Subscription Offerings. Upon Licensor's and Auditor's presentation of their signed written confidentiality statement form to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that You have or at any time have had unlicensed installation, use of, or access to the Software or Subscription Offerings, You will, within 30 days, purchase sufficient licenses or Subscription Offerings to cover any shortfall without benefit of any otherwise applicable discount and subject to fees reflecting the duration of the shortfall. If a shortfall of 5% or more is found, You must reimburse Licensor for the costs incurred in the audit.

Transfer. This Agreement and the associated licenses purchased for use of the Software may not be transferred or assigned without

the prior written approval of Licensor. Any such attempted transfer or assignment shall be void and of no effect. Please contact [CRC@suse.com](mailto:CRC@suse.com) to request the transfer of licenses and assignment of this Agreement.

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 or the European Free Trade Association, (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 [www.bis.doc.gov](http://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 [www.suse.com/company/legal/](http://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.

U.S. Government Restricted Rights. Use, duplication, or disclosure of any Deliverables by the U.S. Government is subject to the restrictions in FAR 52.227-14 (Dec 2007) Alternate III (Dec 2007), FAR 52.227-19 (Dec 2007), or DFARS 252.227-7013(b)(3) (Nov 1995), or applicable successor clauses.

[161201]