

SUSE Academic Program

Terms and Licensing Agreement

April 2017



SUSE Academic Program Agreement

This SUSE Academic Program Agreement ("Agreement") is made between the entity applying to participate ("Institute") in the SUSE Academic program ("Academic Program") and Licensor. Licensor, means, depending on Institute's country of residence, the applicable entity identified in the Licensor Entity table at the end of this Agreement.

1. Purpose

This Agreement sets forth the terms and conditions under which Institute is authorized to participate in the SUSE Academic Program and use or promote Licensor software and tools ("Products") and Training material ("Trainings").

2. Authorization

Effective upon issuance by Licensor of an authorization notice of Institute's admittance into the SUSE Academic Program ("Authorization Notice"), Licensor grants Institute authorization to exercise the privileges indicated in the Authorization Notice and the Academic Program Guide.

The requirements to qualify for privileges of, and obligations associated with, are defined in this Agreement. Institute's continued authorization is based on its compliance with this. The authorization is non-exclusive and is personal to Institute's legal entity or branch office that applied for the Academic Program and meets the Program requirements.

If Institute has different legal entities that wish to participate in the Academic Program, each entity should separately apply to the Academic Program and enter into this Agreement.

2.1 Academic Program Guide

The Agreement incorporates the online Academic Program guide ("Academic Program Guide") located on the SUSE Academic Portal. Institute agrees to additionally comply with the Academic Training Institute requirements identified in the Academic Program Guide. If a conflict arises between the Agreement terms in this document and any provision in the Academic Program Guide, the Agreement terms in this document will prevail. Licensor may in its discretion and without compensation to Institute change the Academic Program Guide, as well as any requirements, benefits, terms or other features of the Academic Program. Any such changes become effective immediately upon written notice, which may take the form of publication online. If Institute is not satisfied with any such change, Institute may terminate this Agreement for convenience as described below.

3. Institute Lab Use of Software

Certain Products may be made available by Licensor to Institute at no cost solely for Institute internal use to the staff to

- a) assist Institute in education to students,
- b) conduct educative research with students,
- c) allow students to develop upon and evaluate Licensor's software.

The software products made available under this section for lab use are identified and available as “evaluation” subscriptions as part of the SUSE Academic Intranet, and exclude, unless otherwise agreed by Licensor in writing, third-party products or products identified in writing by Licensor as not available under this section.

3.1 The Lab Use Software products are made available AS IS with no warranty. Licensor may modify or remove a Product from the list of Partner Use Software products. Licensor is not obligated to provide any technical support to Institute for such use:

Subscription. Subject to the Agreement's terms, Licensor grants Partner a terminable, non-exclusive, non-transferable and restricted subscription to copy and use Lab Use Software during the term of this Agreement, only within Institute, by its employees and its students, and for its internal educational activities and programs. Such use is subject to the terms and conditions of the applicable End User License Agreement (“EULA”) provided with individual Partner Use Software. However, notwithstanding anything to the contrary in the EULA, Institute expressly agrees that its use of the Lab Use Software is subject to the following restrictions, and as to a specific product any further restrictions described in the Program Guide.

3.1.1 SUSE Products. Copying and use of a SUSE Product (including updates received through a subscription) is not limited to a specific number of copies but is restricted to only the portions of Institute that are dedicated to the education of students. The purpose of this benefit is to allow faculties and classes part of the Institute to use SUSE Products as part of the curriculum. Institute must purchase subscriptions for any installation or other deployment of SUSE Linux Enterprise Products it wishes to use in other parts of its organization.

3.1.2 Except as otherwise expressly authorized in this Agreement or the applicable end-user license agreement, Institute may not sublicense, resell, rent, lease, timeshare or otherwise distribute any of the Subscriptions, or use them to provide hosting, outsourcing or other similar services to third parties.

3.1.3 Subscription Termination. Upon Agreement termination, any entitlement to use Internal Lab Use subscriptions will terminate automatically.

4. Institute SUSE Training Terms

Subject to the terms of this Agreement, SUSE entitles Institute to offer SUSE Authorized Courses to students at no cost for the limited and sole purpose of training students and staff for NON-COMMERCIAL purpose as part of a larger government-recognized academic curriculum given by the Institute. Institute is not authorized to provide or otherwise make available SUSE Materials to any anyone other than its students properly enrolled.

Institute is authorized to use current SUSE trademarks, service marks, and certification marks, whether registered or unregistered (“Marks”), that SUSE identifies as applicable to the SUSE Materials and in accordance with SUSE’s trademark usage guidelines as may be updated from time to time.

4.1 SUSE Authorized Courses contain a complete set of training materials for a SUSE Product and/or Solution containing trainer and student materials. Authorized Courses come with a Classroom Requirements Matrix with specifications for hardware and classroom levels as well with requirements for Teaching Days duration.

a. Institute is entitled to replicate student and trainer’s material at no costs otherwise limited by this Agreement.

b. Institute is entitled to offer an unaltered (or verbatim translated) set, either full or subset of SUSE Authorized Courses to students and staff and to use the Marks in communication, marketing and advertising as described in section 5.2

The institute may use other materials for the purposes of adding value to the Authorized Course so long as such materials do not distract from course objectives.

c. SUSE may change SUSE Authorized Courses at any time without restriction. Institute will review the offered Training Documents on a regular basis so as to ensure Institute is using current material.

4.2 Instructor pre-requisites

SUSE recommends that Institute use Qualified Certified Instructors and, if not certified, Institute shall, at its sole cost and expense, assure the Instructors have adequate teaching skills, appropriate class-room setup, and have participated in a train-the-trainer or regular training of the course material used. Institute responsibility to assure proper Instructor training to be able to give SUSE Authorized Course

4.3 Facilities and Equipment

Institute shall use commercially reasonable efforts to, where possible, meet the requirements for facilities and equipment (including audiovisual equipment) as defined in the course description for each training course and Classroom Requirements Matrix.

5. Separate Agreement

Institute and Licensor may choose to enter into a separate written agreement that covers one or more activities covered by this Agreement. The terms and conditions of such agreement shall prevail over the terms and conditions of this Agreement in the event of conflict. Nothing in this Agreement obligates either party to enter into any such separate agreement. Expiration of this Agreement shall not necessarily affect any such separate agreement then in force.

6. Term and Termination

This Agreement, and the authorization granted hereunder, are effective on the date of the Authorization Notice, and remain in effect for a period of one year from that date. This Agreement will automatically renew for successive one-year periods unless earlier terminated in accordance with the provisions below.

6.1 Termination for Cause

Either party may terminate this Agreement for the substantial breach by the other party of a material term. The terminating party will first give the other party written notice of the breach and a reasonable period of at least 14 days in which to cure the alleged breach. If a cure is not achieved during the cure period the non-breaching party may terminate this Agreement upon written notice.

6.2 Termination for Convenience

Either party may terminate this Agreement for the substantial breach by the other party of a material term. The terminating party will first give the other party written notice of the breach and a reasonable period of at least 14 days in which to cure the alleged breach. If a cure is not achieved during the cure period the non-breaching party may terminate this Agreement upon written notice.

6.3 Effect of Termination

Agreement termination for any reason will immediately terminate Institute's participation in the Academic Program, including eligibility for the program benefits. Immediately upon termination, Institute shall cease referring to itself as authorized Institute, or any other title associated with the Academic Program, and shall cease using those titles and any Licensor or Institute trademarks, logos and brands in any communication and advertising or on Institute's websites or products. Unless otherwise permitted by the terms of an open-source license or end-user license agreement, Institute shall destroy all materials, documents, brochures, tools and software (including any copies) that Institute may have obtained from Licensor with its participation in the Academic Program. Regardless of any other provision of this Agreement, Licensor will not by reason of the termination of the Agreement be liable for compensation, reimbursement, or damages on account of the loss of prospective profits or on account of expenditures, investments, or commitments in connection with Institute's business or goodwill, or otherwise.

7 Intellectual Property Rights

7.1 Ownership

Notwithstanding anything to the contrary in this Agreement (other than rights granted pursuant to the terms of open-source licenses), Licensor or its supplier(s) owns and retains title to and ownership of all intellectual property rights in the Products and Subscriptions, including all software programs, documentation, media, and related materials and all modifications to and derivative works from software made by Institute or any third party. Licensor does not transfer any portion of such title and ownership, or any of the associated goodwill to Institute. All rights which are not expressly granted are reserved.

7.2 Trademark Usage

Institute is authorized to use the Licensor trademarks applicable to the Products marketed under this Agreement and the other Licensor marks identified as applicable to Institute's authorization level in the Academic Program Guide, but only in accordance with Licensor's then-current trademark usage guide, and only while this Agreement is in effect. Institute is not authorized to do business under any Licensor trade names. Upon Agreement termination, Institute agrees to cease all display, advertising and use of any and all Licensor trademarks. Institute agrees not to alter, erase or overprint any notice provided by Licensor and not to attach any additional trademarks without Licensor's prior written consent or affix any Licensor trademarks to any non-Licensor product. Institute recognizes Licensor's ownership and title to the trade names and trademarks and the goodwill attaching to the trade names and trademarks. Institute agrees that any goodwill that may accrue because of Institute's use of Licensor trademarks will become Licensor property. Institute agrees not to contest Licensor's trademarks or trade names, or make application for registration of any Licensor trademarks or trade names without Licensor's prior written consent. Institute agrees not to use, employ or attempt to register any trademarks, trade names, or internet domains which, in Licensor's opinion, are confusingly similar to Licensor's trademarks or trade names. Institute agrees not to advertise using Licensor's trademarks or trade names in a way that could cause customers to mistakenly believe that they are contacting Licensor by contacting Institute, or that they are visiting Licensor's web site.

7.3 Protection

Institute agrees to take all reasonable steps to protect the Training material, Products and Subscriptions from unauthorized copying or use

7.4 Infringement

Institute agrees to report any instances of suspected copyright and/or trademark infringement to Licensor and to give Licensor reasonable assistance, in investigating and prosecuting those responsible for the infringing acts.

8. Limited Warranty

8.1 Warranty to End Users

Licensor provides, to End Users only, warranties for Products in the software license agreement accompanying each product. Licensor does not warrant non-Licensor products, or products used by Institute without cost under this Agreement, or other products for which no license or subscription fee is paid. They are provided by Licensor on an "AS IS" basis.

8.2 DISCLAIMER OF WARRANTIES

LICENSOR MAKES NO WARRANTY EXCEPT AS EXPRESSLY SET FORTH IN THE SOFTWARE LICENSE AGREEMENT APPLICABLE TO THE PRODUCT IN QUESTION. LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT ANY OF ITS PRODUCTS SATISFY END USER REQUIREMENTS OR THAT THE PRODUCTS ARE WITHOUT DEFECT OR ERROR OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED.

9. Limitation of Liability

9.1 TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE (WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY) FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFIT, BUSINESS, OR DATA) SUSTAINED OR INCURRED IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

9.2 Aggregate Liability

For death or personal injury caused by the negligence of Licensor or its employees, Licensor's liability to Institute shall not be limited. Except in those two cases, Licensor's liability to Institute for direct damages related to or arising under this Agreement shall be limited to the total amount paid by Institute under this Agreement in the 12 months prior to the date on which the cause of action arose or US\$5,000, whichever is higher.

9.3 Australia Competition and Consumer Act

Where in accordance with section 9.1 this Agreement is governed by the laws of a state of Australia, this section applies. WHERE ANY LEGISLATION, SUCH AS THE COMPETITION AND CONSUMER ACT, IMPLIES INTO THIS AGREEMENT ANY CONDITION OR WARRANTY AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING THE APPLICATION OF THE CONDITION OR WARRANTY, THE

LIABILITY OF LICENSOR FOR ANY BREACH OF THE CONDITION OR WARRANTY IS LIMITED AT THE OPTION OF LICENSOR TO ANY ONE OR MORE OF THE FOLLOWING: A) IF THE BREACH RELATES TO GOODS, REPLACING THE GOODS OR THE PAYMENT OF THE COST OF ACQUIRING EQUIVALENT GOODS OR REPAIRING THE GOODS OR PAYMENT OF THE COST OF REPAIRING THE GOODS; B) IF THE BREACH RELATES TO SERVICES, THE SUPPLYING OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. NOTHING HEREIN IS INTENDED TO RESTRICT OR EXCLUDE ANY LIABILITY OF LICENSOR UNDER PART 3-5 OF THE AUSTRALIAN CONSUMER LAW (SCHEDULE 2 OF THE COMPETITION AND CONSUMER ACT 2010).

8.4. New Zealand. Where in accordance with section 9.1 this Agreement is governed by New Zealand law, then this section applies. WHERE ANY LEGISLATION, SUCH AS THE FAIR TRADING ACT, IMPLIES INTO THIS AGREEMENT ANY CONDITION OR WARRANTY AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING THE APPLICATION OF THE CONDITION OR WARRANTY, CUSTOMER ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, SAVE FOR THOSE EXPRESSLY STATED HEREIN, IT HAS NOT RELIED ON ANY STATEMENT, OR REPRESENTATION OR INFORMATION SUPPLIED BY LICENSOR. FOR AVOIDANCE OF DOUBT, NOTHING IN THIS AGREEMENT EXCLUDES ANY LIABILITY OF A PARTY UNDER, OR LIMITS OR AFFECTS THE APPLICATION OF, THE FAIR TRADING ACT.

9.5 Consumer Guarantee's Act

CUSTOMER ACKNOWLEDGES THAT IT ACQUIRES THE SERVICES FOR ITS BUSINESS PURPOSES AND ACCORDINGLY THE PROVISIONS OF THE CONSUMER GUARANTEES ACT DO NOT APPLY.

9.6 Singapore

Where in accordance with section 9.1 this Agreement is governed by Singapore law, then this section applies. A PERSON WHO IS NOT A PARTY TO THIS AGREEMENT SHALL HAVE NO RIGHT UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT (CAP 53B) TO ENFORCE ANY OF ITS TERMS.

10. General Provisions

10.1 Law and Jurisdiction

Choice of law and jurisdiction for all matters arising out of or relating to this Agreement shall be as follows:

a. Americas. If Institute is located in the Americas, the Agreement is governed by the substantive laws of the State of Utah and applicable federal U.S. laws, without regard to any conflict of laws provision.

b. Europe, Middle East, or Africa (EMEA). For Institutes located in Europe, the Middle-East or Africa (EMEA), this Agreement will be governed by the substantive laws of the country in which Institute has its principal residence where that country is (a) a member state of the European Union, or (b) a member state of the European Free Trade Association, or (c) the Republic of South Africa. For a Institute whose principal residence is in any other country in EMEA, the applicable law will be the laws of England. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this section.

c. Asia-Pacific. If Institute is located in the Asia Pacific region, the Agreement is governed by the substantive laws of the State of Utah and applicable federal U.S. laws, without regard to any conflict of laws provision, unless the subsections below apply.

If Institute's country of principal residence is Australia and/or New Zealand, this Agreement will be governed by the laws, excluding the private international law rules, of the state of New South Wales.

If Institute's country of principal residence is New Zealand, this Agreement will be governed by the laws, excluding the private international law rules of New Zealand.

If Institute's country of principal residence is Singapore, Thailand, Vietnam, the Philippines, Indonesia or Pakistan, this Agreement will be governed by the laws, excluding the private international law rules, of Singapore.

If Institute's principal residence is in China (excluding Hong Kong, S.A.R.), then this Agreement will be governed by the laws of Hong Kong, S.A.R.

Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement. To the extent their exclusion is permissible, the terms of the United Nations Convention on the International Sale of Goods shall not apply to the Agreement, even where adopted as part of the domestic law of the country whose law governs this Agreement. If either party initiates legal proceedings to enforce a term of the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees. Each party will, at its own expense, comply with any applicable law, statute, ordinance, administrative order, rule and regulation.

10.2 Confidential Information

The parties agree that any Confidential Information provided under the Agreement will be held and maintained in strict confidence. Each party agrees to protect the confidentiality of such information in a manner consistent with the way a reasonable person would protect similar Confidential Information. "Confidential Information" means the information and materials noticed or marked by Licensor or Institute as confidential and proprietary. "Confidential Information" does not include information that (a) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (b) becomes publicly known without fault of the receiving party, (c) is independently developed by the receiving party, (d) is approved for release in writing by the disclosing party, (e) is disclosed without restriction by the disclosing party to a third party, or (f) is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties. The recipient of Confidential Information retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services. All Confidential Information is provided "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

10.3 Verifications

Institute agrees that Licensor may, at its own expense, verify Institute's use of Institute Use Software as well as Institute's business activities related to the Academic Program, to determine Institute's compliance or non-compliance with this Agreement and the applicable Academic Program requirements including, if applicable, any related business plans or other specific arrangements between the parties. Such verifications will take the form of requests for information, documents or records, on-site visits, or both. Any on-site visit will occur during regular

business hours at Institute's offices, and will not interfere unreasonably with Institute's business activities. For an on-site visit, Licensor will give Institute at least 10 days prior written notice of the date of each visit.

10.4 Entire Agreement

This Agreement and the Academic Program Guide comprise the whole agreement between the parties. Unless otherwise expressly provided herein, this Agreement supersedes all prior representations or agreements between the parties relating to the same subject matter. The Agreement will not be supplemented or modified by any course of dealing or usage of trade. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification from Institute (including but not limited to any specification of a price different than Licensor's current list price) will be of no effect.

10.5 Survival

The provisions of this Agreement which by their nature extend beyond termination of the Agreement, including sections 6, Intellectual Property Rights, 7, Limited Warranty, 8, Limitation of Liability, and 9, General Provisions, will survive termination of the Agreement

10.6 Assignment

This Agreement may not be assigned by Institute, in whole or in part, without Licensor's prior written consent. Licensor will not unreasonably withhold consent to an assignment to Institute's parent company or subsidiary. Any attempted assignment without Licensor's written consent will be null and void. Licensor may assign all or a portion of its rights and obligations under this Agreement to any company that controls, is controlled by (whether directly or indirectly) or is in common control with Licensor or its parent, or to a purchaser of the intellectual property rights of a Licensor.

10.7 Independent Contractors

Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create an employment or agency relationship or a legal partnership between a party and the other party or the other party's employees or agents. Neither party has the authority to bind the other, to incur any liability or otherwise act on behalf of the other. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

10.8 Severability/Waiver

If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No Agreement term shall be deemed waived and no breach deemed consented to or excused unless such waiver or consent is in a writing signed by a party's authorized representative. No consent to or waiver of a breach shall constitute a consent to or waiver of any different or subsequent breach.

10.9 Anti-Corruption

Neither Institute nor its officers, employees, agents, or sub-contractors shall offer, promise, give, request, accept or agree to accept from any person (whether for themselves or on behalf of another) any advantage, gift, payment, consideration or benefit of any kind which is intended to influence a decision or gain advantage or which otherwise constitutes a bribe and/or an illegal or corrupt practice under the applicable laws of any country,

either directly or indirectly in connection with this Agreement or Licensor's business ("the Anti-Corruption Obligation"). Institute shall disclose in writing to Licensor details of any breach or alleged breach of the Anti-Corruption Obligation. Licensor may terminate this Agreement immediately upon written notice to Institute in the event of any breach of the Anti-Corruption Obligation. Institute's attention is drawn to the Licensor Institute Code of Conduct available ("the Code") which describes the standards of conduct and ethics expected of Licensor's channel Institutes. Institute shall comply with the Code, which is incorporated into this Agreement.

10.10. Export Restrictions

Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist countries as specified in the U.S. export laws. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses. Please consult the Bureau of Industry and Security web page <http://www.bis.doc.gov> before exporting Licensor products from the U.S. Upon request, Licensor will provide Institute with specific information regarding applicable restrictions. However, Licensor assumes no responsibility for Institute's failure to obtain any necessary export approvals.

Licensor Entity Table

Licensor means, depending on Institute's country of residence, the applicable entity identified in the table below.

Activities related to SUSE

Country	Entity
Americas & Asia Pacific, except as detailed otherwise below	Micro Focus Software Inc.
Canada	Micro Focus Software (Canada) Inc.
India	Novell Software Development (India) Private Ltd.
Japan	Novell Japan, Ltd.
Europe, Middle-East or Africa	Micro Focus Software (Ireland) Ltd

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