

Novell Terms and Conditions

Introduction: By clicking "I Accept" below, the entity that purchased the applicable Novell products and/or services ("Customer") represents that the person performing the acceptance has the authority to commit Customer to these terms and conditions ("Agreement"), and that Customer agrees to be bound by such terms. The Effective Date of this Agreement is the date that Customer accepts this Agreement. Unless Customer is a party to a Novell volume purchase agreement (MLA, VLA, ALA, or SLA) specifying its own term length, the term of this Agreement shall begin on the Effective Date and continue for the period specified in the subscription certificate.

- 1. Applicability.** These terms apply to the Novell Maintenance (which term is also intended to refer to the subscription services available with Novell's SUSE Linux Enterprise products, whether designated as Basic, Standard, or Priority Subscription), technical support, or other services you receive through your purchase. Maintenance services do not include integration services, installation of Upgrades or Updates, or any other benefits not expressly described in this Agreement. Technical support or other services you may receive as part of your purchase are described on the Novell web page that provides details about your purchase.
- 2. Maintenance Benefits.** The purchase of Maintenance for a specific installation of Novell software entitles Customer to install and use all Upgrades and Updates (see below) made commercially available by Novell during the period covered by the Maintenance, up to the number of installations for which Customer has purchased Maintenance. "Update" means a fix or compilation of fixes released by Novell to correct operational defects (program bugs) in the Novell product. "Upgrade" means any new version of Novell software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. for SLES 10.0 to 11.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end users generally. If Novell commercially releases any Upgrades and/or Updates, Novell will make such Upgrades and/or Updates available to Customer within a reasonable period of time after they become commercially available. Customer acknowledges that Novell cannot guarantee any specific turnaround times and/or regular release intervals.
- 3. Immediate and Preventive Updates.** At its sole discretion, Novell will determine whether to eliminate a program bug—a software defect that impairs the function of the relevant Novell product according to its specifications—by means of issuing an Update. Novell will inform Customer by e-mail as soon as new Updates are released at the Novell website. The messages will be sent to the email addresses supplied by Customer during its registration for Maintenance.
- 4. Reporting.** Customer acknowledges that the completeness and accuracy of the information Customer provides to Novell may affect Novell's ability and desire to provide Maintenance services. The Maintenance purchased by Customer is intended for use only for the benefit of Customer and only for the specific installations of the Novell product covered by Maintenance. If Customer purchases Maintenance, Customer must purchase Maintenance for all copies of the Novell product(s) installed. Each copy must be installed on a server or machine corresponding to the Maintenance sku or part number describing such product or Maintenance offering (e.g., a SLES Basic Subscription sku cannot be mixed with SLES Priority Support subscriptions, nor can Customer apply Maintenance benefits received pursuant to a particular subscription offering, such as X-86, to a different platform for which the offering does not apply, such as zSeries). Any unauthorized use of Maintenance will be treated as a material breach of this Agreement. If Customer wishes to increase the number of copies of the Novell product installed, Customer must purchase from Novell or its authorized reseller Maintenance for each additional copy installed. Upon renewal, Customer's submission of a purchase order or payment of Maintenance fees will be deemed a representation of the number of copies of the Novell product receiving Maintenance benefits. During the term of this Agreement and for two years after its expiration or termination, Novell will have the right, at its expense and upon no fewer than three (3) working days prior written notice, to verify Customer's purchase and use of Maintenance benefits and related records and payments. If Customer has underpaid amounts owing, Customer must immediately purchase from Novell or its authorized reseller sufficient units or subscriptions of Maintenance to support the actual number of copies installed and pay all amounts owing.
- 5. Warranty Disclaimer; Limitation of Liability; Reserved Rights.** EXCEPT AS OTHERWISE RESTRICTED BY LAW, NOVELL, AND ITS DISTRIBUTORS, DEALERS, RETAILERS AND RESELLERS (COLLECTIVELY "THIRD PARTIES") DISCLAIM AND EXCLUDE ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NOVELL MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THE END USER LICENSE AGREEMENT ACCOMPANYING THE SOFTWARE. NEITHER NOVELL NOR ITS THIRD PARTIES WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. NOVELL AND ITS THIRD PARTIES RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN AND GRANT NO ADDITIONAL RIGHTS, LICENSES OR COVENANTS BY IMPLICATION, ESTOPPEL OR OTHERWISE.

NEITHER NOVELL NOR ITS THIRD PARTIES, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY OF THE FOLLOWING: (A) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES; OR (B) AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEEDING 1.25 TIMES THE AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE [OR \$50 (U.S.) IF CUSTOMER RECEIVED THE SOFTWARE OR SERVICES FREE OF CHARGE].

- 6. Law: Integration.** This Agreement is governed by the laws of the State of Utah. This Agreement includes the entire agreement with respect to the services between (a) Customer and (b) Novell and its Third Parties with respect to the services. It may be modified only by a written agreement signed by the entity to be bound.

7. **Export Compliance.** Any person or entity exporting or re-exporting Novell products directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U.S. Export Administration Regulations and the laws of host countries. Novell assumes no responsibility or liability for your failure to obtain any necessary export approvals. Approvals are dependent upon an item's technical characteristics, the destination, end-use and end-user, as well as other activities of the end user. Specifically, no Novell product may be exported to embargoed or otherwise restricted countries or end users. Please consult the Bureau of Industry and Security web page and other sources before exporting Novell products from the U.S. and familiarize yourself with the laws of destination countries before re-exporting Novell products. This provision shall survive the expiration or earlier termination of this Agreement. Please refer to the export matrix for Novell products for more information on exporting Novell Software. You can download a copy from <http://www.novell.com/info/exports/> or obtain a copy from your local Novell office.
8. **Transfer.** This Agreement may not be transferred or assigned without the prior written approval of Novell.