# Novell<sub>®</sub> Software License Agreement

Novell Tech Select Service, Novell Professional Resource Suite<sup>™</sup>, Novell Professional Resource Suite - Portal Advantage, Novell Software Evaluation and Development Library

# PLEASE READ THIS AGREEMENT CAREFULLY. BY INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE AND, IF APPLICABLE, RETURN THE ENTIRE UNUSED PACKAGE TO THE RESELLER WITH YOUR RECEIPT FOR A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED EXCEPT AS AUTHORIZED BY NOVELL.

This Novell Software License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and Novell, Inc. ("Novell"). The software provided under the offering(s) identified in the title of this Agreement (each a "Technical Subscription") for which You have acquired licenses, any media 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. Any update or support release to the Software that You may download or receive under a Technical Subscription is "Software" and governed by this Agreement.

The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than Novell. Use of any software programs accompanied by a separate license agreement is governed by that separate license agreement. Any third party software that may be provided with the Software is included for use at Your option.

# MAINTENANCE CUSTOMERS

Novell sells maintenance and/or subscriptions for the Software that entitle You to fee based technical support and internal use of Software updates provided during Your maintenance or subscription period ("Maintenance"). If You are current on Maintenance for all installations of an individual Software product included in Your Technical Subscription, then You may use the updates provided under Your Technical Subscription subject to the terms of Your Maintenance entitlement for the individual Software product. In no event does Your Technical Subscription authorize You to use the Software in a quantity or manner that exceeds the quantity or scope of the licenses You have purchased for such Software.

### **EVALUATION LICENSE**

Except as set forth in the paragraph above specific to Maintenance Customers, the Software is licensed solely for internal evaluation use. Subject to the terms and conditions of this Agreement and any additional license restrictions or third party license obligations in the software license agreement provided with individual software programs ("Individual Product License"), Novell grants to You a nonexclusive, nontransferable right to internally use the Software for evaluation purposes in a non-production environment. Notwithstanding anything to the contrary in the Individual Product License, You expressly agree and acknowledge that Your use of the Software is LIMITED TO INTERNAL USE WITHIN YOUR COMPANY SOLELY FOR EVALUATION PURPOSES DURING THE EVALUATION PERIOD. The "Evaluation Period" begins upon use or installation of the Software and terminates: sixty (60) days thereafter for any Software product in the ZENworks or Endpoint Management family of products or ninety (90) days thereafter for any Software product.

You may only use the Software for the number of users, sessions or connections specified in the applicable evaluation license key. If there is no evaluation license key for an individual Software product, then You may use the Software in the quantity specified by the type of license You have purchased for Your Technical Subscription. If You have purchased a Standard License or Electronic License, then You may install and use one instance of the Software on each of two (2) servers for use by no more than five (5) users per server for user based products or to manage no more than five (5) devices per server for device management products. If You have purchased an Expanded License, then Your authorized use increases from five (5) to one hundred (100) users or devices, as applicable.

If, as to a specific Software program, there are conflicts between the terms of this Agreement and those of the Individual Product License, documentation or online license, the terms of this Agreement shall govern. Upon expiration of the Evaluation Period, You must discontinue use of the Software and delete the Software entirely from Your system. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time, so You should back up Your system and take other measures to prevent any loss of files or data. Use of the Software is entirely at your own risk.

# RESTRICTIONS

License Restrictions. Novell reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. You may not (1) reverse engineer, decompile, or disassemble the Software except and only to the extent it is expressly permitted by applicable law; (2) modify, alter, rent, timeshare host or lease the Software or sublicense any of Your rights under this Agreement; or (3) transfer the Software or Your license rights under this Agreement, in whole or in part, without written permission by Novell.

<u>Suite Licenses</u>. If Your license to use the Software is for a suite of products, then for each license only one user may use the products in the suite. The suite license does not allow use of individual products in the suite by multiple users if licensed on a user basis or multiple devices if licensed on a device or server basis.

<u>Support</u>. Novell has no obligation to provide support unless You purchase an offering that expressly includes support services. If You make such a purchase and no separate agreement specifically applies to the support services, then the terms of this

Agreement will govern the provision of such support services ("Services"). For more information on Novell's current support offerings, see <u>http://www.novell.com/support.</u>

# OWNERSHIP

No title to or ownership of the Software is transferred to You. Novell and/or its 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. You acquire only a conditional license to use the Software.

### WARRANTY AND LIMITATION OF LIABILITY

THIS SOFTWARE IS PROVIDED BY NOVELL AND ITS LICENSORS "AS IS". ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL NOVELL OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL THE AGGREGATE LIABILITY OF NOVELL OR ITS LICENSORS 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. In those jurisdictions that do not allow the exclusion or limitation of damages, Novell's liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

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. THE SOFTWARE IS ONLY COMPATIBLE WITH CERTAIN COMPUTERS AND OPERATING SYSTEMS.

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

# **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. Upon termination of this Agreement or expiration of the Evluation Period, You must destroy the original and all copies of the Software or return them to Novell and delete the Software from Your systems.

<u>Verification</u>. Novell may, upon fifteen (15) days' advance notice and at its expense, conduct an annual audit, during your normal business hours, of your use of the Software and Documentation to verify compliance with this Agreement. You agree to implement internal safeguards to prevent any unauthorized copying, distribution, installation, or use of, or access to, the Software. You further agree to keep records sufficient to certify your compliance with this Agreement, and, upon request of Novell, provide and certify metrics and/or reports based upon such records and accounting both numbers of copies (by product and version) and network architectures as they may reasonably relate to your licensing and deployment of the Software. You shall provide Novell or an authorized representative with access to records, hardware and employees in order to perform the audit. Upon Novell's or its authorized representative's presentation of their reasonable written commitment(s) to safeguard your confidential information, you shall fully cooperate with such audit and provide any necessary assistance and access to the Software. You will promptly acquire sufficient licenses to cover any shortage. If a material license shortage of 5% or more is found, you must reimburse Novell for the costs incurred in the audit and acquire the necessary additional licenses within 30 days without the benefit of any otherwise applicable discount.

**Benchmark Testing.** This benchmark testing restriction applies to You if You are a software developer or licensor or if You are performing testing on the Software at the direction of or on behalf of a software developer or licensor. You may not, without Novell's prior written consent not to be unreasonably withheld, publish or disclose to any third party the results of any benchmark test of the Software. If You are a licensor of products that are functionally similar to or compete with the Software ("Similar Products"), or are acting on behalf of such a licensor, and You publish or disclose benchmark information on the Software in violation of this restriction, then notwithstanding anything to the contrary in the Similar Product's end user license agreement, and in addition to any other remedies Novell may have, Novell shall have the right to perform benchmark testing on Similar Products and to disclose and publish that benchmark information and You hereby represent that You have authority to grant such right to Novell.

**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.

Transfer. This Agreement may not be transferred or assigned without the prior written approval of Novell.

Law and Jurisdiction. This Agreement is governed by the laws of the State of Utah, U.S. Any action at law relating to this Agreement may only be brought before the courts of competent jurisdiction of the State of Utah. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, this Agreement is governed by the laws of that country, and any action at law may only be brought before a court of competent jurisdiction of that country.

**Entire Agreement.** This Agreement sets forth the entire understanding and agreement between You and Novell and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Novell. NO 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.** 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 www.bis.doc.gov before exporting Novell products from the U.S. Please refer to <a href="http://www.novell.com/company/legal/">http://www.novell.com/company/legal/</a> for more information on exporting Novell software. Upon request, Novell will provide You specific information regarding applicable restrictions. However, Novell assumes no responsibility for Your failure to obtain any necessary export approvals.

<u>U.S. Government Restricted Rights.</u> Use, duplication, or disclosure by the U.S. Government is subject to the restrictions in FAR 52.227-14 (June 1987) Alternate III (June 1987), FAR 52.227-19 (June 1987), or DFARS 252.227-7013 (b) (3) (Nov 1995), or applicable successor clauses. Contractor/Manufacturer is Novell, Inc., 1800 South Novell Place, Provo, Utah 84606.

Other. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

© 2012 Novell, Inc. All Rights Reserved. (080712)

Novell is a registered trademark and Novell Professional Resource Suite is a trademark of Novell, Inc. in the United States and other countries.

Product Purchased	License for Evaluation Software	License Description
Novell Software Evaluation and Development Library Standard	Standard	2 servers x 5 users
Novell Software Evaluation and Development Library Expanded	Expanded	2 servers x 100 users
Novell Professional Resource Suite Standard	Expanded	2 servers x 100 users
Novell Professional Resource Suite Electronic	Expanded	2 servers x 100 users
Novell Professional Resource Suite - Portal Advantage	Expanded	2 servers x 100 users
Novell Tech Select Service	Expanded	2 servers x 100 users