

Novell® Cloud Manager

Novell Software License Agreement

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 product identified in the title of this Agreement, 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 that is not accompanied by a license agreement expressly superseding this 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.

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.

LICENSED USE

Commercial Software.

“Operating System” means software that controls the operation of a computer and directs the processing of programs (as by assigning storage space in memory and controlling input and output functions). An Operating System may be installed either directly on a computer system or within a virtual machine. For example, a virtual machine server that hosts four virtual machines represents five Operating Systems.

“Workload” means a unit of software that may be (a) installed and can run on a physical computer that has no Operating System software loaded onto it, or (b) installed and can run in a specialized operating environment, typically understood as a virtual operating environment, that allows the Operating System to run as an independent computer in the presence of other such independent computers, known as virtual machines. This includes any encapsulated form of such unit of software. A Workload contains the Operating System files necessary to “boot up” a standard computer and run the associated applications and data.

LICENSED USE

Commercial Software.

Provided You comply with all terms and conditions of this Agreement, Novell grants You a non-exclusive, non-transferable license, without the right to sublicense, to internally use the Software in accordance with the Software License Key associated with the Software and in accordance with the terms specified in this Agreement.

Workload License.

You must acquire a license for each Workload managed or provisioned by the Novell Cloud Manager Software. You may assign the license to a specific Workload (an “Assigned Workload”), whatever form such Workload takes; provided however that once assigned, the Workload license applies only to the Assigned Workload until such Assigned Workload is permanently disabled or decommissioned (which would include discarding the computer or deleting and disassembling all the components that constitute the Assigned Workload) after which the Workload license can be re-assigned to another Workload. You are permitted to re-assign (or Workload transfer) any or all of the Workload licenses You have purchased provided that the Assigned Workload is permanently disabled or decommissioned. In no circumstance other than as described above may You assign a Workload license to a Workload and then temporarily reassign it to another Workload (such as a Workload migration).

Your use of the PlateSpin Orchestrate technology included with the Software is limited solely to use in connection with Your licensed use of Novell Cloud Manager. You are not authorized to use PlateSpin Orchestrate other than solely in support of Workload provisioning provided through the Novell Cloud Manager Software.

Evaluation Software. If the Software is an evaluation version or is provided to You for evaluation purposes, then Your license to use the Software is limited solely to internal evaluation purposes and in accordance with the terms of the evaluation offering under which You received the Software and expires 90 days from installation (or such other period as may be indicated within the Software). Upon expiration of the evaluation period, You must discontinue use of the Software, return to an original state any actions performed by 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.

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.

Suite Licenses. 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.

Upgrade Protection. If You purchased upgrade protection or maintenance under a Novell program for this Software, the upgrade protection or maintenance only entitles You to upgrades of the Software as a whole and does not entitle You to upgrades of any component programs or products bundled with the Software or any individual products included in a suite if the Software is licensed as a suite of products. You may separately purchase upgrade protection for individual components of the Software if permitted by the applicable Novell policies and programs.

Upgrade Software. This section applies to You if You have purchased the Software based upon upgrade pricing. "Original Product" means the product from which You are upgrading. You are authorized to use the Software only if You are the authorized user of the Original Product and You meet the following conditions: (1) You have acquired the right to use the Software solely to replace the Original Product that You acquired legally and that is qualified to be upgraded with the Software under the Novell policies existing at the time You acquired the Software; (2) You installed and used the Original Product in accordance with the terms and conditions of the applicable license agreement; and (3) You will not sell or otherwise transfer possession of the Original Product.

Support. 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 <http://www.novell.com/support>.

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.

LIMITED WARRANTY

For ninety (90) days from Your date of purchase, Novell warrants that (1) any media on which the Software is delivered is free from physical defects; and (2) the Software will substantially conform to the documentation accompanying the Software. If the defective items are returned to Novell or if You report the nonconformity to Novell within ninety (90) days from the date of purchase, Novell will at its sole discretion either resolve the nonconformity or refund the license fees You paid for the Software. Any unauthorized use or modification to the Software voids this warranty. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. (The foregoing warranty does not apply to Software provided free of charge. SUCH SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.)

Services. Novell 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 ninety (90) days following delivery of the Services. Upon any breach of this warranty, Novell'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 Novell for the portion of the Services that fail to comply with this warranty. As files may be altered or damaged in the course of Novell providing technical services, 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.

THE SOFTWARE IS ONLY COMPATIBLE WITH CERTAIN COMPUTERS AND OPERATING SYSTEMS. THE SOFTWARE IS NOT WARRANTED FOR NON-COMPATIBLE SYSTEMS. Call Novell or Your reseller for information about compatibility.

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.

EXCEPT AS OTHERWISE RESTRICTED BY LAW, NOVELL DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. NOVELL MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. NOVELL DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED. 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 NOVELL NOR ANY OF ITS LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR 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.

Direct Damages. IN NO EVENT WILL NOVELL'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. 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.

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. If the Software is provided to You on a subscription basis, then Your right to possess or use the Software will terminate at the end of the applicable subscription period. Upon termination of this Agreement or any applicable subscription period, You must destroy the original and all copies of the Software or return them to Novell and delete the Software from Your systems.

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 <http://www.novell.com/company/legal/> 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.S. Government Restricted Rights. 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.

© 1993, 2000-2010 Novell, Inc. All Rights Reserved.
(071410)

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