

ZENworks® for Servers 3 Novell® Software License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. BY INSTALLING 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. 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"). However, if You obtained the Software in Europe, the Middle-East or Africa, any license under this Agreement is granted to You by, or on behalf of, Novell Ireland Software Limited. The software product identified in the title of this Agreement, media (if any) 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 You do not agree with the terms of this Agreement, do not download, install or otherwise use the Software and, if applicable, return the entire unused package to the reseller with Your receipt for a refund. The Software is licensed to You, not sold.

The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a vendor 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. Novell is not responsible for any third party's software and shall have no liability for Your use of third party software.

LICENSED USE

Commercial Software.

"Server Software" means the components of the Software that operate on a central processing unit (CPU), or group of CPUs, and that provide access to shared resources.

"Client Software" means the components of the Software that permit access to Server Software from another device.

"User" means a user object in a single directory tree (or other class of object that contains data representing a person, such as objects containing credit card information or PIN numbers) that has (a) access or use rights to any portion of the Software, or (b) access or use rights to products (devices, hardware, or software) being managed by the Software, regardless of whether the user object is assigned to a person or device. User objects (or other classes of objects) representing the same person that are linked to each other within a single tree and/or linked across multiple trees count as only one User.

LICENSE. One of the following licenses applies depending on whether You have purchased licenses to the Software on a Server basis or on a User basis. Use of any software programs accompanied by a separate license agreement shall be governed by that separate license agreement.

User License

If You have purchased licenses to the ZENworks for Servers 3.0 Software on a User basis, then You must acquire a User license for each User. Each person who accesses or uses the ZENworks for Servers 3.0 Software must have at least one User uniquely assigned to that person and access the ZENworks for Servers 3.0 Software through that User. Provided that You comply with the above requirements, You are authorized to use an unlimited number of copies of the ZENworks for Servers 3.0 Software.

Server License

If You have purchased licenses to the ZENworks for Servers 3.0 Software on a Server basis, then You must acquire a Server license for each installation of the ZENworks for Servers 3.0 Software and for each additional copy (or partial copy) of the ZENworks for Servers 3.0 Software stored or loaded in memory or virtual memory beyond the initial copy necessary for execution of the ZENworks for Servers 3.0 Software installed on the hardware. All installations must be within the same directory tree. Provided that You comply with the above requirements, You are authorized to use an unlimited number of copies of the Client Software, if any, to connect to the Server 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 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 indicated by the Software) and the Software may cease to function. Unless otherwise authorized by Novell, Your license to install and use the Software is limited to the greater of (1) one copy of the Software, or (2) the smallest stratification in which Novell sells licenses for the Software. 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. You may not: (1) increase, by any means whatsoever, the number of connections supported by the Software and licensed to You or support more than one connection or user through a single

connection; (2) reverse engineer, decompile, or disassemble the Software except and only to the extent it is expressly permitted by applicable law; (3) modify, alter, rent, timeshare or lease the Software or sublicense any of Your rights under this Agreement; or (4) transfer the Software or Your license rights under this Agreement, in whole or in part.

Suite Licenses. If Your license to use the Software is for a suite of products, then only one user may use all products in the suite (unless otherwise indicated by the Software). The suite license does not allow use of individual products in the suite by multiple users.

Upgrade License. This section applies to You if the Software is an upgrade version or is provided to You as an upgrade. "Original Product" means the product from which You are upgrading. You are authorized to use the Software only if You are the sole and original, 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 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; (3) At the time You acquired the Original Product, You acquired a complete and authentic copy of the Original Product, including all disks and manuals, and not simply a master or license disk; (4) You have not acquired the Original Product as scrap or through a second hand purchase from a dealer, distributor or another end user; (5) You will permanently discontinue use of the Original Product within sixty (60) days of installation of the Software; and (6) You will not sell or otherwise transfer possession of the Original Product.

Additive License. This section applies to You if You are acquiring the Software to add additional users or servers to a previously acquired product (referred to below as the "Base Product"). You are authorized to use the Software only if You are the sole and original, authorized user of the Base Product and You meet the following conditions: (1) You have acquired the right to use this Software solely to add additional users or servers to the Base Product that You acquired legally; (2) At the time You acquired the Base Product, You acquired a complete and authentic copy of the Base Product, including all disks and manuals, and not simply a master or license disk; and (3) You have not acquired the Base Product as scrap or through a second hand purchase from a dealer, distributor or another end user.

Commercial Public Service Restriction. The Software is licensed for Your internal use only. If You are a provider of internet services, remote or hosted management services or information technology outsourcing services, this Agreement does not permit You to use the Software for providing such services. If You would like to use the Software for any such purposes, You must obtain a separate license from Novell. For more information, see <http://www.novell.com/internet>.

Support. Novell has no obligation to provide support for the Software. For more information on Novell's current support offerings, see <http://support.novell.com>.

OWNERSHIP RIGHTS

No title to or ownership of the Software is transferred to You. Novell and/or its licensors owns and retains all title and ownership of all intellectual property rights in the Software, including any adaptations or copies. You acquire only a 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 misuse or unauthorized modification of 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.)

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 dealer for information about compatibility.

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

EXCEPT AS OTHERWISE RESTRICTED BY LAW, NOVELL DISCLAIMS AND EXCLUDES 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 THIS LIMITED WARRANTY. NOVELL DOES NOT WARRANT THAT THE SOFTWARE WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE 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 from state to state.

LIMITATION OF LIABILITY

(a) 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, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

(b) 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 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. Upon termination of this Agreement, You must destroy the original and all copies of the Software or return them to Novell and delete the Software from Your systems.

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 and the Upgrade/Additive Agreement (if applicable) sets forth the entire understanding and agreement between You and Novell and may be amended only in a writing signed by both parties. NO VENDOR, 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. You agree to comply with any international and national laws that apply to the Software and other Confidential Information, including the United States of America Export Administration Regulations, as well as any end-user and country-destination restrictions issued by the U.S. and other governments. Please refer to Export Matrix for Novell Products for more information on exporting the Software. You can download a copy from the following web site: <http://www.novell.com/info/exports/matrix.html> or You can obtain a copy from Your local Novell office.

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, 2000-2002 Novell, Inc. All Rights Reserved.

Novell and ZENworks are registered trademarks of Novell, Inc. in the United States and other countries.