

Equipment Donation Agreement

This is a formal Agreement ("Agreement") effective as of _____ ("Effective Date") between _____, a _____ company with an address at _____ ("Company"), and SUSE Linux GmbH, a german company, with an address at Maxfeldstraße 5, 90409, Nuremberg, Germany (hereinafter referred to as "SUSE"), (each known as "party" or collectively "parties"), to whom the Company property, itemized from time to time on a copy of the attached Schedule A ("Equipment"), is donated for the purpose of maintaining and deploying the Equipment solely for the benefit of the openSUSE community ("Purpose").

Under this Agreement, the parties agree to the following:

1. The parties acknowledge and agree that the Equipment shall be deployed at SUSE's premises solely for the benefit of the openSUSE community. SUSE shall not deploy the Equipment productively for its own benefit. SUSE may provide, at its own cost, services on or for the Equipment including without limitation electricity, network and server administration.
2. As consideration for Company's donating of the Equipment to SUSE for the benefit of the openSUSE community, for the term of this Agreement, Company shall be entitled to the publicity and/or marketing benefits which are detailed in writing at https://en.opensuse.org/images/8/8c/Sponsoring_for_opensuse.pdf. For the avoidance of doubt, such publicity and/or marketing benefits are provided by the openSUSE community and not by SUSE.
3. All donated Company equipment, accompanying software, documentation and peripherals shall become the property of SUSE, to be held solely for the benefit of the openSUSE community.
4. When Company desires to donate Equipment under this Agreement, Company shall list such Equipment in a copy of Schedule A. Company shall state on such copy of Schedule A the date on which the donation shall occur.
5. Company shall ship the hardware, at Company's cost and adequately insured, to the address provided in writing by SUSE. Upon SUSE's written confirmation to Company that the Equipment received is in good working order, SUSE assumes ownership of the Equipment. For Equipment which is deemed by SUSE to be not in good working order, ownership shall not be deemed to have transferred to SUSE and Company shall, at its option, repair the Equipment at SUSE's premises, arrange with SUSE to have the Equipment returned to Company, at Company's expense or arrange with SUSE to have the Equipment destroyed, at Company's expense. For the purposes of this Section 5, the parties agree that notice of good working order and/or directions on how to proceed in the event that Equipment is not in good working order may be provided by either party by email, provided that receipt of such email is provided by the recipient party.
6. The parties agree that this Equipment is provided to SUSE without warranty.
7. COMPANY GRANTS NO OTHER CONDITIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, ON ANY EQUIPMENT OR OTHER SERVICES PERFORMED, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF COMPANY.
8. COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE, OR USE OF THE EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTUOUS CONDUCT.

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NO OBLIGATION OR LIABILITY SHALL ARISE OR FOLLOW OUT OF COMPANY RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH THE EQUIPMENT OR SERVICES.

9. This Agreement shall be governed by the laws of the Federal Republic of Germany, without regard to any conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement, the exclusive jurisdiction of such action shall be in the courts of Nuremberg, Germany. The prevailing party in any action to enforce the terms of this Agreement entered into hereunder is entitled to recover its costs and expenses, including reasonable attorney's fees, incurred in connection therewith, in addition to any other relief to which such party is entitled. Each party shall comply, at its own expense, with any governmental law, statute, ordinance, administrative order, rule, or regulation relating to its duties, obligations, or performance under this Agreement.
10. Neither party may transfer or assign any right or obligation set forth in this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. Such consent is not required, however, for transfer or assignment to an entity acquiring control of a party hereto or of substantially all the assets relating to this Agreement. Assignments not in accordance with this provision are null and void.
11. It may be the intention of the parties to transfer or exchange information, including confidential information, as may be necessary under this Agreement. As used in this Agreement, a "Discloser" is a disclosing party, and a "Recipient" is a receiving party.
 - i. Confidential Information. A Discloser may disclose confidential information in oral, visual, or written form (including magnetic, optical, or other media). A Recipient's obligations only extend to Source Code and to confidential information that is marked as confidential at the time of disclosure or that is unmarked (e.g., orally disclosed) but is treated as confidential at the time of disclosure. The terms and conditions of this Agreement are confidential information. A Recipient shall protect disclosed confidential information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the disclosed confidential information as the Recipient uses to protect its own confidential information of a like nature. A Recipient may divulge disclosed confidential information to the extent required by law but only after reasonable notice to the Discloser so the Discloser may attempt to prevent such divulging or otherwise protect the confidential information.
 - ii. Expiration of Duty. A Recipient's duty to hold confidential information in confidence expires three (3) years after its receipt or development (whichever is later). Expiration of the duty of confidentiality does not modify other restrictions on a Recipient including, for example, any restrictions on distribution of Source Code arising out of a copyright license.

Exceptions. This Agreement imposes no obligation upon a Recipient with respect to information that: (a) is in the Recipient's possession before its receipt from a Discloser; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is independently developed by the Recipient; or (e) is disclosed by the Recipient with the Discloser's prior written approval.
12. This Agreement commences on the Effective Date and continues until terminated by either party by providing sixty (60) days written notice to the other party. Either party can terminate this Agreement immediately upon material breach of the Agreement's terms by the other party, provided however, that the purportedly breaching party shall have twenty (20) days in which to cure the purported breach. Upon termination of this Agreement no further Equipment donations may occur.
13. This Agreement may be executed in two or more counterparts, each of which when so executed will be an original, and all of which together constitutes the same instrument.

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14. This Agreement sets forth the entire agreement and understanding between the parties, and merges all prior discussions between them, concerning its subject matter. Neither party is bound by any conditions, definitions, warranties, understandings, agreements, or representations, whether written or oral, with respect to such subject matter other than as expressly provided in this Agreement, or as set forth on or subsequent to its Effective Date in a written document signed by an authorized representative of each party. Nothing in this Agreement supersedes, modifies, or alters the free/open source licenses under which Support Software is licensed.
15. 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. Upon request, SUSE will provide specific information regarding applicable restrictions. However, SUSE is not responsible for Company's failure to obtain any necessary export approvals. Each party will reasonably cooperate with the other party in obtaining export licenses or approvals.
16. A party is not liable for damages or subject to termination of this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond the control of such party. Such conditions may include, for example, acts of God, government restrictions, continuing domestic or international problems such as wars or insurrections, strikes, fires, floods, work stoppages, and embargoes.
17. Unless otherwise agreed by the parties, all breach or termination-related notices required or permitted to be given under this Agreement shall be in writing and addressed and delivered either (i) in person, (ii) by certified mail return-receipt requested; or (iii) by commercial overnight courier providing a receipt. Such notice shall be sent to the addresses set forth below, or to any other address either party may from time to time specify in writing to the other party pursuant to this present section. All other notices may be sent by email or facsimile.

If to SUSE:

SUSE Linux GmbH
 Attn: Legal Counsel
 Maxfeldstraße 5
 90409, Nuremberg
 Germany

If to Company:

18. No party has the right to issue media releases, public announcements or public disclosures relating to the existence of or the terms of this Agreement or use the other party's name or trademark in any promotional or marketing material (other than as required by legal, accounting or regulatory requirements) without the other party's express prior written consent.
19. If a court of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, or unenforceable, it is the intent of the parties that the remaining provisions remain in full force and effect and that the court interpret the remaining provisions to achieve the purposes of this Agreement as originally expressed. It is the further intent of the parties that the invalid, illegal, or unenforceable provision be replaced with a provision that most closely approximates the intent and economic effect of the replaced provision.
20. Each party warrants that it, its officers, employees, agents and sub-contractors:
 - (a) Do not represent the other party or other party's interests, save as set forth in this Agreement;
 - (b) Do not have or maintain any illegal or corrupt connections with the other party or any servant or agent of the other party; and

(c) Do not have or maintain any illegal or corrupt connections with any customer, government, government agency or public body of any country or any servant or agent thereof, in particular, but without limitation, any government official, government minister, candidate for political office or military or police officer.

21. Each party shall exercise commercially reasonable diligence to guard against conflicts of interest with respect to the other party among its officers, employees, agents or sub-contractors. In the event that a party becomes aware that any conflict of interest involving its officers, employees, agents or sub-contractors is reasonably likely to involve the other party, that party shall take prompt corrective action and advise the other party of the conflict and the corrective action taken.
22. Neither party 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 the business of the other party ("the Anti-Corruption Obligation"). Each party shall reasonably disclose in writing to the other party details of any breach or alleged breach of the Anti-Corruption Obligation. Either party may terminate this Agreement immediately upon written notice to the other party in the event of a breach of the Anti-Corruption Obligation.

SUSE Linux GmbH

Name:
Title:
Date:
Signature:

Company

Name:
Title:
Date:
Signature:

Schedule A

Equipment donated by Company to SUSE solely for the benefit of the openSUSE community

For each Equipment donation, Company shall complete a copy of this Schedule A. Pursuant to the terms and conditions of the Agreement, Company shall provide to SUSE the Equipment listed in the table "Donated Equipment". Unless otherwise agreed in writing between the parties, the Equipment shall be delivered to the following address:

SUSE Linux GmbH
Maxfeldstraße 5
90409 Nuremberg
Germany

Donated Equipment		
Item ID	Number of Items	Item Description