

## Novell® Vibe 4.0.1 Novell End User 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, YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SOFTWARE TO OBTAIN A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED EXCEPT AS AUTHORIZED BY LICENSOR.**

This End User License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and Novell, Inc. ("Licensor"). The software product identified in the title of this Agreement 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. If the laws of Your country of origin require contracts to be in the local language to be enforceable, such local language version may be obtained from Licensor upon written request and shall be deemed to govern Your purchase of licenses to the Software. Any update, mobile application, module or adapter or support release to the Software that You may download or receive that is not accompanied by a license 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.

### LICENSED USE

#### Commercial Software.

Novell Vibe may only be used for the purposes of Your business operations. Hosting Novell Vibe for the use by third parties for their own purposes is prohibited under this Agreement.

You must acquire a license for each object in the Novell Vibe database. A unique object may be duplicated in any of Your Novell Vibe deployments without the requirement of multiple licenses for that unique object. You are not required to have a license for an object in the Novell Vibe database that is an External User. An "External User" is an object that does not represent an employee and must be configured in the Novell Vibe database as an External User in order to not require a license. When using LDAP to import an External User, it must be designated as an External User in the import as well as in the Novell Vibe database.

Mobile Apps. Subject to the terms and conditions of this Agreement, Novell grants You a non-exclusive, non-transferable right to reproduce and internally use the Novell Vibe mobile apps in connection with Your licensed use of Novell Vibe 3.4 (or subsequent version) or Your use of the Kablink™ Open Collaboration Platform (subject to compliance with the open source licenses applicable to Kablink). You may not redistribute the Software.

Third Party Components. Additional terms applicable to Your use of the Software are found in the appendix attached hereto.

**Notice Regarding Collection of Telemetry Data.** The Software may be enabled by You at your option to collect and send to Licensor weekly updates about your product deployment and usage on an anonymous basis for purposes of product improvement. You may select and view the information collected through the Product Improvement dialog box. By entering into this Agreement, You expressly consent to the collection of this data in the manner You select. In addition, You may optionally provide Your express consent when utilizing the Software to associate Your identifying information with the data collection, which may enable Licensor to offer suggested improvements to Your specific usage of the Software.

**Evaluation Software.** If the Software is an evaluation version or is provided to You for evaluation purposes, then, unless otherwise approved in writing by an authorized representative of Licensor, Your license to use the Software is limited solely for internal evaluation purposes in non-production use and in accordance with the terms of the evaluation offering under which You received the Software, and expires 60 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 and You may not download the Software again unless approved in writing by an authorized representative of Licensor. The Software may contain an automatic disabling mechanism that prevents its use after a certain period of time.

### RESTRICTIONS

License Restrictions. Licensor reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. Except as this Agreement expressly allows, You may not (1) copy (except for back-up purposes), modify, alter, create derivative works, reverse engineer, decompile, or disassemble the Software except and only to the extent expressly permitted by applicable law; (2) transfer, assign, pledge, rent, timeshare, host or lease the Software, or sublicense any of Your license grants or rights under this Agreement; in whole or in part, without prior written permission of Licensor; (3) remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or its documentation; or (4) disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Licensor.

Hosting Restrictions. In the event that You desire to have a third party manage, host (either remotely or virtually) or use the Software on Your behalf, You shall (1) first enter into a valid and binding agreement with such third party that contains terms and conditions to

protect Licensor's rights in the Software that are no less prohibitive and/or restrictive than those contained in this Agreement, including, without limitation, the Verification section below; (2) prohibit use by such third party except for the sole benefit of You; and (3) be solely responsible to Licensor for any and all breaches of the above terms and conditions by such third party.

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 Software. This section applies to You if You have purchased the Software based upon upgrade pricing or otherwise received an upgrade or update to the Software. "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 may use the Software to replace Your licensed unit count of the Original Product on a one-for-one basis, not exceeding the authorized licensed unit count for the Original Software. This Agreement shall replace and govern any license agreement for the surviving units of Original Product. This Agreement is specific to the Software (by product and version) that it accompanies, and You may not re-allocate Your Software licensed unit count to another product or version except under express written permission from Licensor.

Maintenance and Support. Licensor 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 Licensor's current support offerings, see <http://www.novell.com/support>.

## **OWNERSHIP**

No title to or ownership of the Software is transferred to You. Licensor and/or its third party 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. The Software is not sold to You, You acquire only a conditional license to use the Software. Title, ownership rights and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives You no rights to such content.

## **LIMITED WARRANTY**

For ninety (90) days from Your date of purchase, Licensor warrants that the Software will substantially conform to its accompanying documentation. If You report the nonconformity to Licensor within ninety (90) days from the date of purchase, Licensor 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. Licensor 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 thirty (30) days following delivery of the Services. Upon any breach of this warranty, Licensor'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 Licensor for the portion of the Services that fail to comply with this warranty. 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.

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

EXCEPT AS OTHERWISE RESTRICTED BY LAW, LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. LICENSOR MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS, BE COMPATIBLE WITH ALL OPERATING SYSTEMS, OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. 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 LICENSOR NOR ANY OF ITS THIRD PARTY LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

**Direct Damages.** IN NO EVENT WILL LICENSOR'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 caused by the negligence of Licensor or its employees, agents or contractors. In those jurisdictions that do not allow the exclusion or limitation of damages, including, without limitation, damages for breach of any implied terms as to title or quiet enjoyment of any Software obtained pursuant to this Agreement or for fraudulent misrepresentation, Licensor'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 Licensor and delete the Software from Your systems.

**Verification.** Licensor has the right to verify Your compliance with this Agreement. You agree to: (1) Implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the Software; (2) Keep records sufficient to certify Your compliance with this Agreement (including its Product Use Rights Appendix, if any), and, upon request of Licensor, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your licensing and deployment of the Software; and (3) Allow a Licensor representative or an independent auditor ("Auditor") to inspect and audit Your, or Your contractor's, computers and records, during Your normal business hours, for compliance with the licensing terms for Licensor's software products. Upon Licensor's and Auditor's presentation of their signed written confidentiality statement form to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that You have or at any time have had unlicensed installation, use of, or access to the Software, You will, within 30 days, purchase sufficient licenses and associated maintenance to cover the volume and time period of any shortfall without benefit of any otherwise applicable discount. If a material license shortfall of 5% or more is found, You must reimburse Licensor for the costs incurred in the audit.

**Third Party Software/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. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a licensor other than Licensor. 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.

**Transfer.** This Agreement and the associated licenses purchased for use of the Software may not be transferred or assigned without the prior written approval of Licensor. Any such attempted transfer or assignment shall be void and of no effect. Please contact [CRC@novell.com](mailto:CRC@novell.com) to request the transfer of licenses and assignment of this Agreement.

**Law.** All matters arising out of or relating to the Agreement will be governed by the substantive laws of the United States and the State of Utah without regard to its choice of law provisions. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a federal or state court of appropriate jurisdiction in Utah. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys' fees. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, (1) the courts of Ireland shall have exclusive jurisdiction over any action of law relating to this Agreement; and (2) where the laws of such country of principal residence are required to be applied to any such action of law the laws of that country shall apply. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

**Entire Agreement.** This Agreement, together with any other purchase documents or other agreement between You and Licensor, sets forth the entire understanding and agreement between You and Licensor and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Licensor. 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.** You acknowledge that Licensor's products and/or technology are subject to the U.S. Export Administration Regulations (the "EAR") and You agree to comply with the EAR. You will not export or re-export Licensor's products, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who You know or have reason to know will utilize Licensor's products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. By downloading or using the Software, You are agreeing to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction

which may impact Your right to import, export or use Licensor's products. Please consult the Bureau of Industry and Security web page [www.bis.doc.gov](http://www.bis.doc.gov) before exporting items subject to the EAR. For more information on exporting Software, including the applicable Export Control Classification Number (ECCN) and associated license exception (as applicable), see [www.Novell.com/info/exports/](http://www.Novell.com/info/exports/). Upon request, Licensor's International Trade Services Department can provide information regarding applicable export restrictions for Licensor products. Licensor assumes no responsibility for Your failure to obtain any necessary export approvals.

U.S. Government Restricted Rights. Use, duplication, or disclosure of any Deliverables by the U.S. Government is subject to the restrictions in FAR 52.227-14 (Dec 2007) Alternate III (Dec 2007), FAR 52.227-19 (Dec 2007), or DFARS 252.227-7013(b)(3) (Nov 1995), or applicable successor clauses.

(120315)

\*\*\*\*\*

## APPENDIX

### THIRD PARTY COMPONENTS

#### ORACLE:

The Software contains viewer software licensed by Novell from Oracle America, Inc. ("Oracle"). For purposes of this addendum, the term "program" refers to the Oracle viewer software and related Oracle components. Oracle requires that You agree to the following terms regarding use of the program.

#### Terms of Use

- 1) Your use of the program is restricted to the scope of the Software and to Your internal business operations. You may permit Your agents, contractors, outsourcers and non-employee users to use the program on Your behalf for Your internal business operations, subject to the terms of the end user license agreement and provided that You are responsible for their use of the Software and compliance with the end user license agreement. Physical control and administrative control of the programs must remain with the legal entity that executed the end user license agreement.
- 2) You are prohibited from (a) transferring the program except for temporary transfer in the event of computer malfunction if the Software embeds the program in a physical device; (b) assigning, giving, or transferring the program or an interest in them to another individual or entity (and if You grant a security interest in the programs, the secured party has no right to use or transfer the programs).
- 3) Oracle or its licensor retains all ownership and intellectual property rights to the program.
- 4) You are prohibited from: (a) use of the program for rental, timesharing, subscription service, hosting, or outsourcing; (b) the removal or modification of any program markings or any notice of Oracle's or its licensors' proprietary rights; (c) making the programs available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license); (d) reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs); and (e) publication of any results of benchmark tests run on the programs.
- 5) You are required to comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the programs, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws. The Software of the Uniform Computer Information Transactions Act is excluded.
- 6) You are hereby notified that the programs are subject to this restricted license and can only be used in conjunction with the Software. You are not permitted to modify the programs. At the termination of the end user license agreement, You will discontinue use and destroy all copies of the program and documentation.
- 7) You agree to permit Novell to audit Your use of the programs and report the audit results to Oracle or allow Oracle to perform the audit at Your cost. You agree to designate Oracle as a third party beneficiary of the agreement with respect to the programs. You may not require Oracle to perform any obligations or incur any liability not previously agreed to between Novell and Oracle.
- 8) To the extent permitted by applicable law, Oracle disclaims liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the programs.
- 9) Some programs may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of the end user license agreement. Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the Software documentation or as otherwise notified. Such third party technology is licensed to You only for use with the program under the terms of the third party license agreement specified in the Software documentation or as otherwise notified and not under the terms of the end user license agreement.

(February 2013)

#### APPLE:

If You are using the Novell Vibe for iOS Software, the Software may contain intellectual property licensed from Apple. Apple requires that Novell include certain minimum terms in this Agreement. You hereby agree to and acknowledge the following terms in order to

use such Software (for purposes of this addendum, the term "Licensed Application" refers to the Novell Vibe application for iOS).

1. Acknowledgment: You acknowledge that this Agreement is concluded between You and Novell only, and not with Apple, and Novell, not Apple, is solely responsible for the Licensed Application and the content thereof. To the extent that this Agreement provides for usage rules for the Licensed Application that are less restrictive than the Usage Rules set forth for Licensed Applications in, or otherwise are in conflict with, the App Store Terms of Service, then those more restrictive terms in the App Store Terms of Service also apply.
2. Scope of License: Your license to use the Licensed Application is limited to a non-transferable license to use the Licensed Application on an iOS Product that You own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service.
3. Maintenance and Support: You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.
4. Warranty: In the event of any failure of the Licensed Application to conform to any applicable warranty, then pursuant to the refund provision in the Agreement, You may notify Apple, and Apple will refund the purchase price for the Licensed Application. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application.
5. Product Claims: You acknowledge that Apple is not responsible for addressing any claims relating to the Licensed Application or Your possession and/or use of that Licensed Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
6. Intellectual Property Rights: You acknowledge that, in the event of any third party claim that the Licensed Application or Your use of that Licensed Application infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.
7. Legal Compliance: You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.
8. Third Party Terms of Agreement: You must comply with applicable third party terms of agreements when using Your Application, e.g., if use VoIP, then You must not be in violation of Your wireless data service agreement when using the Licensed Application.
9. Third Party Beneficiary: Apple, and Apple's subsidiaries, are third party beneficiaries of the Agreement. Upon Your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement against You as a third party beneficiary thereof.