



NUTANIX END USER LICENSE AGREEMENT

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- **DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN “ACCEPT” BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE**
- **DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT**

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“*Authorized Nutanix System*” means either (i) a device that runs the Software and is branded as a Nutanix device; or (ii) a device that runs the Software and is branded with a third party’s brand pursuant to an original equipment manufacturing agreement between Nutanix and the third party; or (iii) a device (including its specific configuration) that has been authorized in writing by Nutanix to run the Software.

“*Documentation*” means Nutanix’s published user and administration manuals and other documentation for the Software that is furnished to You.



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“*Licensed Unit*” means the unit of measure by which Your use of Software is licensed, as described in Your Entitlement.

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- (c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
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- (f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
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- (i) unless specifically permitted in writing in an Entitlement, transfer the Software from an Authorized Nutanix System to another Authorized Nutanix System or to another device.

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- 6 Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. This Agreement automatically terminates if (a) You or any of Your employees or consultants fail to comply with its terms and conditions; or (b) You terminate or suspend Your business, become insolvent, admit in writing Your ability to pay Your debts as they mature, make an assignment for the benefit of creditors or become subject to any bankruptcy or insolvency proceeding. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if

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7 Warranty.

- 7.1 Nutanix warrants to You that the Purchased Software will substantially conform to the specifications in the Documentation for the ninety (90) day period from (i) the date of shipment of the Authorized Nutanix System to You or (ii) the date Nutanix first makes the initial version or release of the Purchased Software available to You, whichever is earlier. Nutanix does not warrant that the operation of the Purchased Software will be uninterrupted or error free, or that all defects can or will be corrected.
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10 Confidentiality. "*Confidential Information*" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain;

(c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

- 11 Technical Information.** You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.
- 12 Injunctive Relief.** You acknowledge and agree that Your breach or threatened breach of this Agreement shall cause Nutanix irreparable damage for which recovery of money damages would be inadequate and that Nutanix therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.
- 13 Compliance with Laws; Export Control.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria.

Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

- 14 Governing Law.** To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive laws of either: (a) the State of California, U.S.A. if You first took delivery of the Software in the United States, Mexico or Canada and You expressly and irrevocably agrees and submits to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California, U.S.A.; or (b) England if You first took delivery of the Software outside of the United States, Mexico or Canada, and You expressly and irrevocably agrees and submits to the exclusive jurisdiction of the English courts. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 15 Miscellaneous.** If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. Nutanix may assign this Agreement to any person or entity at its sole discretion. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). If You are found to have breached Section 2 or Section 10 of this Agreement, then Nutanix shall be awarded attorney fees, costs and expenses. This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".
- 16 User Outside the U.S.** If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

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