

MICROSOFT SOFTWARE LICENSE TERMS

MICROSOFT WINDOWS SERVER 2016 FOR EMBEDDED SYSTEMS STANDARD AND DATACENTER

These license terms are an agreement between you and:

- the server manufacturer that distributes the software with the server; or
- the software installer that distributes the software with the server.

Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Microsoft:

- updates,
- supplements,
- Internet-based services, and
- support services

for this software, unless other terms accompany those items. If so, those terms apply. If you obtain updates or supplements directly from Microsoft, then Microsoft, and not the manufacturer or installer, licenses those to you. Printed paper license terms, which may come with the software, take the place of any on-screen license terms.

By using the software, you accept these terms. If you do not accept them, do not use the software. Instead, contact the manufacturer or installer to determine its return policy for a refund or credit.

As described below, using some features also operates as your consent to automatic updates and the transmission of certain standard computer information for Internet-based services.

If you comply with these license terms, you have the rights below for each server license you acquire.

1. OVERVIEW

- a. **Software.** The software includes:
 - server software; and
 - additional software that may only be used with the server software.
- b. **License Model.** The license model differs based on which software edition you have acquired:

Windows Server for Embedded Systems Standard is licensed based on:

- the number of instances of server software that you run;
- the number of physical cores in the physical hardware;
- the number of devices and users that access instances of server software; and
- the server software functionality accessed.

Windows Server for Embedded Systems Datacenter is licensed based on:

- the number of physical cores in the physical hardware;
- the number of devices and users that access instances of server software; and
- the server software functionality accessed.

c. **Licensing Terminology**

- **Instance.** You create an "instance" of software by executing the software's setup or install procedure. You also create an instance of software by duplicating an existing instance. References to software in this agreement include "instances" of the software.
- **Run an Instance.** You "run an instance" of software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.
- **Operating System Environment.** An "operating system environment" is:
 - (i) all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and
 - (ii) instances of applications, if any, configured to run on the operating system instance or parts identified above.

There are two types of operating system environments: physical and virtual.

A physical operating system environment is configured to run directly on a physical hardware system. The operating system instance used to run hardware virtualization software (e.g., Microsoft Hyper-V Server or similar technologies) or to provide hardware virtualization services (e.g., Microsoft virtualization technologies) is considered part of the physical operating system environment.

A virtual operating system environment is configured to run on a virtual (or

otherwise emulated) hardware system.

A physical hardware system can have either or both of the following:

- (i) one physical operating system environment, and
- (ii) one or more virtual operating system environments.

- **Server.** A server is a physical hardware system or device capable of running server software. A hardware partition or blade is considered to be a separate physical hardware system.
- **Assigning a License.** To assign a license means to designate that license to one device or user.
- **Core License.** A core license is the license required to license one physical core within a server.
- **Physical Core.** A physical core is a core in a physical central processing unit (CPU). A physical CPU consists of one or more physical cores.
- **Hyper-V Container** is a feature of Windows Server that utilizes a virtual operating system environment. Each Hyper-V Container is considered to be one virtual operating system environment.
- **Windows Server Container** is a feature of Windows Server.
- **Web Workloads** (also referred to as "Internet Web Solutions") are publicly accessible and consist solely of web pages, websites, web applications, web services, and/or POP3 mail services. For clarity, access to content, information, and applications served by the software within an Internet Web Solution is not limited to your or your affiliates' employees.

You may use the software in Internet Web Solutions to run:

- web server software (for example, Microsoft Internet Information Services), and management or security agents (for example, the System Center Operations Manager agent).
- database engine software (for example, Microsoft SQL Server) solely to support Internet Web Solutions.
- the Domain Name System service to provide resolution of Internet names to IP addresses as long as that is not the sole function of that instance of the software.

Any other usage of the software is not considered to be a Web Workload.

- **High Performance Computing ("HPC") Workload** is a workload where the

server software is used to run a Cluster Node and is used in conjunction with other software as necessary to permit security, storage, performance enhancement, and systems management on a Cluster Node for the purpose of supporting the Clustered HPC Applications.

- **Clustered HPC Applications** is a common industry term for high performance computing applications that solve complex computational problems, or a set of closely related computational problems in parallel. Clustered HPC Applications divide a computationally complex problem into a set of jobs and tasks that are coordinated by a job scheduler, such as provided by Microsoft HPC Pack or similar HPC middleware that distributes these in parallel across one or more computers operating within an HPC cluster.
- **Cluster Node** is a device that is dedicated to running Clustered HPC Applications or providing job scheduling services for Clustered HPC Applications.

2. USE RIGHTS

- a. **Licensing a Server.** The manufacturer or installer has determined a certain number of server software licenses and assigned those licenses to the server with which the software was distributed. Under this agreement, you are granted the right to install and run a certain number of instances of the server software on a server. Before you run instances of the server software on the server, you must determine the number of required core licenses per server and assign those core licenses to that server as described below. You must ensure that you received the appropriate number of licenses with the server.

Certificate of Authenticity label(s) may be found affixed to the server and/or in the manufacturer's or installer's software packaging, which will indicate the total number of core licenses assigned to the server by the manufacturer or installer; additional core licenses may be included in the manufacturer's or installer's server packaging. You may need to acquire additional server software licenses to run your instances of the server software. Any additional licenses you acquire from the manufacturer or installer will be subject to these license terms. Licenses you acquire from other sources will be subject to the terms that accompany them.

- b. **Determining the Number of Licenses Required.** To license a server, all physical cores in the server must be licensed. Physical cores that are disabled for use by an operating system do not need to be licensed; this exemption does not reduce the minimum number of core licenses required as described in this section. Each server is required to be licensed with a minimum of 16 core licenses. Each physical processor is required to be licensed with a minimum of eight core licenses. If the number of physical cores in the server exceeds the minimum 16-core license requirement, you need additional core licenses to cover the additional physical cores.

- c. **Assigning the Required Number of Licenses to the Server.** The software license is permanently assigned to the server with which you acquired the software. That server is the licensed server for all of those licenses. You may not assign the same core licenses to more than one server. A hardware partition or blade is considered to be a separate server.

d. **Running Instances of the Server Software**

Windows Server for Embedded Systems Standard

- i. For each server to which you have assigned the required number of core licenses as provided in Section 2.b. you may run, at any one time:
 - one instance of the server software in one physical operating system environment,
 - up to two instances of the server software in virtual operating system environments (only one instance per virtual operating system environment), and
 - any number of operating system environments instantiated as Windows Server Containers.
- ii. If you run all permitted instances at the same time, the instance of the server software running in the physical operating system environment may be used only to:
 - run hardware virtualization software
 - provide hardware virtualization services
 - run software to manage and service operating system environments on the licensed server.
- iii. If you want to run additional instances of the server software as set forth in this Section 2.d.i and 2.d.ii, you need to re-license the server as described in Section 2.b.

Windows Server for Embedded Systems Datacenter

- i. For each server to which you have assigned the required number of core licenses as provided in Section 2.b. you may run, at any one time:
 - one instance of the server software in the physical operating system environment,
 - any number of instances of the server software in virtual operating system environments (only one instance per virtual operating system environment), and

- any number of operating system environments instantiated as Windows Server Containers.
- e. Server Repartitioning.** You may reassign licenses on a single piece of hardware sooner than permitted above, when you:
- reallocate physical processors from one licensed hardware partition to another;
 - create two or more partitions from one licensed hardware partition;
 - create one partition from two or more licensed hardware partitions
- as long as (i) prior to repartitioning, each hardware partition is fully licensed, and (ii) the total number of physical processors, physical cores and core licenses remains the same.
- f. Running Instances of the Additional Software.** You may run or otherwise use any number of instances of additional software listed on the website specified below in physical or virtual operating system environments on any number of devices. You may use additional software only with the server software. For a list of additional software, see (aka.ms/additionalsoftware).
- g. Creating and Storing Instances on Your Servers or Storage Media.** For each server license you acquire, you may create and store any number of instances of the software on any of your servers or storage media. This may be done solely to exercise your right to run instances of the software under any of your licenses as described in the applicable use rights (e.g., you may not distribute instances to third parties).
- h. Included Microsoft Programs.** The software contains other Microsoft programs. These license terms apply to your use of those programs.

3. ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS

- a. Specific Use.** The manufacturer designed this server for a specific use. You may only use the software for that use.
- b. CALs.** Windows Server 2016 Client Access Licenses (CALs) are not required with this special Cal-Less version of Windows Server 2016 at all.
- c. Multiplexing.** Hardware or software you use to:
- pool connections,
 - reroute information,
 - reduce the number of devices or users that directly access or use the software,
 - reduce the number of devices or users the software directly manages,

(sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses of any type that you need.

- d. **Font Components.** While the software is running, you may use its fonts to display and print content. You may only:
 - embed fonts in content as permitted by the embedding restrictions in the fonts; and
 - temporarily download them to a printer or other output device to print content.
 - e. **Icons, images, and sounds.** While the software is running, you may use but not share its icons, images, sounds, and media. The sample images, sounds, and media provided with the software are for your non-commercial use only.
 - f. **No Separation of Server Software.** You may not separate the server software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.
 - g. **Maximum Instances.** The software or your hardware may limit the number of instances of the server software that can run in physical or virtual operating system environments on the server.
 - h. **Additional Functionality.** Microsoft may provide additional functionality for the software. Other license terms and fees may apply.
 - i. **Nano Server Installation.** A valid Microsoft Volume Licensing Agreement with active Software Assurance coverage for Windows Server on the Licensed Server is required to deploy the Nano Server installation option.
4. **MANDATORY ACTIVATION.** Activation associates the use of the software with a specific device. During activation, the software may send information about the software and the device to Microsoft. This information includes the version, language, and product key of the software, the Internet protocol address of the device, and information derived from the hardware configuration of the device. For more information, see (aka.ms/mandatoryactivation). By using the software, you consent to the transmission of this information. If properly licensed, you have the right to use the version of the software installed during the installation process up to the time permitted for activation. **Unless the software is activated, you have no right to use the software after the time permitted for activation.** This is to prevent its unlicensed use. **You are not permitted to bypass or circumvent activation.** If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software. **The software may remind you to activate it until you do.**

5. VALIDATION

- a. The software will, from time to time, validate the software and update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software or to obtain additional benefits. For more information, see (aka.ms/genuine).
- b. During a validation check, the software will send information about the software and the device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see (aka.ms/genuineprivacy).
- c. If, after a validation check, the software is found not to be properly licensed, the functionality of the software may be affected. For example, you may:
 - need to reactivate the software, or
 - receive reminders to obtain a properly licensed copy of the software,or you may not be able to:
 - use or continue to use some of the features of the software, or
 - obtain certain updates or upgrades from Microsoft.
- d. You may only obtain updates or upgrades for the software from Microsoft or authorized sources.

6. **PRIVACY; INTERNET-BASED SERVICES.** Microsoft provides Internet-based services with the software. It may change or cancel them at any time.

- a. **Consent for Internet-Based Services.** Some of the software features send or receive information when using those features. In some cases, you will not receive a separate notice when they connect. You may switch off these features or you can choose not to use them. By accepting this agreement and using these features, you agree that Microsoft may collect, use, and disclose the information as described in the Privacy Statement (aka.ms/winserverprivacy), and as may be described in the user documentation associated with the software features (see aka.ms/winservertelemetry).

7. **DATA STORAGE TECHNOLOGY.** The server software may include data storage technology called Windows Internal Database. Components of the server software use this technology to store data. You may not otherwise use or access this technology under this agreement.

- 8. SCOPE OF LICENSE.** The software is licensed, not sold. This agreement only gives you some rights to use the software. The manufacturer or installer and Microsoft reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For more information, see the software documentation or contact the manufacturer. You may not:

- work around any technical limitations in the software;
- reverse engineer, decompile, or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- use the software's files and components within another operating system or application running on another operating system;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy;
- rent, lease, or lend the software; or
- use the software for commercial software hosting services.

Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

- 9. BACKUP COPY.** You may make one backup copy of the software media. You may use it only to create instances of the software.
- 10. NOT FOR RESALE SOFTWARE.** You may not sell software marked as "NFR" or "Not for Resale."
- 11. APPROVED ADDITIONAL TEXT IF EMBEDDED SYSTEM IS AUTHORIZED TO BE LEASED UNDER THE OEM LICENSE AGREEMENT:**

LEASED HARDWARE. If you lease the server from the manufacturer the following additional terms shall apply: (a) you may not transfer the software to another user as part of the transfer of the server, whether or not a permanent transfer of the software with the server is otherwise allowed in these license terms; (b) your rights to any software upgrades shall be determined by the lease you signed for the server; and (c) you may not use the software after your lease terminates, unless you purchase the server from the manufacturer.

- 12. DOWNGRADE.** Instead of creating, storing, and using the software, for each permitted instance, you may create, store, and use an earlier version of the same edition of the

software.

This agreement applies to your use of the earlier version of that earlier version of the software. For the avoidance of doubt, by electing this downgrade option: (i) you will not have the right to create, store, or use a greater number of instances of the software than are permitted under this agreement, and (ii) you will need to acquire licenses for all cores in the physical server in accordance with Section 2 of this agreement. If the earlier version includes different components not covered in this agreement, the terms that are associated with those components in the earlier version of these editions apply to your use of them. Neither the manufacturer or installer, nor Microsoft is obligated to supply earlier versions or other editions to you. At any time, you may replace an earlier version or edition with this version and edition of the software.

- 13. PROOF OF LICENSE.** If you acquired the software on the server, disc or other media, your proof of license is the genuine Certificate of Authenticity label that comes with the server. To be valid, this label must be affixed to the server or appear on the manufacturer's or installer's software packaging. Certificate of Authenticity labels for additional licenses will be affixed to packaging by the manufacturer or installer. If you receive the label in any other manner, it is invalid. You should keep the label on the server and retain packaging that has the label on it to prove that you are licensed to use the software. To identify genuine Microsoft software, see (aka.ms/genuine).
- 14. TRANSFER TO A THIRD PARTY.** You may transfer the software only with the licensed server, all Certificate of Authenticity label(s), any additional licenses originally included with the server, and this agreement directly to a third party. Before the transfer, that party must agree that this agreement applies to the transfer and use of the software. You may not retain any instances of the software unless you also retain another license for the software.

Nothing in this agreement prohibits the transfer of software to the extent allowed under applicable law if the distribution right has been exhausted.

- 15. NOTICE ABOUT THE H.264/AVC, MPEG-4 VISUAL STANDARDS, AND THE VC-1 VIDEO STANDARDS.** This software may include H.264/AVC, MPEG-4 and/or VC-1 decoding technology. MPEG LA, L.L.C. requires this notice:

THIS PRODUCT IS LICENSED UNDER THE H.264/AVC, THE MPEG-4 PART 2 AND THE VC-1 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE STANDARDS ("VIDEO STANDARDS") AND/OR (ii) DECODE AVC, MPEG-4 PART 2 AND VC-1 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C; see www.mpegla.com.

- 16. ADOBE FLASH PLAYER.** The software includes Adobe Flash Player that is licensed under

terms from Adobe Systems Incorporated at (aka.ms/adobeflash). Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

- 17. THIRD PARTY PROGRAMS.** The software may include third party programs that the manufacturer or installer, not the third party, licenses to you under this agreement. Notices, if any, for the third party programs are included for your information only.
- 18. EXPORT RESTRICTIONS.** The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. For additional information, see (aka.ms/exporting).
- 19. SUPPORT SERVICES.** Contact the manufacturer or installer for support options. Refer to the support number provided with the software. For updates and supplements obtained directly from Microsoft, Microsoft provides support as described at (aka.ms/mssupport).
- 20. RESTRICTED USE.** The Microsoft software was not designed for systems that require fault-tolerant performance. You may not use the Microsoft software in any device or system in which a failure or fault of any kind of the software could reasonably be seen to lead to death or serious bodily injury of any person, or to severe physical or environmental damage.
- 21. ENTIRE AGREEMENT.** This agreement (including the warranty below), and the terms for supplements, updates, and Internet-based services and support services that you use, are the entire agreement for the software and support services.
- 22. APPLICABLE LAW**
 - a. United States.** If you acquired the software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
 - b. Outside the United States.** If you acquired the software in any other country, the laws of that country apply.
- 23. LEGAL EFFECT.** This agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

Canada. You can choose to stop receiving updates by turning off the automatic update feature or Internet access. Refer to the product documentation to learn how to turn off updates for your specific device or software.

- 24. NO WARRANTIES FOR THE SOFTWARE.** The software is provided “as is”. You bear all risks of using it. Microsoft gives no express warranties, guarantees, or conditions. Any warranties you receive regarding the device or the software do not originate from, and are not binding on, Microsoft, or its affiliates. When allowed by your local laws, the manufacturer or installer and Microsoft exclude implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- 25. LIMITATION ON AND EXCLUSION OF DAMAGES.** Except for any refund the manufacturer or installer may provide, you cannot recover any other damages, including consequential, lost profits, special, indirect, or incidental damages.

This limitation applies to:

- anything related to the software, services, content (including code) on third-party Internet sites, or third-party programs; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if:

- repair, replacement, or a refund for the software does not fully compensate you for any losses; or
- the manufacturer or installer, or Microsoft knew or should have known about the possibility of the damages.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential, or other damages.

- 26. FOR AUSTRALIA ONLY.** Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Goods presented for repair may be replaced by refurbished goods of the same type rather than being replaced. Refurbished parts may be used to repair the goods.

For further information regarding this warranty and to claim expenses in relation to the warranty (if applicable), please contact the manufacturer or installer; see the contact information provided in the system packaging.