

# Marketplace Customer Agreement

for SUSE Subscription and Services Offerings

## 1. General

- 1.1 **Acceptance.** By accessing the benefits of a Subscription Offering, by clicking the relevant checkbox (or similar action) on the Marketplace or by executing or clicking to accept this document on [www.suse.com](http://www.suse.com), you (“**You**”) accept this agreement (“**Agreement**”) with the SUSE entity corresponding to your location as listed in Section 3 “**Contracting Entity**” hereto (“**SUSE**”). IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE COMPANY TO THIS AGREEMENT, AND THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR THE COMPANY DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT ACCEPT IT. If you are accepting this Agreement on behalf of your company, then the terms “**You**” and “**Your**” refer to your company whenever used below. If You have previously accepted a different version of this agreement, this Agreement supersedes that agreement.
- 1.2 **Purpose.** This Agreement concerns purchases of Subscription Offerings on the Marketplace(s) only. In order to purchase Subscription Offerings from a Marketplace under this Agreement, You must first have entered an agreement with the relevant Marketplace Operator permitting You to purchase Subscription Offerings on that Marketplace, such agreement being the “**Customer Marketplace Contract**”.
- 1.3 **Deployment Restrictions.**
- (a) **General.** Except as expressly specified on a Marketplace Offer or a Standard Listing, Subscription Offerings purchased from a Marketplace may be used in respect of SUSE Products deployed on that Marketplace Operator’s Cloud Infrastructure only. You must not: (a) attempt to purchase or use Subscription Offerings via any reseller of Subscription Offerings other than the Marketplace Operators under this Agreement; or (b) attempt to use Subscription Offerings purchased from one Marketplace Operator for SUSE Products deployed on a Cloud Infrastructure offered by a different Marketplace Operator.
  - (b) **Multi-Product Managers.** If You purchase a Subscription Offering for Rancher Prime, only the control pane of the multi-product manager must be deployed on the Cloud Infrastructure of the Marketplace Operator from which the Subscription Offering was purchased. The software that is managed by the multi-product manager may be deployed on any infrastructure. For example, if a Rancher Prime Subscription Offering is purchased from AWS, the Rancher Prime control pane must be deployed on AWS Cloud Infrastructure but the Kubernetes under management (including non-SUSE products) need not be deployed on AWS Cloud Infrastructure.
- 1.4 **Compliance.** You shall at all times remain in compliance with the Customer-Marketplace Contract(s). If a Marketplace Operator issues Customer with a notice of breach of the Customer-Marketplace Contract by Customer or termination of the Customer Marketplace Contract (each a “**Marketplace Notice**”), Customer shall immediately notify SUSE. SUSE may in the event of a Marketplace Notice to Customer, immediately suspend or terminate Customer’s rights to purchase additional Subscription Offerings from that Marketplace under this Agreement. Unless the facts giving rise to the Marketplace Notice are also grounds for termination of this Agreement, all Subscription Offerings purchased as at the effective date of termination shall remain in effect.
- 1.5 **Direct Transaction Structure.** By providing You with a Marketplace Offer or offering a Standard Listing on the Marketplace, SUSE offers to sell to You the SUSE Products specified in the Marketplace Offer, in the relevant Marketplace specified in the Marketplace Offer or in the Marketplace in which that Standard Listing is published, at the prices specified in the Marketplace Offer or Standard Listing (as applicable). You accept that offer and a purchase contract is formed when You click on the Marketplace to purchase that Marketplace Offer or Standard Listing. The pricing specified in a Marketplace Offer applies to purchases on that Marketplace only. The pricing specified in a Standard Listing applies to purchases on the Marketplace on which the Standard Listing is published only.
- 1.6 **Indirect Transaction Structure.** You may purchase Subscription Offerings from a reseller authorised by SUSE to resell Subscription Offerings on the Marketplace. If You purchase from a reseller, compliance with the terms of this Agreement will be a condition of Your purchase from the reseller. Your contract with the reseller will govern, as between You and the reseller, all invoicing, payment and taxes related to the Subscription Offerings.

1.7 **SaaS.** Schedule 1 (SaaS Terms) will apply to purchases of services offered on a ‘software as a service’ basis.

2. **Agreement Structure.** This Agreement incorporates the following components: (a) this Marketplace Customer Agreement, (b) the SUSE Subscription Terms, which includes the PSA; (c) the EULA; (d) the applicable Transaction Document, such as an order form or a Statement of Work (“**SOW**”) (including any applicable addenda for specific Services); and (e) any software-specific license(s) that accompany a SUSE Product. To the extent of any conflict or ambiguity between the terms and conditions of the Marketplace Customer Agreement, the SUSE Subscription Terms, a Transaction Document, and/or the EULA, the terms and conditions will be interpreted in the following order of precedence: (1) The SUSE Subscription Terms; (2) the Marketplace Customer Agreement; (3) the applicable Transaction Document; (4) the EULA; and (5) all other documents and policies applicable between the parties.

3. **Contracting Entity.**

3.1 **Contracting Entities.** You are entering this Agreement with the SUSE entity that corresponds to your location as listed in the following table:

Your Location	SUSE Entity
Americas (except Canada), Asia-Pacific (except India and Japan)	SUSE LLC
Europe, the Middle-East, Africa (EMEA)	SUSE Software Solutions Ireland Ltd

4. **Term and Ordering**

4.1 **Term of the Agreement.** This Agreement will begin on the Effective Date and will remain in effect until the later of: (a) one year after the Effective Date; and (b) the expiration of the last SUSE Offering purchased pursuant to this Marketplace Customer Agreement (“**Term**”), subject to earlier termination as stated below.

4.2 **Term of a SUSE Offering.** The term of each SUSE Offering, and your entitlement to the benefit of that SUSE Offerings shall: (i) commence on the date an order you placed for that SUSE Offering via the Marketplace is accepted on SUSE’s behalf by the Marketplace Operator (or if later, the date you make payment for that SUSE Offering to the Marketplace Operator), and expire at the end of the period specified for the duration of your SUSE Offering on the Marketplace at the time you place your order, unless the SUSE Offering is terminated earlier in accordance with the Agreement.

4.3 **Termination.** Either Party may terminate this Agreement (in whole or with respect to any active SUSE Offering) by written notice to the other party if: (a) the other party materially breaches this Agreement and does not cure the breach within thirty (30) days after written notice; or (b) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, SUSE may, at its option and without limiting its other remedies, suspend (rather than terminate) any SUSE Offering if You breach this Agreement until the breach is remedied.

4.4 **Effect of Termination.** The expiration or termination of the Agreement and/or the termination, expiration, or suspension of an individual SUSE Offering will not terminate or suspend any other SUSE Offering or the remainder of the Agreement, unless otherwise specified in the notice of termination or suspension, and the Agreement will continue to govern such unaffected SUSE Offering(s). If the Agreement is terminated in whole, all outstanding Transaction Documents and related SUSE Offerings will terminate. If this Agreement or any Transaction Document and related SUSE Offerings are terminated, You agree to pay for all items specified in the applicable Transaction Document that You used or deployed or that were provided by SUSE up to the date of termination. You shall remain liable for all applicable Fees for the SUSE Offerings stated in the applicable Transaction Document. If SUSE is in uncured material breach of this Agreement and you terminate for material breach pursuant to Section 4.3, SUSE will provide a pro-rata refund of any pre-paid Subscription Fees paid to SUSE in respect of the time period that follows the effective date of termination. In all other cases Subscription Fees are not refundable. Your right to continue to use any open source licenses will not be affected, including any Upgrades and Updates to which You were entitled under Subscription Offering benefits. Any provision of the

Agreement that expressly or by implication is intended to come into force or continue in force on or after expiration or termination of the Agreement shall survive and continue in full force and effect.

## 5. Ordering and Payment

5.1 **Ordering.** You must place an order for the appropriate number of SUSE Offerings through the Marketplace Operator. The Fees will be: (i) either the standard price specified by SUSE on the Marketplace Operator's Website or (ii) the price otherwise agreed between You and SUSE and displayed on the Marketplace at the time you place an order.

5.2 **Payment and Taxes.** You must make timely payment of the Fees for the SUSE Offerings to the Marketplace Operator in accordance with the instructions provided on the Marketplace, with any other written instructions provided by the Marketplace Operator or, in the case of a purchase through a reseller, in accordance with instructions provided by the reseller. The following specific rules apply for the following Marketplaces:

(a) **For AWS.** For countries listed in the 'Taxes', 'International Indirect Taxes' section on the AWS website as 'Marketplace Operator' countries ([Tax Help – AWS Marketplace Sellers \(amazon.com\)](https://aws.amazon.com/marketplace/tax)), the taxes (if any) applicable to (or arising from) the payment of Fees to the Marketplace Operator shall be determined between, and payable by, You and the Marketplace Operator (as applicable), along with any relevant invoicing and tax reporting obligations. SUSE has no liability under the Agreement with respect to such taxes, invoicing or tax reporting obligations for sales to customers in these jurisdictions. For sales to other countries, SUSE and You agree to comply with all relevant tax reporting obligations as determined by the appropriate taxing authorities.

(b) **For Microsoft.** For countries listed as 'Microsoft-managed countries/regions' or 'Reseller countries/regions' on the Microsoft website ([Tax details for Microsoft commercial marketplace – Marketplace publisher | Microsoft Learn](https://www.microsoft.com/marketplace/publisher)), the taxes (if any) applicable to (or arising from) the payment of Fees to the Marketplace Operator shall be determined between, and payable by, You and the Marketplace Operator (as applicable), along with any relevant invoicing and tax reporting obligations. SUSE has no liability under the Agreement with respect to such taxes, invoicing or tax reporting obligations for sales to customers in these jurisdictions. For sales to other countries (identified on the website as 'Publisher/Developer-managed countries/regions'), SUSE and You agree to comply with all relevant tax reporting obligations as determined by the appropriate taxing authorities.

5.3 **Promotions.** As a condition of Your use and receipt of certain promotional Subscription Offerings (each being a "Promotional Subscription"), SUSE may include limited exceptions or additional terms or restrictions applicable to Your use of certain Subscription Offerings as specified: (a) on the Marketplace Operator's Website; or (b) on [www.suse.com](https://www.suse.com) at the time a Transaction Document is entered into (such restrictions or conditions being a "Promotional Conditions"). You agree to comply with any Promotional Conditions applicable to Your Promotional Subscription.

## 6. Support and Services

6.1 **General Support.** Except as specified in this Section, SUSE will provide support for the SUSE Subscriptions as described in the SUSE Subscription Terms.

6.2 **Support for Community Software.** SUSE Offerings may include access to Community Software applications that are developed by third parties and packaged and distributed by SUSE. Community Software may not be supported by SUSE or may be subject to different levels of support, in each case, as specified on the webpage or registry from which the Community Software is made available for download by SUSE or on the Marketplace.

6.3 **Consulting Services.** SUSE offers optional professional services including training, consultancy and implementation services, which are as described in a statement of work entered into between You and SUSE, on the Marketplace Operator's Website or described in standard service descriptions available online at <https://www.suse.com/services/> and referenced in an order placed by You. The provision of such

Consulting Services are governed by the SUSE Professional Services Addendum available at [https://www.suse.com/licensing/eula/download/suse\\_professional\\_services\\_addendum.pdf](https://www.suse.com/licensing/eula/download/suse_professional_services_addendum.pdf), the terms of which are incorporated into the Agreement.

## 7. Testing and Security.

- 7.1 **Testing.** You are responsible for testing the SUSE Products, Updates, patches and any other software or process obtained from SUSE, before: (i) deploying them in Your production environment; (ii) using them to process live data; or (iii) incorporating them into processes that could impact Your business or data subjects.
- 7.2 **Security and Backup.** You acknowledge and agree that whilst SUSE Products and/or SUSE Offerings may contain features designed to improve the overall security of Your environment, You are solely responsible for implementing, and shall implement, appropriate measures to protect the security, integrity and accuracy of Your systems and data. Without limiting the foregoing, You must (i) back up Your data and systems on a regular basis, and make those backups available to SUSE if needed for support purposes; (ii) implement business continuity and disaster recovery measures; and (iii) implement physical and logical access controls, firewalls, malicious code scanning and detection measures, intrusion detection systems and regular security patches, in addition to SUSE Products and SUSE Offerings, in each case, in accordance with industry practice for Your business and as appropriate having regard to Your risk. If You sustain a data loss and/or system outage, You are solely responsible for recovering and restoring Your systems and data. SUSE support does not include data migration or data recovery support or remote access by SUSE personnel to Your network and/or systems. Where SUSE personnel will access Your systems and data, You must implement appropriate industry standard safeguards in accordance with least privilege principles.
- 7.3 **Applying Updates.** You must apply Updates provided by SUSE as soon as possible after SUSE makes them available to You.
- 7.4 **Third-Party Integrations.** Customer is solely responsible for procuring and complying with all licenses for third-party software with which SUSE Products can integrate, including AI Models, which SUSE does not distribute or license.
- 7.5 **Interfaces.** Customer is responsible for procuring, implementing, securing and maintaining Customer's own systems, hardware, networks and environment on which SUSE Products are installed and/or that they monitor, manage or observe. Customer is also solely responsible for setting up all interfaces and configurations between Customer's systems and SUSE Products, and for ensuring the accuracy, reliability, suitability, or availability of necessary inputs from Customer's environment into SUSE Products.
- 7.6 **Integrations with Third-Party Sites.** SUSE Products may enable or assist Customer to access the website content of, interface with, and purchase products and services from, third parties via third-party data websites (each a "**Third-Party Site**"). Customer does so solely at Customer's own risk. SUSE makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content, output or use of any such Third-Party Site, including the accuracy, reliability or integrity of any data sent from or to the Third-Party Site.
- 7.7 **Compliance-Related Features.** The SUSE Products and/or Services may contain features intended to assist Customer in addressing certain legal, regulatory or policy requirements. Such features are indicative and are provided solely for general informational purposes. SUSE does not provide legal advice, and SUSE does not promise that the SUSE Products or Services ensure or achieve compliance with any laws or obligations applicable to Customer, or any other requirements with which Customer chooses to comply (together, "**Customer Obligations**"). Customer, and not SUSE, is responsible for determining whether, or ensuring that, Customer's use of the SUSE Products satisfies any Customer Obligations.
- 7.8 **Environmental Observation and Decision Support.** The SUSE Products may enable the observation or analysis of Customer's technical or operational environment, including providing data or information to inform decisions regarding security, functionality and efficiency of the IT environment, including infrastructure, networks, data, applications and/or operations. SUSE does not warrant or guarantee that use of the SUSE Products or Services will: (1) achieve any particular operational, functional, security or efficiency outcome; or (2) detect all vulnerabilities, intrusions, errors, inefficiencies or other undesirable circumstances. All outputs, analyses or

recommendations generated by or together with the SUSE Products are provided to support decisions, should not be relied on solely and must be independently reviewed and validated by Customer.

- 7.9 **Third-Party AI Tools and Automated Implementations.** The SUSE Products may provide integrations or connectivity with third-party AI tools or other third-party offerings, which may, together with the SUSE Products, generate, suggest and/or implement actions or recommendations, including enabling Customer to automate the implementation of such actions or recommendations in the Customer's IT Environment. SUSE is not responsible for any such recommendations, outputs, actions, implementations, automations or other resulting effects (together, "**AI-Enabled Actions**").
- 7.10 **Customer Verification.** Customer must ensure, and is solely responsible for: (1) the review, validation and verification all outputs of the SUSE Products (whether used on their own or in connection with third-party products) and AI-Enabled Actions, including by means of appropriate human review; and (2) its own compliance with Customer Obligations. Without limiting the foregoing, Customer must conduct appropriate testing of all SUSE Products and AI-Enabled Actions prior to deployment in production environments or in any context in which errors, failures, or unexpected behavior could result in loss or harm (whether physical, operational or financial). SUSE will not be responsible for any loss or damage that would have been avoided, or reduced, had the Customer fulfilled its obligations under this Section 7.
8. **Reporting.** You acknowledge that the completeness and accuracy of the information You provide to SUSE may affect SUSE's ability to provide Subscription Offering benefits. Any unauthorized use of Subscription Offering will be treated as a material breach of this Agreement. SUSE 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 SUSE Offerings including materials provided under this Agreement; (2) Keep records sufficient to certify Your compliance with this Agreement, and, within 30 days of SUSE's written request, 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 use, licensing and deployment of the SUSE Offerings and Units; (3) Within 30 days of SUSE's written request, execute a tool or application designated or provided by SUSE to assist with or achieve the reporting referenced in the previous sub-section (2); and (4) Allow a SUSE 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 terms of this Agreement. Upon SUSE's and the 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 Your Subscription Offering purchases have at any time been insufficient to cover each installation, use of, deployment of, or access to the Software, You will, within 30 days, purchase sufficient Subscription Offerings to cover any shortfall without benefit of any otherwise applicable discount and subject to interest and fees reflecting the duration of the shortfall. If a shortfall of 5% or more is found, You must reimburse SUSE for the reasonable costs incurred in the audit.
9. **Changes to this Agreement.** From time-to-time SUSE may make changes to this Agreement including changes to Subscription Offerings as set out in the SUSE Subscription Terms. If You renew Your Subscription Offerings or You acquire new Subscription Offerings, You agree that the most recent Agreement (including changes to Subscription Offering set out in the SUSE Subscription Terms) governs all of your SUSE Offerings.
10. **Representations and Warranties.** SUSE represents and warrants that (a) it has the authority to enter into this Agreement; (b) the SUSE Offerings will be performed in a professional and workmanlike manner by qualified personnel, and (c) the SUSE Offerings will comply in all material respects with laws applicable to SUSE as the provider of the SUSE Offerings. You represent and warrant that (a) you have the authority to enter into this Agreement, and (b) your use of the SUSE Offerings will comply in all material respects with the laws applicable to you. SUSE's only obligation for breach of the warranty set out in Section 10(b) is to, upon written notice from You stating the non-conformity, re-perform the SUSE Offering so that it complies with the warranty. If, after a reasonable period of time, the SUSE Offering continues to be non-compliant with the warranty set out in Section 10(b), You may terminate this Agreement and SUSE will provide a pro-rata refund of the amount paid for the SUSE Offering in respect of the unused Subscription Offering Term, as of the effective date of termination. EXCEPT AS OTHERWISE RESTRICTED BY LAW, SUSE, ON BEHALF OF ITSELF AND ITS AFFILIATES, SUPPLIERS, DISTRIBUTORS, DEALERS, RETAILERS AND RESELLERS (COLLECTIVELY "**THIRD PARTIES**") DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED TERMS,

CONDITIONS AND WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SUSE AND THIRD PARTIES MAKE NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. NEITHER SUSE NOR THIRD PARTIES WARRANT THAT: (1) THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS OR (2) THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR (3) USE OF THE SUSE PRODUCTS, SUSE OFFERINGS OR SOFTWARE WILL PREVENT OR REMEDY ALL NETWORK INTRUSIONS AND SECURITY VULNERABILITIES. SUSE AND THIRD PARTIES RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN AND GRANT NO ADDITIONAL RIGHTS, LICENSES OR COVENANTS BY IMPLICATION, ESTOPPEL, OR OTHERWISE.

## 11. Liability

- 11.1 NEITHER PARTY, NOR ITS AFFILIATES, WILL BE LIABLE FOR (A) LOSS OF REVENUES, LOSS OF (OR DIMINUTION IN) PROFITS, LOSS OF GOODWILL OR LOSS OR CORRUPTION OF DATA, IN EACH CASE WHETHER DIRECT OR INDIRECT; OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, IN EACH CASE, WHETHER ARISING UNDER ANY LEGAL OR EQUITABLE THEORY OR ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, ALL OF WHICH ARE HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT ANY PARTY TO THIS AGREEMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2 SUSE'S MAXIMUM LIABILITY WITH RESPECT TO ALL CLAIMS RELATING TO OR ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY SUSE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST CLAIM UNDER THIS AGREEMENT (OR FIFTY US DOLLARS (\$50) IF YOU RECEIVED THE SUSE OFFERING(S) FREE OF CHARGE). THIS LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHER LEGAL THEORY.
- 11.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SUSE DOES NOT EXCLUDE OR LIMIT LIABILITY FOR (A) DEATH OR PERSONAL INJURY OR DEATH CAUSED BY ITS NEGLIGENCE, OR (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) ANY OTHER LIABILITY THAT CANNOT BE LAWFULLY EXCLUDED OR LIMITED; OR (D) CUSTOMER'S OBLIGATION TO MAKE PAYMENT OF FEES DUE AND PAYABLE UNDER THIS AGREEMENT.

## 12. Indemnification.

- 12.1 **Indemnity.** SUSE will indemnify You from and against damages, costs and expenses (including reasonable attorneys' fees) finally awarded against You (or approved by SUSE in a settlement) in favour of a third party, resulting from a claim by that third party alleging that the SUSE Offerings infringe the trademarks of such third party. In order to benefit from the indemnity in this Section, You must notify SUSE promptly, but no later than ten (10) days of receipt of the claim, give SUSE control of the defense and related settlement negotiations, not make any admission or take any action which may be prejudicial to the claim without SUSE's prior written consent (such consent not to be unreasonably withheld or delayed), and provide SUSE with the reasonable assistance (at SUSE's cost) in defending the claim. You will make best efforts to mitigate any losses and consequences of an infringement to the extent possible.
- 12.2 **Repair and Replace.** If a SUSE Offering is held to infringe and its use is prohibited or if, in SUSE's reasonable opinion, infringes or is likely to become the subject of an infringement claim, You will permit SUSE, at SUSE's option and expense, to (a) procure for you the right to continue to use the SUSE Offering, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, provided that if the measures at (a) and/or (b) are not available on a basis that SUSE finds commercially reasonable, SUSE may terminate the applicable SUSE Offering without further liability under this Agreement and, upon Your discontinued use of the infringing SUSE Offering, refund to You the amount paid for the unused portion of the term of the SUSE Offering as of the effective date of said termination.
- 12.3 **Exceptions to SUSE's Indemnification Obligation.** SUSE will have no obligation of defense or indemnity: (a) if at any time You were in breach of this Agreement; (b) in respect of any claim arising after Your last active Subscription Offering has expired; or (c) to the extent the infringement claim arises from: (i) Your designs, specifications or instructions; (ii) use of a version other than the current release of the SUSE Products, if the infringement would have been avoided by use of the current release; (iii) Your failure to promptly implement a patch provided by SUSE, if the infringement would have been avoided by use of that patch; (iv) a modification

of the SUSE Offering and/or SUSE Product not requested or authorized in writing by SUSE; (v) Community Software; (vi) use of the SUSE Product and/or a SUSE Offering with non-SUSE software, equipment, or data, other than as specified or approved by SUSE in writing; (vii) the furnishing to You of any information, service, or technical support by a third party; (viii) Your use of the SUSE Product or SUSE Offering otherwise than for internal use.

- 12.4 **Sole Remedy.** This Section 12 states the exclusive obligation of SUSE, and Customer's sole remedy, regarding any claim of infringement or misappropriation of any third party's intellectual property rights.
13. **Confidentiality. "Confidential Information"** means the terms of this Agreement, pricing information in Marketplace Offers, and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential". Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; (f) required to be disclosed by law, regulation, or court order; or (g) licensed under an open source license (as defined by the Open Source Initiative (<https://opensource.org/>)). The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. SUSE retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any Services to You.

#### 14. Governing Law and Jurisdiction.

- 14.1 **Generally.** Except as specified in Sections 14.2 and 14.3, this Agreement is governed by, construed in accordance with, and enforced under the substantive law of the State of New York, USA, without giving effect to any contrary choice of law or conflict of law provision or rule (whether of the State of New York or other jurisdiction). 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 New York. In any action relating to this Agreement, each of the parties irrevocably waives the right to trial by jury.
- 14.2 **UK, EU, EFTA.** If Your country of principal residence is the United Kingdom, or 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) the laws of Ireland shall apply except where the laws of the country of Your principal place of business are required to be applied to any such action of law, in which case the laws of that country shall apply.
- 14.3 **People's Republic of China.** If Your country of principal residence is in the People's Republic of China, the applicable law will be the law of the People's Republic of China. Where any dispute arises out of or in relation to this Agreement, SUSE or You may give notice in writing of the dispute to the other party, setting out the material particulars of the dispute and the parties must act in good faith to try to resolve the dispute quickly. Any dispute not resolved between the parties within 30 days of such notice may be referred by either party to, and finally resolved by, arbitration in China in accordance with the Arbitration Rules of the China International Economic and Trade Arbitration Commission ("**CIETAC**") for the time being in force, which rules are deemed to be incorporated by reference in this Section 14.3. Each arbitration shall be conducted by one arbitrator (selected by agreement between the parties, or failing agreement, in accordance with the CIETAC Rules). Arbitration shall be conducted in the Chinese language and in confidence. The parties agree to comply with any arbitration award or order made pursuant to such arbitration and such award or order shall be final and binding on the parties.
15. **Publicity.** You hereby grant SUSE such rights as are necessary to use Your name, logo, related trademarks in any of SUSE's publicity or marketing materials (whether in printed or electronic form) for the purpose of highlighting that You have purchased and use SUSE Subscription Offerings, unless You otherwise inform SUSE in writing.
16. **Severability/Waiver.** If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No



waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

**17. Force Majeure.** Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

**18. Service Exclusions.** Support provided by SUSE does not include, and SUSE is not liable for, or responsible for remedying, defects or non-performance caused by the following, being “**Exclusions**”:

- 18.1 **Third-Party Elements:** Issues arising from third-party hardware, software, or services not provided by SUSE, or any unauthorized modifications, customization, or integration of SUSE Products.
- 18.2 **Customer Mismanagement:** Customer's failure to use the most current version of SUSE Products, accidental damage, misuse, neglect, or operator error.
- 18.3 **Customer Failure to Act:** Customer's failure to implement required Updates or Upgrades as required by the SUSE Technical Support Handbook, or failure to implement fixes, workarounds or any other reasonable instructions provided by SUSE to mitigate the impact of an issue with the SUSE Product
- 18.4 **External Factors:** Problems due to power or utility failures, Customer's network or connectivity issues, hardware failures in the Customer's environment or Force Majeure.
- 18.5 **Professional Services:** Any separate implementation, configuration, training or data services (like recovery, migration, backup) or other Professional Services, unless explicitly purchased from SUSE under a separate statement of work.
- 18.6 **Improper Use:** Use of SUSE Products in a manner or environment for which they were not designed or supported.

**19. Open Source Licenses and Third-Party Software.** The license grants and restrictions for Software are contained in the most current version of the End User License Agreement (“EULA”) accompanying the Software in question, available at <https://www.suse.com/licensing/eula/>. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a third party other than SUSE. Use by You of any software programs accompanied by a separate license agreement is governed by that separate license agreement. If You do not agree to abide by the applicable license terms for the third party software, you may not install and/or use it. 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.

**20. Intellectual Property Rights/Remedies.** Nothing in this Agreement waives or limits extra-contractual rights or remedies available to SUSE to protect its rights in the SUSE Offerings, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the SUSE Offerings. Ownership of SUSE Offerings is held by SUSE and/or its licensors.

**21. Privacy Policy.** SUSE's privacy policy (<https://www.suse.com/company/legal/>) applies to Your use of the Software and SUSE Offerings. To the extent that SUSE acts as a processor on behalf of You when performing Services under this Agreement, SUSE's data processing addendum shall apply.

**22. Feedback.** If You choose to voluntarily provide any feedback to SUSE regarding SUSE Offerings, SUSE may use such feedback for any purpose, including incorporating the feedback into, or using the feedback to develop and improve Software and SUSE Offerings without attribution or compensation. You grant SUSE a royalty-free, perpetual and irrevocable license to use all feedback for any purpose. You represent that You have the authority to provide the feedback and that feedback will not include proprietary information of a third party.

**23. Transfer.** This Agreement may not be transferred or assigned without the prior written approval of SUSE; any other transfer or assignment or attempted transfer or assignment shall be null and void.

**24. Export Compliance.**

- 24.1 The Parties acknowledge that, while some of the SUSE Products may be considered “publicly available” and therefore not subject to certain export control regulations, certain aspects of the SUSE Products and SUSE Offerings, including, but not limited to, related services, support, updates, or technical information, may be subject to export control laws and regulations of the United States, the European Union, and other

applicable jurisdictions. If and when applicable, each Party agrees to comply with all applicable export control and economic sanctions laws, including but not limited to the U.S. Export Administration Regulations (EAR), U.S. Office of Foreign Assets Control (OFAC) regulations, EU Dual-Use Regulation (Regulation (EU) 2021/821), and any other relevant national or international export control and economic sanctions legal requirements.

- 24.2 The Parties further agree not to export, re-export, transfer, provide access, or otherwise make available any SUSE Products or SUSE Offerings (i) to any individual or entity listed on applicable U.S., EU, or other government restricted party lists or any entity or individual otherwise the subject of export controls or economic sanctions restrictions, (ii) to any country or territory subject to comprehensive embargoes or sanctions, or (iii) for any end use prohibited by applicable law, including but not limited to uses related to nuclear, missile, chemical, or biological weapons.
- 24.3 It is the responsibility of each Party to obtain any required licenses, authorizations, or item classifications prior to exporting, re-exporting, importing or otherwise transferring or making available any SUSE Products or SUSE Offerings. Additional information regarding SUSE's export compliance is available at <https://www.suse.com/company/legal/eccn/>. Upon request, SUSE can provide information regarding applicable restrictions; however, SUSE assumes no responsibility for Customer's failure to obtain any necessary approval.

**25. Miscellaneous.** Translations. For Your convenience, SUSE may from time to time make available translated versions of this Agreement. You acknowledge and agree that such translations are merely a convenience. In the event of any conflict between any such translated version and this Agreement, this Agreement shall govern. Delivery. Unless otherwise agreed to, the SUSE Product (including its documentation) will be delivered to You in binary (electronic) format through electronic software distribution. Your right to use said product under this Agreement shall arise at the location of the computer on which the SUSE Product and documentation is first used by You. Delivery of the product and documentation so supplied shall be deemed to occur where download is made available at the destination computer. For clarity, delivery to US destinations occurs at the point of original download from SUSE servers in the United States to Your server in the United States. For delivery from the U.S. to destinations outside the U.S.A., delivery terms are DDU-POE (Delivery Duty Unpaid – Port of Entry) as defined in INCOTERMS 2020. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees. For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2020. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by SUSE of taxes or any applicable import duties. For shipment within the United States, title to any deliverables, exclusive of SUSE's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with SUSE until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if You so request shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect SUSE's interest until title passes as set forth above.

**26. Defined Terms.**

- 26.1 **"Affiliate"** means any person or entity directly or indirectly controlling, controlled by or under common control with a party, for so long as that relationship is in effect (including affiliates subsequently established by acquisition, merger or otherwise).
- 26.2 **"AI Model"** means any artificial intelligence model (including but not limited to machine learning models, large language models and multimodal models) that interfaces or integrates with SUSE Products.
- 26.3 **"Annual Period"** means the period beginning on the Subscription Effective Date (defined in Section 5.1) and ending one (1) year later, and each consecutive one-year period thereafter.
- 26.4 **"Cloud Infrastructure"** means, with respect to a Marketplace Operator, the hardware, network, storage and other infrastructure made available and managed by that Marketplace Operator to its customers as a service pursuant to the Customer Marketplace Contract.
- 26.5 **"Community Software"** means an open-source software product that is not SUSE-branded and that SUSE provides access to or makes available for download as part of certain Subscription Offerings. Community Software includes, without limitation, 'SUSE Rancher Prime Application Collection Advanced' and 'SUSE Rancher Prime Application Collection Base'.

- 26.6 **"Consulting Services"** means the delivery of specialised activities, such as project-based activities, or consulting services charged on, e.g., a time and materials basis.
- 26.7 **"Effective Date"** means the earliest of (a) the date of the last signature on this Agreement; or (b) your online acceptance of the Agreement.
- 26.8 **"EULA"** means the end user license agreement that accompanies and governs the use of Software which is available at  
[https://www.suse.com/licensing/eula/download/suse\\_end\\_user\\_license\\_agreement\\_june\\_2024.pdf](https://www.suse.com/licensing/eula/download/suse_end_user_license_agreement_june_2024.pdf).
- 26.9 **"Fees"** are the amounts to be paid for the Software, Services or Subscription Offering (as applicable).
- 26.10 **"Marketplace Operator"** means: (i) Amazon Web Services, Inc. (AWS) and any of its affiliates that operate its Cloud Marketplace; (ii) Microsoft Corporation and any of its affiliates that operate its Cloud Marketplace; or (iii) Google LLC and any of its affiliates that operate its Cloud Marketplace, as applicable.
- 26.11 **"Marketplace"** means the website of the Marketplace Operator through which the SUSE Offerings are made available to purchase, which is (a) in the case of Amazon Web Services Inc, <https://aws.amazon.com/marketplace/>; (b) in the case of Microsoft Corporation, at <https://azuremarketplace.microsoft.com/en-us/>; and in the case of Google LLC, <https://cloud.google.com/marketplace?hl=en>, in each case, as may be updated from time to time.
- 26.12 **"Marketplace Offer"** means a listing or offer for SUSE Products in the relevant Marketplace, where the price for the Subscription Offering (and any applicable discounts) is displayed to You in the non-public Marketplace portal.
- 26.13 **"PSA"** means the SUSE Professional Services Addendum available at  
[https://www.suse.com/licensing/eula/download/suse\\_professional\\_services\\_addendum.pdf](https://www.suse.com/licensing/eula/download/suse_professional_services_addendum.pdf).
- 26.14 **"Services"** means Consulting Services, Training Services, and Support Services.
- 26.15 **"Software"** means any SUSE or SUSE Affiliate branded software product that is the subject of a Subscription Offering.
- 26.16 **"Standard Listing"** means a listing or offer for SUSE Products in the relevant Marketplace, where the price for the Subscription Offering (and any applicable discounts) is publicly displayed;
- 26.17 **"Statement of Work"** or **"SOW"** means the documentation of an order for Consulting Services consisting of a description of the services to be performed and other associated information such as the term of these services.
- 26.18 **"Subscription Fees"** are the amounts to be paid for a Subscription Offering.
- 26.19 **"Subscription Offering"** means a SUSE Offering You acquire for a SUSE Product to receive the SUSE Support, Updates, and Upgrades as described in the SUSE Subscription Terms, and which may include subscriptions for non-SUSE products.
- 26.20 **"SUSE Offering"** means SUSE branded services that You acquire to receive a) Subscription Offerings; b) Consulting Services; c) Training Services, and d) other services offered by SUSE.
- 26.21 **"SUSE Product"** is a software product that you obtain directly from SUSE or indirectly from SUSE (for example, via a distributor or reseller), that is made available for download by SUSE on a trusted SUSE registry and for which Subscription Offerings are made available, including without limitation, all of the SUSE Products listed in the SUSE Subscription Terms; and/or (2) any other open-source software product in respect of which SUSE provides a support and maintenance offering for which SUSE charges fees, as specified at [www.suse.com](http://www.suse.com)
- 26.22 **"Support Services"** means the delivery of problem resolution and customer technical support.
- 26.23 **"SUSE Subscription Terms"** means, in respect of a Subscription Offering, the terms and conditions that apply in respect of the specific SUSE Product that are available at  
[https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf).
- 26.24 **"Training Services"** means the delivery of onsite or remote training courses.
- 26.25 **"Transaction Document"** means SUSE's or the Marketplace Operator's standard ordering document (including any electronic ordering form), a SOW, a SUSE or Marketplace Operator issued quote form as accepted by a matching purchase order, or any other document or electronic ordering mechanism recognized by SUSE as the basis for the sale and purchase of a SUSE Offering as executed between the Parties. Any conflicting or additional terms and conditions set forth in a purchase order or otherwise unilaterally included by You in an electronic order mechanism shall not form part of a Transaction Document and shall not apply to a SUSE Offering.
- 26.26 **"Unit"** means the applicable unit of measure set forth in the SUSE Subscription Terms.

- 26.27 **"Update" or "Patch"** means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in the SUSE Product.
- 26.28 **"Upgrade"** means any new version of a SUSE Product which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 12.x to 15.x). If a question arises as to whether a product offering is an Upgrade or a new product, SUSE's opinion will prevail, provided that SUSE treats the product offering the same for its end users generally.

## Schedule 1 – SaaS Terms

1. **Purpose.** This Schedule applies where software is made available and supported by SUSE as a hosted, network-delivered service (a “**SaaS Offering**”) purchased on a Marketplace.
2. **Additional Definitions.** Capitalized terms in this Schedule shall have the meanings given to them below. Capitalized terms used but not defined in this Schedule have the meaning given to them elsewhere in this Agreement.
  - 2.1. **Customer Data** means data and content that Customer, its Affiliates or end users submit to, store in or process through a SaaS Offering, excluding Technical Usage Data and excluding SUSE’s Confidential Information.
  - 2.2. **Exit Period** means the post-termination access period during which Customer may retrieve Customer Data and complete Switching, as set out in Section 9 (Interoperability, Portability and Switching) of this Schedule.
  - 2.3. **Member State** means a member state of the European Union.
  - 2.4. **Service Data** means operational data generated by the operation of the SaaS Offering, including logs, metrics and telemetry, excluding Personal Data unless processed under the Data Processing Addendum.
  - 2.5. **Switching** means Customer’s transition from the SaaS Offering to an alternative data processing service, including the portability of Customer Data and related digital assets.
  - 2.6. **Switching Plan** means a written plan agreed between SUSE and Customer describing the steps, timing and responsibilities for Switching.
  - 2.7. **Third Country** means a country that is not a member state of the European Union.
  - 2.8. **Third-Country Request** means any legally binding demand, order or other request for access to Customer Data made directly to SUSE by a public authority of a Third Country (including any court, law-enforcement, regulatory or administrative body, and any person acting at its direction). It does not include (a) requests from EU or Member State authorities; (b) requests from private litigants; or (c) requests that are transmitted to SUSE only via an EU or Member State authority under an applicable international agreement or instrument of cooperation.
  - 2.9. **Usage Data** means Service Data that qualifies as data generated by the use of a product or related service under the EU Data Act.
3. **Provision of SaaS Offering.** During the term of the applicable Subscription Offering, SUSE will use reasonable efforts to operate and make the SaaS Offering available to Customer for its Internal Use 24 hours a day, 7 days a week. No license to install or run SUSE Software is granted for a SaaS Offering other than as necessary for Customer to access and use the SaaS Offering. SUSE may deliver a SaaS Offering using SUSE infrastructure and/or third-party data center or cloud infrastructure and subprocessors, and will remain responsible for its performance of the SaaS Offering toward Customer in accordance with this Agreement. Where the EU Data Act applies, and subject to security and confidentiality requirements, SUSE will indicate, upon Customer’s request prior to contract conclusion, the locations (EU Member State(s) and any Third Countries) where Customer Data will be stored or processed for the relevant SaaS Offering.
4. **Access and Use.** Subject to payment of applicable Fees and compliance with this Agreement, Customer may access and use the SaaS Offering for its Internal Use in accordance with this Agreement. Customer remains responsible for its accounts, configurations, the accuracy and legality of Customer Data, and for procuring and maintaining the telecommunications and internet connectivity required to access the SaaS Offering.
5. **Maintenance and Changes.** SUSE may perform scheduled maintenance, including changes to features, functions and infrastructure, and will use reasonable endeavors to schedule maintenance outside of peak usage windows and to provide prior notice where practicable. SUSE may implement emergency maintenance, including temporary suspension, to address material security risks, service integrity or legal compliance, and

will restore the SaaS Offering as soon as reasonably practicable. SUSE may modify non-material features without notice and will not make changes that materially reduce the core functionality of a SaaS Offering without providing reasonable prior notice or an alternative that preserves substantially equivalent core functionality.

6. **Security.** SUSE will implement and maintain appropriate technical and organizational measures designed to protect the security, confidentiality and integrity of the SaaS Offering and Customer Data, taking into account the nature of the service and the risks. With respect to non-Personal Data held in the European Union, SUSE will take all reasonable technical, legal and organizational measures to prevent and resist access to, or disclosure of, Customer Data to a public authority of a Third Country where such access or disclosure would conflict with European Union or Member State law. SUSE will assess any such Third-Country Request for legality, necessity, specificity and proportionality, including whether it is subject to independent review in the Third Country, and will challenge any request that does not meet these requirements or would otherwise conflict with European Union or Member State law. Where SUSE is legally compelled to disclose Customer Data in response to a Third-Country Request, SUSE will disclose only the minimum necessary, apply available protective measures to safeguard confidentiality and trade secrets, and notify Customer without undue delay unless such notification is prohibited by law, in which case SUSE will notify Customer as soon as that prohibition is lifted. SUSE will maintain records of Third-Country Requests and their handling and will impose obligations equivalent to this paragraph on its subprocessors that have access to Customer Data. Customer is responsible for managing identities, access controls and configurations within its tenancy and for any Customer-managed keys or integrations, and nothing in this Schedule 1 restricts or excludes Customer's obligations under Section 7 (Testing and Security) of this Agreement. Each Party will notify the other without undue delay upon becoming aware of a security incident affecting Customer Data within the SaaS Offering, and will cooperate in accordance with the Data Processing Addendum where Personal Data are concerned.
7. **Shared Security Responsibility.** The following sections apply to SUSE Rancher for AWS:
  - 7.1. **SUSE Responsibilities (Control Plane):** SUSE is responsible for the security, production availability, and maintenance of the hosted SUSE Rancher for AWS Control Plane ("**SRA Control Plane**"), subject to Sections 9 (Customer Responsibilities relating to the use of SUSE Products and Services) and 23 (Service Exclusions) of this Agreement. SUSE shall implement industry-standard technical and organizational safeguards—including encryption, access controls, and vulnerability management—to protect the SRA Control Plane. SUSE will notify Customer without undue delay of any confirmed security incident affecting Customer Data within the SRA Control Plane.
  - 7.2. **Customer Responsibilities (AWS & EKS):** Customer is solely responsible for the security and configuration of its AWS accounts and EKS environments. This includes the hardening and patching of worker nodes (EC2/Fargate), networking (VPCs), identity management (IAM), workloads, and data residing within the Customer's AWS environment, as well as any applicable responsibilities set out in Section 7 (Testing and Security) of this Agreement.
  - 7.3. **Boundary & Exclusion:** SUSE's security obligations are strictly limited to the SRA Control Plane. SUSE is not responsible for the security of the underlying AWS infrastructure, Customer's configuration decisions, or third-party outages.
8. **Data Protection; Data Categories.** As between the Parties, Customer retains all right, title and interest in and to Customer Data. SUSE will process Customer Data solely to provide and support the SaaS Offering, to perform obligations under this Agreement, and to comply with law, and will process Personal Data contained in Customer Data as a processor on Customer's instructions in accordance with the Data Processing Addendum. SUSE may collect and use Service Data and Technical Usage Data to operate, secure, support and improve the SaaS Offering and SUSE products and services. Where Service Data includes Usage Data, SUSE will, upon Customer's simple request and without undue delay, make such Usage Data available to Customer in a comprehensive, structured, commonly used and machine-readable format, to the extent required by applicable law. Upon request, SUSE will provide information reasonably necessary to demonstrate compliance with this Section 8 and the Data Processing Addendum.
9. **Interoperability, Portability and Switching.**

- 9.1. SUSE will facilitate Switching in accordance with applicable law and will not impose contractual, commercial, or technical obstacles that prevent or unduly hinder interoperability or Switching.
- 9.2. To the extent required by applicable law, and where the EU Data Act applies, prior to contract conclusion and upon Customer's request thereafter, SUSE will make available the information required by the EU Data Act for data processing services, including: (a) the steps, roles and timeline parameters for Switching; (b) the formats, interface specifications and applicable harmonized standards or common specifications relevant to interoperability and data export; (c) the categories of data and digital assets that can be ported, including any Usage Data; (d) the locations (EU Member State(s) and, if applicable, Third Countries) where Customer Data are stored or processed for the relevant SaaS Offering; and (e) the basis for any permitted charges for Switching or data egress limited to demonstrable direct costs. Upon Customer's request, SUSE will provide information reasonably demonstrating the basis for any permitted direct costs charged for Switching or data egress, to the extent required by applicable law.
- 9.3. Upon Customer's written request, the Parties will agree a Switching Plan that identifies the effective date for Switching, the scope and destination of the Switching, continuity measures to avoid undue disruption, the timetable for the Switching steps, and the responsibilities of each Party. SUSE will perform Switching within the maximum period required by applicable law, taking into account the complexity of the Switching and the Parties' agreed Switching Plan.
- 9.4. SUSE will enable Customer to export Customer Data and associated digital assets generated through use of the SaaS Offering in a structured, commonly used and machine-readable format, in accordance with applicable common specifications and harmonized standards for interoperability referenced in the Official Journal of the European Union, together with self-describing metadata where relevant, and will provide or make available the information about interfaces, data structures and formats that is necessary to achieve functional equivalence at the destination service, to the extent technically feasible and without prejudice to SUSE's and its licensors' trade secrets and security.
- 9.5. SUSE will make available and maintain the interface information and documentation reasonably necessary to support interoperability with the SaaS Offering, will not use licensing, bundling or technical measures to prevent or unduly hinder interoperability or Switching, and will implement Switching without undue delay and with continuity of service until the earlier of completion of Switching or expiry of the Exit Period.
- 9.6. Charges, if any, for Switching or data egress will be limited to demonstrable direct costs associated with the Switching and will be reduced and, where required by law, phased out in accordance with applicable transitional periods; SUSE will not apply charges that are not permitted by applicable law.
- 9.7. Customer remains responsible for securing rights vis-à-vis the destination provider, for its costs at the destination environment, and for any optional professional services or bespoke migration assistance beyond the minimum Switching assistance required by law and this Schedule, which SUSE may provide at mutually agreed rates.
10. **Suspension.** In addition to SUSE's rights under this Agreement, SUSE may suspend access to a SaaS Offering immediately where SUSE reasonably determines that Customer's use poses a material security, legal or service integrity risk, or in the event of non-payment after any applicable cure period under this Agreement. SUSE will provide prompt notice of any suspension and will restore access without undue delay once the underlying issue is resolved.
11. **Termination; Exit and Deletion.** Upon termination or expiry of the applicable Subscription Offering for a SaaS Offering, SUSE will make the SaaS Offering available for read-only access for an Exit Period of at least thirty days to enable Customer to retrieve Customer Data or complete Switching, unless this Agreement is terminated for Customer's irremediable material breach or continued access would contravene applicable law or create a material security risk. Following the Exit Period, SUSE will delete or irreversibly render anonymous Customer Data from production systems, subject to backups that will be overwritten in accordance with SUSE's standard retention cycles; upon Customer's request, SUSE will confirm deletion.

Nothing in this Section 11 limits SUSE's right to retain information as required by law or for the establishment, exercise or defense of legal claims, subject to Section 18 (Confidentiality) of this Agreement.

12. **Support.** SUSE will not provide any software or code of any nature to the Customer (including Updates or Upgrades) in relation to the SaaS Offerings. SUSE will, where appropriate, apply Updates and Upgrades directly to the SaaS Offerings from time to time.
13. **Miscellaneous.** Nothing in this Schedule transfers any Intellectual Property Rights in or to the SaaS Offering or SUSE Software, and SUSE retains all rights not expressly granted. The confidentiality, warranties, indemnities and limitations and exclusions of liability in this Agreement apply to SaaS Offerings. If Customer enables integrations with Third-Party Sites or third-party services for use with a SaaS Offering, Customer does so at its own risk and is responsible for any third-party terms; SUSE has no responsibility for third-party services.