

# 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**". Except as set out in Section 1.3, Subscription Offerings purchased from a Marketplace may be used in respect of SUSE Products deployed on that Marketplace 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 on a different Marketplace offered by a different Marketplace Operator.
- 1.3 **Permitted Deployments for AWS.** If You have entered into a Customer Marketplace Agreement with AWS and purchase Subscription Offerings, You may deploy the relevant SUSE Products on infrastructure owned or managed exclusively for You, other than a public cloud.
- 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.
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. Unless this Agreement is terminated by reason of Your violation of SUSE's intellectual property rights, Your right to continue to use any perpetual 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 \(amazon.com\)](#)), 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](#)), 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](http://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. **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.
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 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 IN EACH 12 MONTH PERIOD COMMENCING ON THE EFFECTIVE DATE (AND ON EACH ANNIVERSARY THEREAFTER) WILL NOT EXCEED THE FEES RECEIVED BY SUSE IN RESPECT OF THE PARTICULAR SUSE OFFERING DURING THAT TWELVE (12) MONTH PERIOD (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; OR (C) ANY OTHER LIABILITY THAT CANNOT BE LAWFULLY EXCLUDED OR LIMITED.
- 11.4 NOTHING IN THIS AGREEMENT LIMITS YOUR OBLIGATION TO MAKE PAYMENT OF FEES DUE AND PAYABLE UNDER THIS AGREEMENT.

## **12. Indemnification.**

- 12.1 **Indemnification.** SUSE will indemnify, defend and hold You harmless from and against any and all claims, actions, proceedings, judgments, losses, liabilities, costs and expenses (including reasonable attorneys' fees) relating to (i) claims by any third party arising or resulting from or attributable to allegations that Software, or the use thereof in accordance with this Agreement infringes or misappropriates the intellectual property rights of such third party; (ii) SUSE's failure to comply with applicable laws.; (iii) tangible property damage. In order to benefit from this indemnity, 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, and provide SUSE with the reasonable assistance (for which SUSE shall pay Your reasonable out-of-pocket costs) in defending the claim. You shall make best efforts to mitigate any losses and consequences of an infringement to the extent possible. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel, which may not interfere in SUSE's defense and/or negotiation of the claim.
- 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, 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 or return 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.** SUSE will have no obligation of defense or indemnity to the extent the infringement claim arises from (a) SUSE's compliance with Your designs, specifications or instructions, (b) use of other than the current release of the Software, if the infringement would have been avoided by use of the current release and if the infringement occurs more than ninety (90) days after SUSE notifies You that a previous release may infringe, (c) a modification of the SUSE Offering not requested or authorized in writing by SUSE, (d) use of the Software and/or a SUSE Offering with non-SUSE software, equipment, or data, other than as specified or approved by SUSE in writing, (e) any use of the SUSE branded software other than your own internal use, (f) the furnishing to You of any information, service, or technical support by a third party, or (g) any SUSE Offering for which You are not current on payment of Subscription fees for all installations and/or deployments of the Software on the date the infringement claim is tendered to SUSE.
- 12.4 **Exclusive Remedy.** This Section 12 states the exclusive obligation of SUSE to Customer 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. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **Export Compliance.** Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: [www.bis.doc.gov](http://www.bis.doc.gov) before exporting or re-exporting items subject to the EAR. Refer to: [www.suse.com/company/legal/](https://www.suse.com/company/legal/) for more information on exporting Software. Upon request, SUSE can provide information regarding applicable export restrictions. However, SUSE assumes no responsibility for Your failure to obtain any necessary export approvals.
24. **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.

25. **Defined Terms.**

- 25.1 **"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).
- 25.2 **"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.
- 25.3 **"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.
- 25.4 **"Effective Date"** means the earliest of (a) the date of the last signature on this Agreement; or (b) your online acceptance of the Agreement.
- 25.5 **"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/>.
- 25.6 **"Fees"** are the amounts to be paid for the Software, Services or Subscription Offering (as applicable).
- 25.7 **"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.
- 25.8 **"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.
- 25.9 **"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.
- 25.10 **"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).
- 25.11 **"Services"** means Consulting Services, Training Services, and Support Services.
- 25.12 **"Software"** means any SUSE or SUSE Affiliate branded software product that is the subject of a Subscription Offering.
- 25.13 **"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;
- 25.14 **"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.
- 25.15 **"Subscription Fees"** are the amounts to be paid for a Subscription Offering.

- 25.16 **"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.
- 25.17 **"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.
- 25.18 **"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)
- 25.19 **"Support Services"** means the delivery of problem resolution and customer technical support.
- 25.20 **"SUSE Subscription Terms"** means, in respect of a Subscription Offering, the terms and conditions that apply in respect of the specific SUSE Product licensed to You and that are available at [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf).
- 25.21 **"Training Services"** means the delivery of onsite or remote training courses.
- 25.22 **"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.
- 25.23 **"Unit"** means the applicable unit of measure set forth in the SUSE Subscription Terms.
- 25.24 **"Update" or "Patch"** means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in the SUSE Product.
- 25.25 **"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.