

AWS Marketplace Customer Agreement

for SUSE Subscription and Services Offerings

1. Introduction

- 1.1 **Acceptance.** By accessing the benefits of a Subscription Offering, by clicking the relevant checkbox (or similar action) on the Marketplace Operator Website or by executing this document, 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 **Restriction.** This Agreement concerns purchases of Subscription Offerings on the Marketplace Operator Website only. You must not attempt to purchase or use Subscription Offerings via any other cloud reseller of Subscription Offerings under this Agreement.
2. **Structure.** This Agreement incorporates the following components: (a) this Marketplace Customer Agreement, (b) the SUSE Subscription Terms; (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
Canada	SUSE Software Solutions Canada ULC
India	SUSE Software Solutions India Private Ltd
Japan	SUSE Software Solutions Japan KK
Europe, the Middle-East, Africa (EMEA)	SUSE Software Solutions Ireland Ltd

4. Term and Termination

- 4.1 **Term of the Agreement.** This Agreement will begin on the Effective Date and will remain in effect for three (3) consecutive years ("**Term**"), subject to earlier termination as stated below. At the end of each Term, this Agreement will renew for an additional Term of three (3) years, unless either party gives notice in writing at least ninety (90) days prior to the end of the then-current Term that it does not wish to renew, or unless this Agreement terminated earlier as provided below.
- 4.2 **Term of a SUSE Offering.** The term of each SUSE Subscription Offering, and your entitlement to the benefit of that SUSE Subscription Offerings shall: (i) commence on the date an order you placed for that SUSE Subscription Offering via the Marketplace Operator Website is accepted on SUSE's behalf by the Marketplace Operator (or if later, the date you make payment for that SUSE Subscription Offering to the Marketplace Operator), and expire at the end of the period specified for the duration of your SUSE Subscription Offering on the Marketplace Operator Website at the time you place your order, unless the SUSE Subscription 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.
- 4.5 **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 Operator Website at the time you place an order. You must place an order for the appropriate renewal SUSE Subscription Offerings via the Marketplace Operator Website at least five (5) days prior to the expiration date of Your then-current Subscription Offerings ("**Order Due Date**"). If you fail to submit an order by the Order Due Date, SUSE may, without limiting its other remedies, immediately suspend your access to the benefits of the SUSE Offerings. If, within 30 days after the Order Due Date you have failed to place a renewal order for the appropriate number of SUSE Subscription Offerings, SUSE may, without any liability to you, immediately terminate this Agreement and the SUSE Offerings.
- 4.6 **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 Operator Website or otherwise in accordance with written instructions provided by the Marketplace Operator. 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.
5. **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 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.

6. **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.
7. **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 7(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 7(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 THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. SUSE AND THIRD PARTIES RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN AND GRANT NO ADDITIONAL RIGHTS, LICENSES OR COVENANTS BY IMPLICATION, ESTOPPEL, OR OTHERWISE.

8. Liability

- 8.1 SUBJECT TO SECTION 8.3, 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 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.
- 8.2 SUBJECT TO SECTION 8.3, 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.
- 8.3 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.
- 8.4 NOTHING IN THIS AGREEMENT LIMITS YOUR OBLIGATION TO MAKE PAYMENT OF FEES DUE AND PAYABLE UNDER THIS AGREEMENT OR EITHER PARTY'S LIABILITY UNDER SECTION 1.5.
- 8.5 IN RESPECT OF DISPUTES UNDER THIS AGREEMENT, EACH PARTY WILL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS, THE OTHER PARTY (THE PREVAILING PARTY) AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL

LEGAL COSTS SUSTAINED BY THE PREVAILING PARTY IN CONNECTION WITH AN AWARD BY A COURT OF COMPETENT JURISDICTION (OR AN AGREED SETTLEMENT BETWEEN THE PARTIES), IN FAVOR OF THE PREVAILING PARTY. "LEGAL COSTS" MEANS ALL LOSSES AND LIABILITIES ARISING FROM OR IN CONNECTION WITH LITIGATION (INCLUDING CONTEMPLATED LITIGATION), INCLUDING INTEREST, COURT COSTS, REASONABLE FEES OF ATTORNEYS, ACCOUNTANTS AND OTHER EXPERTS (ON AN INDEMNITY BASIS) OR OTHER REASONABLE FEES OF LITIGATION, OR WITH OTHER PROCEEDINGS OR WITH ANY CLAIM, DEFAULT OR ASSESSMENT.

9. Indemnification.

- 9.1 **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. 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.
- 9.2 **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.
- 9.3 **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.
- 9.4 **Exclusive Remedy.** This Section 9 states the exclusive obligation of SUSE to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.
10. **Confidentiality.** "Confidential Information" means the terms of this Agreement 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.

11. Governing Law and Jurisdiction.

- 11.1 **Generally.** Except as specified in Sections 11.2 and 11.3, 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.
- 11.2 **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.
- 11.3 **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 11.3. 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.
12. **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.
13. **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.
14. **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.
15. **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.
16. **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.

17. **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.
18. **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.
19. **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.
20. **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 before exporting or re-exporting items subject to the EAR. Refer to: 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.
21. **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.
22. **Defined Terms.**
 - 22.1 **"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).
 - 22.2 **"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.

- 22.3 **"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.
- 22.4 **"Effective Date"** means the earliest of (a) the date of the last signature on this Agreement; or (b) your online acceptance of the Agreement.
- 22.5 **"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/>.
- 22.6 **"Fees"** are the amounts to be paid for the Software, Services or Subscription Offering (as applicable).
- 22.7 **"Marketplace Operator"** means Amazon Web Services Inc. or any of its affiliates that is a provider of public cloud services and that is authorised by SUSE to offer, on SUSE's behalf, Subscription Offerings to customers to purchase.
- 22.8 **"Marketplace Operator Website"** means the website the Marketplace Operator through which the SUSE Offerings are made available to purchase.
- 22.9 **"Services"** means Consulting Services, Training Services, and Support Services.
- 22.10 **"Software"** means any SUSE or SUSE Affiliate branded software product that is the subject of a Subscription Offering.
- 22.11 **"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.
- 22.12 **"Subscription Fees"** are the amounts to be paid for a Subscription Offering.
- 22.13 **"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.
- 22.14 **"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.
- 22.15 **"SUSE Product"** is a SUSE product consisting of Software as defined.
- 22.16 **"Support Services"** means the delivery of problem resolution and customer technical support.
- 22.17 **"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.
- 22.18 **"Training Services"** means the delivery of onsite or remote training courses.
- 22.19 **"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.
- 22.20 **"Unit"** means the applicable unit of measure set forth in the SUSE Subscription Terms.
- 22.21 **"Update" or "Patch"** means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in the SUSE Product.
- 22.22 **"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.