Subscription Agreement
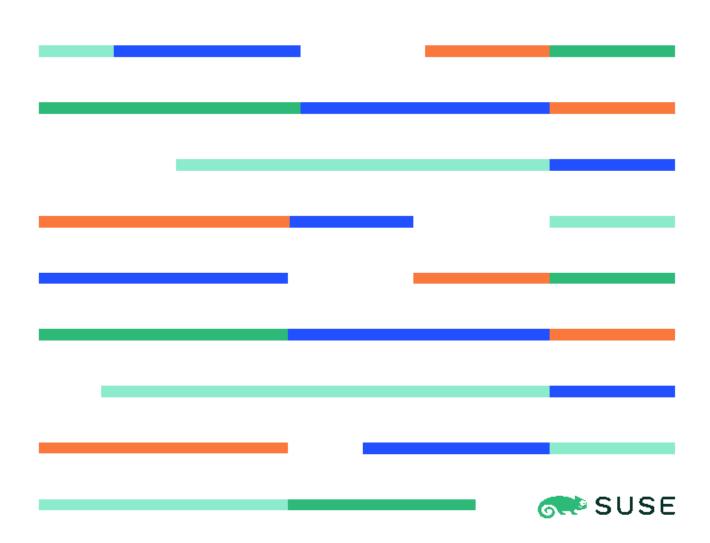
for SUSE Cloud Observability

SUSE

Subscription Agreement

NOTICE: 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 OR ORDER AGAINST IT.

1. **Contracting Entities and Formation**

    1.1 **Contracting Entities**

"Customer" or "Customer"
The entity that accepted the terms of this Subscription Agreement online or placed an Order to SUSE against the Order referring to this Subscription Agreement.

"SUSE" means the legal entity with its SUSE business unit named below depending on Customer's region/country		
Customer Location	**SUSE Entity**	**Notices**
Americas (except Canada) and Asia-Pacific (except India and Japan)	SUSE LLC	Post: Attention Contract Admin Team, 1221 S Valley Grove Way #500, Pleasant Grove, UT 84062, Email at: contractadmin@suse.com
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	Post: Attention: Contract Admin Team, One Spencer Dock, North Wall Quay, Dublin 1, Ireland, Email: emea_contract_admin@suse.com

    1.2 **Formation and Structure.** Each "**Agreement**" comprises the terms of this Subscription Agreement and each Order placed referencing its terms. Each Agreement entered into which refers to the terms of this Subscription Agreement constitutes a separate, standalone contract, which incorporates the terms of this Subscription Agreement and any amendments entered into between the Parties in writing. A reference in this Subscription Agreement to the "Agreement" means a reference to that Order only.

    1.3 **Effective Date.** Each Agreement is effective between Customer and SUSE as of: (i) the date of its final signature of this Subscription Agreement by both parties; (ii) the date the Customer clicks to accept these terms when placing an Online Order, or (iii) the date the Customer places an Order incorporating the terms of this Subscription Agreement, whichever is earliest (the "**Effective Date**").

2. **Purpose.** This Subscription Agreement describes the terms and conditions under which Customer may access and receive the benefit of, SUSE Cloud Observability for its own internal use and benefit. If Customer purchases User Subscriptions on the Marketplace, the terms of Appendix 1 (Marketplace Transactions) will apply.

3. **User Subscriptions**

    3.1 SUSE will provide the Customer with User Subscriptions granting access to SUSE Cloud Observability for the Subscription Fees specified in the Order.

    3.2 Access to SUSE Cloud Observability is provided via customary license keys.

    3.3 Subject to Customer purchasing the User Subscriptions and compliance with the terms of this Agreement, SUSE grants to the Customer a non-exclusive, non-transferable right and license, without the right to grant sublicenses, to permit the Authorized Users to use SUSE Cloud Observability and the Community Support Resources during the Subscription Term solely for the Customer's internal business operations.

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3.4 The Customer undertakes that: (a) it will not allow any User Subscription to be used by anyone other than an Authorized User; (b) each Authorized User shall keep a secure password for their use of SUSE Cloud Observability and keep it confidential; and (c) it shall maintain a written, up to date list of current Authorized Users and provide such list to SUSE within 5 Business Days of SUSE's written request at any time or times. The Customer will ensure that each Authorized User complies with the usage restrictions set out in this Agreement.

3.5 Upon termination or expiration of a User Subscription, SUSE will, without notice, disable customary license keys and remove access to SUSE Cloud Observability for the relevant Authorized User(s)**.**

3.6 The Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, SUSE Cloud Observability and, in the event of any such unauthorized access or use, promptly notify SUSE.

3.7 The Customer may, from time to time during any Subscription Term, request to purchase additional User Subscriptions in excess of the number set out in the Order by providing SUSE notice in writing or by placing Online Orders.

3.8 If the Customer places an Order in writing, the Customer shall, within 30 days of the date of SUSE's invoice, pay to SUSE the relevant Fees for such additional User Subscriptions.

3.9 Except for Marketplace Subscriptions, if additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such Fees shall be prorated from the date of activation by SUSE for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

4.1 SUSE shall, during the Subscription Term, make SUSE Cloud Observability to the Customer on a hosted basis, on and subject to the terms of this Agreement.

4.2 SUSE shall use commercially reasonable endeavors to make SUSE Cloud Observability Available 99% of the time, 24 hours a day, seven days a week, except for: (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am local time; and (b) unscheduled maintenance performed at any time, provided that such maintenance is necessary to urgently remediate a material functionality, availability or security issue.

4.3 SUSE's provision of SUSE Cloud Observability does not include the provision of support, and Customer has no entitlement to support from SUSE for SUSE Cloud Observability.

4.4 The Customer may separately purchase consulting services, at SUSE's then current rates, subject to the terms of the SUSE Professional Services Addendum, which is incorporated into this Agreement,.

4.5 SUSE makes available various resources and self-help documentation at https://docs.stackstate.com/ (the "**Community Support Resources**") designed to enable the Customer to troubleshoot incidents with SUSE Cloud Observability itself and locate community-based support for SUSE. SUSE may, at its sole discretion, assist You in using the Community Support Resources to troubleshoot incidents. This assistance is provided "as is" and may be withdrawn by SUSE at any time.

4.6 By connecting the Customer System to SUSE Cloud Observability, Customer grants SUSE the right to access and interoperate with the Customer System solely to the extent necessary to: (a) monitor the performance of components of the Customer System; (b) provide dashboards on the status of the Customer System; and (c) at SUSE's sole discretion, assist the Customer with trouble-shooting incidents affecting Customer's use and enjoyment of SUSE Cloud Observability.

4.7 Nothing in this Agreement authorizes SUSE to make any changes to the Customer System or to Customer Data stored on the Customer System, including by way of installing any updates or other software or code on the Customer System.

5. Integrations with Third Party Products

5.1 Customer acknowledges that SUSE Cloud Observability may enable or assist Customer to access the content of, correspond, monitor, integrate or interface with, and purchase products and services from, third parties via third-party data sites (each a "**Third Party Site**"), and that Customer does so solely at Customer's own risk. Whilst those Third Party Sites are intended to be complementary to SUSE Cloud Observability and enhance the Customer's overall experience of SUSE Cloud Observability, SUSE makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to: (a) 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; (b) any transactions completed, and any contract entered into by Customer, with the operator of such Third Party Site; (c) or the functionality or performance of the Third Party Site or, except as specified in Section 5.2, any integration or interface between the Third Party Site and either the Customer System or SUSE Cloud Observability. Any contract entered into and any transaction completed via any Third Party Site is between Customer and the relevant third party operator, and not SUSE. SUSE does not endorse or approve any Third Party Site nor the content of any Third Party Site.

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5.2 SUSE does not provide support services or any other support for Third Party Sites or any integrations or interfaces with the Third Party Sites. SUSE will not provide any technical coding or engineering support in respect of the Supported Integrations, and Customer is responsible for obtaining technical support for those components and tools.

6. Customer's Obligations

6.1 **Compliance.** Customer must comply with applicable law in its use of SUSE Cloud Observability. Without limiting the foregoing, Customer must not: (a) access, store, distribute or transmit any material during the course of its use of SUSE Cloud Observability that is unlawful, infringing or could otherwise cause damage to any person or property; or (b) introduce or permit the introduction of, any Virus or vulnerability into SUSE Cloud Observability or SUSE's network and information systems.

6.2 **Restrictions**. Customer will not, or permit any third party to, directly or indirectly: (i) sublicense transfer, lease, rent or otherwise assign its rights under this Agreement to any third party or allow any third party (other than Authorized Users) to access SUSE Cloud Observability; (ii) modify SUSE Cloud Observability, create or attempt to create any derivative works of SUSE Cloud Observability, or translate, reproduce, reverse engineer, re- engineer, de-compile, or disassemble SUSE Cloud Observability; (iii) make use of any of SUSE Cloud Observability for Customer's product development, in production or for any other commercial purpose; (iv) export SUSE Cloud Observability in violation of applicable US laws or any other applicable export control laws; (v) use SUSE Cloud Observability for any prohibited use, such as but not limited to nuclear technology applications, missile, or other military guidance systems and biological weaponry; (vi) alter or remove any of SUSE's or its licensors' copyright or proprietary rights notices or legends appearing on or in SUSE Cloud Observability; or (vii) modify, distribute or otherwise use SUSE Cloud Observability in any manner that causes any portion of SUSE Cloud Observability that is not already subject to an open source license to become subject to the terms of any open source license, in whole or in part, without SUSE's prior written consent. Customer shall not circumvent, or attempt to circumvent, any license management, security devices, access logs, or other measures provided, or permit or assist any Authorized User or any third party to do the same.

7. Shared Technical and Security Responsibility

7.1 **Interfaces.** Customer is solely responsible for procuring, installing, licensing, configuring, securing and maintaining the Customer System. Customer is solely responsible for selecting, implementing, activating, deactivating, and configuring each of the connections between each interface between the Customer System and SUSE Cloud Observability (the "**Interfaces**") and configuring SUSE Cloud Observability.

7.2 **Security Measures.** The Customer shall have sole responsibility for the legality, reliability, accuracy and quality of all Customer Data it provides to SUSE, which shall include any Customer Data that Customer enters into SUSE Cloud Observability. SUSE will implement appropriate technical and organizational measures to secure SUSE Cloud Observability in accordance with the security measures set out at https://www.suse.com/observability/.

7.3 **Personal Data.** Each party will comply with applicable data protection laws in relation to this Agreement. Customer will not upload personal data to SUSE Cloud Observability or provide access to SUSE Cloud Observability or to SUSE to personal data. SUSE will process any personal data contained in the Customer Data in accordance with the SUSE Privacy Policy. Without limiting this, SUSE's privacy policy (https://www.suse.com/company/legal/) applies to Customer's use of SUSE Cloud Observability. SUSE's data processing addendum available at https://www.suse.com/contracts/SUSE-Data-Processing-Addendum.pdf applies to the extent that SUSE acts as a processor on behalf of Customer when performing Services under this Subscription Agreement.

7.4 **Testing.** Customer is responsible for testing SUSE Cloud Observability and any other software or process obtained from SUSE, before using them to process live data or incorporating them into processes that could impact Customer's business or data subjects. SUSE will use reasonable measures to test updates it deploys to SUSE Cloud Observability.

7.5 **Customer's Security and Backup Obligations.** Customer acknowledges and agrees that whilst SUSE Cloud Observability contains features designed to improve the overall security of the Customer's environment, the Customer is solely responsible for implementing, and shall implement, appropriate measures to protect the security, integrity and accuracy of its systems and data. Without limiting the foregoing, Customer must: (i) back up Customer Data and systems on a regular basis; (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 Cloud Observability, in each case, in accordance with industry practice for the Customer's business and as appropriate having regard to the Customer's risk.

7.6 **SUSE's Security and Backup Obligations.** SUSE shall back-up and store Customer Data in accordance with its archiving procedures for Customer Data as set out in its Back-Up Policy for the period of time specified in the Back-Up Policy following the receipt or creation of such Customer Data (the "**Back-Up Period**"). In the event of any loss or damage to Customer Data

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during the Back-Up Period, which results solely from SUSE's breach of this Agreement, the Customer's sole and exclusive remedy against SUSE shall be for SUSE to use commercially reasonable endeavors to restore the lost or damaged Customer Data, in respect of the Back-Up Period, from the latest back-up of such Customer Data maintained by SUSE, and to make such back ups available to the Customer on SUSE Cloud Observability .

8.   Charges and payment

8.1   Customer agrees to pay all fees charged by SUSE in connection with Customer's use of SUSE Cloud Observability in accordance with this Agreement and applicable Order(s) (collectively, "**Fees**"). Except as otherwise provided in an Order, Fees for User Subscriptions ("**Subscription Fees**") are set forth at https://www.suse.com/observability/, on the Marketplace or in an Order placed pursuant to a quote received from SUSE.

8.2   If Customer wishes to purchase consultancy, training or other professional services or support, the fees will be as set out in an Order placed pursuant to a quote received from SUSE, on the Marketplace or in a statement of work signed by the Parties.

8.3   Marketplace Subscriptions

   8.3.1   The terms of Paragraph 3 of Appendix 1 (Marketplace Transactions) apply to Marketplace Subscriptions..

8.4   Non-Marketplace Subscriptions

   8.4.1   Subscription Fees are calculated annually or monthly in advance based on the estimated number of Chargeable Units to be consumed on a monthly basis. If the number of Chargeable Units used by the Customer in a month exceeds the number of Chargeable Units the Customer has paid for in advance for that month, SUSE shall invoice the Customer for the Subscription Fees for the additional number of Chargeable Units.

   8.4.2   All Fees must be paid in the currency specified in the Order.

   8.4.3   The Customer shall on or before the Effective Date provide to SUSE valid, up-to-date and complete credit card details or approved purchase order information acceptable to SUSE and any other relevant valid, up-to-date and complete contact and billing details.

   8.4.4   If Customer has elected to pay Subscription Fees by credit card, Customer authorizes SUSE to charge the credit card: (b) on the Effective Date for the Subscription Fees payable upfront as specified in the Order; and (b) monthly for Chargeable Units consumed in excess of the Subscription Fees paid upfront.

   8.4.5   If the Customer has opted to pay by purchase order, SUSE shall invoice the Customer: (a) on the Effective Date for the Subscription Fees payable upfront as specified in the Order; and (b) monthly for Chargeable Units consumed in excess of the Subscription Fees paid upfront.

   8.4.6   The Customer shall pay each invoice within 30 days after the date of such invoice.

   8.4.7   If an invoice is not paid when due under the Agreement, or SUSE is not provided with valid credit card information prior to the commencement of the Initial Subscription Term or a Renewal Period, overdue amounts will accrue interest from the date due to the date fully paid at the lesser of the rate of 1% per month (compounded monthly) and the highest rate allowed by applicable law.

   8.4.8   All amounts and fees stated or referred to in this Agreement are non-cancellable and non-refundable.

   8.4.9   If, at any time whilst using SUSE Cloud Observability , the Customer exceeds the amount of Chargeable Units specified in the Order, SUSE shall charge the Customer, and the Customer shall pay, SUSE's then current excess fees.

9.   Taxes. Except for Marketplace Subscriptions, which are governed by Paragraph 3 of Appendix 1 (Marketplace Transactions), all Fees are exclusive of all applicable taxes. Customer will pay and bear the liability for taxes associated with activities under this Subscription Agreement, including sales, use, excise, and added value taxes but excluding taxes based upon SUSE's net income, capital, or gross receipts. If Customer is required to withhold tax as required by law: (i) this will be subject to the application of any reduced rate allowed in an income tax treaty; (ii) Customer will request all documentation required for the reduction of withholding tax; and (iii) Customer will provide to SUSE a valid government receipt documenting the withholding or deduction as applicable. If SUSE is required by law to remit any tax or duty on Customer's behalf or for Customer's account upon delivery, Customer agrees to reimburse SUSE within thirty (30) days after SUSE notifies Customer in writing of such remittance. Should Customer determine that the supply should be exempt from transaction taxes, Customer will provide SUSE with valid tax exemption certificates in advance of placing an order where such certificates are applicable.

10.   Proprietary rights

10.1   The Customer acknowledges and agrees that SUSE and/or its licensors own all intellectual property rights in SUSE Cloud Observability. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any

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patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licenses in respect of SUSE Cloud Observability or the Community Support Resources.

10.2   SUSE has all the rights in relation to SUSE Cloud Observability that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10.3   The Customer shall own all right, title and interest in and to all of the Customer Data.

11.   Technical Usage Data. SUSE Cloud Observability service collects and generates technical usage data relating to Customer's use of SUSE Cloud Observability, including error logs, network architectures, usage patterns, and the workloads and infrastructure Customer has deployed in the Permitted Observable Environment, but in each case, excluding personal data (together, the "**Technical Usage Data**").   As a condition of Customer's use of and access to SUSE Cloud Observability, Customer agrees that SUSE may collect and generate Technical Usage Data as described in this Section and that SUSE may use, store, analyze, and aggregate the Technical Usage Data solely for the purpose of: (i) performing its obligations under the Agreement; (ii) improving the services SUSE provides to customers; (iii) developing new products and services; (iv) calculating Fees; and (vii) monitoring Customer's compliance with this Agreement. SUSE warrants that SUSE Cloud Observability service is not designed to collect personal data or personally identifiable information as part of Technical Usage Data. To the extent Technical Usage Data contains information that identifies the Customer or otherwise contains Customer's Confidential Information, the obligations of confidentiality set out in Section 15 shall apply. Customer agrees that SUSE may use aggregated or anonymized Customer Data for any lawful business purpose during or after the term of this Agreement, including without limitation to develop and improve SUSE products and services and to create and distribute insights, reports and other materials. Customer represents and warrants that it has obtained all necessary consents and permissions required to enable it to grant the permissions set out in this Section 11.

12.   SUSE Representations and Warranties. SUSE warrants that: (a) it has the authority to enter into the Agreement; (b) in the provision of SUSE Cloud Observability, SUSE will comply with laws applicable to SUSE as the provider of SUSE Cloud Observability; and (c) it will perform its obligations under the Agreement with reasonable skill and care. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SERVICES, ASSISTANCE PROVIDED BY SUSE, THE COMMUNITY SUPPORT RESOURCES AND ANY OTHER MATERIAL ARE PROVIDED BY SUSE ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS RESTRICTED BY LAW, SUSE, ON BEHALF OF ITSELF AND ITS AFFILIATES AND AGENTS (COLLECTIVELY "**THIRD PARTIES**"), DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS INCLUDING ANY WARRANTIES OR CONDITIONS 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 THE AGREEMENT. NEITHER SUSE NOR ITS THIRD PARTIES WARRANT THAT: (1) THE SUSE PRODUCTS, SOFTWARE OR SERVICES WILL SATISFY CUSTOMER'S REQUIREMENTS; (2) THAT THE OPERATION OF SUSE CLOUD OBSERVABILITY WILL BE UNINTERRUPTED OR ERROR FREE; OR (3) USE OF SUSE CLOUD OBSERVABILITY WILL PREVENT, DETECT 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.

13.   Liability

13.1   **DISCLAIMER OF DAMAGES.** 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.

13.2   **AGREEMENT LIABILITY CAP.** THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES WITH RESPECT TO: (A) ALL CLAIMS RELATING TO OR ARISING OUT OF EACH AGREEMENT, SHALL BE LIMITED TO THE GREATER OF: (1) THE AMOUNTS RECEIVED BY SUSE UNDER THAT AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO THE FIRST CLAIM UNDER THAT AGREEMENT; AND (2) FIVE THOUSAND U.S DOLLARS (USD 5,000); AND (B) ALL OTHER CLAIMS OTHERWISE ARISING UNDER OR IN RELATION TO THIS SUBSCRIPTION AGREEMENT, SHALL BE LIMITED TO FIVE THOUSAND U.S DOLLARS (USD 5,000).

13.3   **MITIGATION & EXCUSE.** EACH PARTY SHALL MITIGATE ALL LOSSES THAT IT SEEKS TO RECOVER UNDER OR IN CONNECTION WITH THIS AGREEMENT. SUSE SHALL NOT BE LIABLE TO CUSTOMER FOR LOSS OR DAMAGE RESULTING FROM, OR TO THE EXTENT INCREASED BY, CUSTOMER'S BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

13.4   **EXCLUSIONS FROM LIMITATIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NOTHING IN THIS AGREEMENT LIMIT OR EXCLUDES LIABILITY FOR THE FOLLOWING: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (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.

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14. **SUSE Indemnification.**

14.1 **Indemnity.** SUSE will indemnify Customer from and against damages, costs and expenses (including reasonable attorneys' fees) finally awarded against Customer (or approved by SUSE in a settlement) in favor of a third party, resulting from a claim, received during a Subscription Term, by that third party alleging that SUSE Cloud Observability infringes the trademarks or copyrights of such third party. In order to benefit from the indemnity in this Section, Customer 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 (at SUSE's cost) in defending the claim. Customer will make best efforts to mitigate any losses and consequences of an infringement to the extent possible.

14.2 **Repair and Replace**. If SUSE Cloud Observability 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, Customer will permit SUSE, at SUSE's option and expense, to (a) procure for Customer the right to continue to use SUSE Cloud Observability, 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 this Agreement without further liability and refund to Customer the amount paid for the unused portion of the term of the User Subscriptions as of the effective date of said termination.

14.3 **Exceptions to SUSE's Indemnification Obligation.** SUSE will have no obligation of defense or indemnity: (a) if at any time Customer was in breach of this Agreement; or (b) to the extent the infringement claim arises from: (i) Interfaces; (ii) a modification of SUSE Cloud Observability not requested or authorized in writing by SUSE; (iii) use of SUSE Cloud Observability with non-SUSE software, equipment, or data, other than as specified or approved by SUSE in writing; (iv) the furnishing to Customer of any information, service, or technical support by a third party; or (v) Customer's use of SUSE Cloud Observability otherwise than for internal use.

14.4 **Sole Remedy.** This Section 14 states the exclusive obligation of SUSE and sole remedy of Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

15. **Confidentiality.** "**Confidential Information**" means the terms of this Subscription Agreement, the Agreement, SUSE Cloud Observability, all information regarding SUSE Cloud Observability (including any trade secrets, know-how, inventions, techniques, processes, and algorithms embodied in SUSE Cloud Observability), and any other information that: (i) if disclosed in tangible form, is marked in writing as confidential, (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential", (iii) pricing information; or (iv) by the nature of the information or the circumstances surrounding its disclosure, would reasonably be considered confidential. Confidential Information will not include information: (a) already in the receiving party's possession without obligation of confidence; (b) independently developed by the receiving party; (c) that becomes available to the general public without breach of this Subscription Agreement; (d) rightfully received by the receiving party from a third party without obligation of confidence; and (e) released for disclosure by the disclosing party with its written consent. The receiving party of Confidential Information will hold and maintain such Confidential Information in confidence and use at least the same degree of care to protect it that it uses to protect its own confidential information, but in no event less than reasonable care. 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 Subscription Agreement. The obligations in this section will not apply to information to the extent that information is required to be disclosed by law, regulation, or court order.

16. **Term and Termination**

16.1 **Term of the Subscription Agreement**. This Subscription Agreement will become effective on the Effective Date of the first Order placed under it and will remain in effect for until the later of: (a) one (1) year after the Effective Date; and (b) the expiration of the last User Subscription purchased pursuant to this Agreement the (the "**Term**"), subject to earlier termination as stated below.

16.2 **Term of User Subscriptions.** The term of each of the User Subscriptions begins on the date specified in the Order and continues for the term stated in the Order (each a "**Subscription Term**"). Except for Marketplace Subscriptions, User Subscriptions will automatically renew for successive terms of the same duration as the Initial Subscription Term (each a "**Renewal Period**"), at the Renewal Price, unless either party gives written notice to the other of its intention not to renew at least thirty (30) days before the commencement of the next renewal term.

16.3 **Termination for Cause.** Either Party may terminate this Subscription Agreement and any or all Agreements placed under it, in whole or in part, by notice to the other party if: (i) the other party irremediably breaches the Agreement; or (ii) materially breaches the Agreement and does not cure the breach within thirty (30) days after written notice. Without limiting the foregoing, SUSE may suspend performance of its obligations and/or terminate this Subscription Agreement or any

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Agreement, in whole or in part, if: (a) Customer fails to meet its payment obligations and this failure continues for ten (10) days following receipt of written notice from SUSE; or (b) SUSE has reasonable grounds to believe that Customer and/or the Authorized Users are in breach of the obligations under Section 3; or (c) the Customer Marketplace Contract is terminated by the Marketplace Operator.

16.4 **Effect of Termination.** Termination of this Subscription Agreement will not: (a) terminate an Agreement unless the terminating party provides notice to terminate specific Agreements pursuant to Section 16.3, in which case only the specified Agreements shall terminate; or (b) affect any pre-termination obligations of either party under the Agreement or the Subscription Agreement. The provisions of the Subscription Agreement that by their nature extend beyond the expiration date or other termination of the Agreement will survive and remain in effect until all obligations are satisfied.

16.5 **Effect of Termination on Usage Rights**. All license rights and User Subscriptions in respect of all SUSE Cloud Observability will terminate on the effective date of termination of this Subscription Agreement.

16.6 **Survival.** The provisions of this Subscription Agreement which by their nature extend beyond termination will survive termination or expiration of this Subscription Agreement.

17. Governing Law and Jurisdiction.

17.1 **Generally.** Except as specified in Sections 17.2 and 17.3: (1) this Subscription Agreement and each 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); and (2) any dispute, claim, action, or proceeding arising out of or relating to the Agreement ("**Proceeding**") may only be brought before a federal or state court of appropriate jurisdiction in New York. In any Proceeding, each of the parties irrevocably waives the right to trial by jury.

17.2 **UK, EU, EFTA.** If Customer's country of principal residence is the United Kingdom, or a member state of the European Union or the European Free Trade Association, (1) this Subscription Agreement and each Agreement is governed by and construed in accordance with the laws of England and Wales; and (2) any Proceeding will be submitted to the exclusive jurisdiction of the courts of England and Wales.

17.3 **People's Republic of China.** If Customer's country of principal residence is in the People's Republic of China, this Subscription Agreement is governed by and construed in accordance with the law of the People's Republic of China. Where any dispute arises out of or in relation to this Subscription Agreement, SUSE or Customer will 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 thirty (30) days of such notice will be referred by either party to, and finally resolved by, arbitration in China in accordance with the then current Arbitration Rules of the China International Economic and Trade Arbitration Commission ("**CIETAC**"), which rules are deemed to be incorporated by reference in this Section 17.3. Each arbitration will be conducted by one arbitrator (selected by agreement between the parties, or failing agreement, in accordance with the CIETAC Rules). Arbitration will 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 will be final and binding on the parties.

18. Compliance

18.1 **Export Compliance.** Any products, services or technical information provided under this Subscription Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all applicable export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables or services. 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 SUSE Products. Upon request, SUSE can provide information regarding applicable export restrictions. However, SUSE assumes no responsibility for Customer's failure to obtain any necessary export approvals.

18.2 **Anti-Corruption Laws.** Each party and its Affiliates and any other persons performing any activities related to this Subscription Agreement, will comply with all applicable anti-corruption laws and regulations, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and will not engage in conduct that would cause the other party to violate any law or regulation including anti-corruption laws and regulations. Neither party nor its officers, employees, agents or subcontractors will offer, promise, give, request, accept or agree to accept from any person (whether for themselves or on behalf of another) any advantage, gift, payment, consideration or benefit of any kind that is intended to influence a decision or gain advantage or that otherwise constitutes a bribe and/or an illegal or corrupt practice under the applicable laws of

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any country, either directly or indirectly in connection with this Subscription Agreement or the business of SUSE ("**the Anti-Corruption Obligation**"). Each party will disclose in writing to the other details of any breach or alleged breach of the Anti-Corruption Obligation. A party may terminate this Subscription Agreement immediately upon written notice to the other in the event of a breach or suspected breach of the Anti-Corruption Obligation by the other party.

18.3 **SUSE Policies.** Customer agrees that Customer's access to and use of the User Subscriptions will be subject to, and Customer agrees to at all times comply with, the SUSE policies available at https://www.suse.com/company/legal/ as updated from time to time.

18.4 **SUSE Trade Marks.** Customer will not alter, erase or overprint any notice provided by SUSE and not to attach any additional trademarks without the prior written consent of SUSE or to affix any SUSE Marks to any non-SUSE product. Customer recognizes SUSE's ownership and title to the trade names and Marks and the goodwill attaching to the trade names and Marks.

19. Miscellaneous.

19.1 **Superior Agreement.** Each Agreement comprises the whole agreement between the parties with regard to its subject matter and supersedes all prior oral and written representations or agreements between the parties relating to the subject matter contained therein. The Agreement will not be supplemented or modified, including by any course of dealing or usage of trade or any terms in a Customer's purchase order, except as documented in a written document signed by each party, or as set out in an Order. For clarity, the SUSE Subscription Terms do not apply to your use of SUSE Cloud Observability.

19.2 **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.

19.3 **Transfer and Assignment.** The Agreement may not be transferred or assigned without the prior written approval of the other party; any other transfer or assignment or attempted transfer or assignment will be null and void.

19.4 **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, including without limitation, acts of God; pandemics; flood, fire or explosion; war, invasion, riot or other civil unrest; terrorist or criminal acts; cyberattacks; internet disruptions; embargoes or blockades; or national or regional emergency, provided that, in each case, the affected Party will provide prompt notice to the other Party, stating the period of time the occurrence is expected to continue, and use diligent efforts to end the failure or delay and minimize the effects of such event. Upon the occurrence of any of the foregoing, the date of performance will be deferred for a period of time equal to the time lost by reason of the delay. This Section 19.4 does not relieve either party of its obligation(s) to make timely payments.

19.5 **Changes to this Subscription Agreement.** From time-to-time SUSE may make changes to this Subscription Agreement and the User Subscriptions. If Customer's User Subscriptions are renewed or Customer acquires new User Subscriptions, Customer agrees that the most recent version of this Subscription Agreement governs all of Customer's SUSE Cloud Observability prospectively.

19.6 **Notices.** Notices given under this Subscription Agreement must be in writing. Notices to SUSE will be sent by email and post to the addresses provided in Section 1 (as may be updated in writing to the other Party). Notices to Customer will be sent to the Customer address stated in this Subscription Agreement or, if not stated, to its registered address (or for US based entities, its headquarters address).

20. Definitions.

20.1 **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).

20.2 **Agreement** has the meaning given in Section 1.2.

20.3 **Authorized User** means those employees, agents and independent contractors of the Customer who are authorized by the Customer to use SUSE Cloud Observability.

20.4 **Available** means that the SUSE Cloud Observability is capable of being accessed and used by the Authorized Users.

20.5 **Backup Period** has the meaning given in Section 7.6.

20.6 **BackUp Policy** means the back up policy set out at https://docs.stackstate.com/self-hosted-setup/data-management/backup_restore.

20.7 **Chargeable Unit** means a Host, a Log, a Metric, a Trace or any other unit used to measure the consumption of SUSE Cloud Observability as specified at https://www.suse.com/observability/ from time to time.

20.8 **Community Support Resources** has the meaning given in Section 4.4.

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20.9 **Customer Data** means the data inputted by or on behalf of the Customer and Authorized Users into SUSE Cloud Observability.

20.10 **Customer Marketplace Contract** has the meaning given in Appendix 1 (Marketplace Transactions).

20.11 **Customer System** means the systems, platforms, services, software, devices, sites and/or networks that Customer uses for its operations, excluding SUSE Cloud Observability.

20.12 **Effective Date** has the meaning given in Section 1.3.

20.13 **Fees** has the meaning given in Section 8.1

20.14 **Hosts** means any computing systems, virtual machines or physical servers within the Customer's environment that are monitored, managed, or otherwise observed using SUSE Cloud Observability.

20.15 **Initial Subscription Term** means the duration of the User Subscription(s) specified in an Order.

20.16 **IP Owner** has the meaning given in Section 14.1

20.17 **Interfaces** has the meaning given in Section 7.1

20.18 **Logs** means the records of system events, application events, or infrastructure-level activities generated by the Customer's systems and collected by SUSE Cloud Observability for the purpose of monitoring, troubleshooting, and analyzing performance and behavior.

20.19 **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.

20.20 **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.

20.21 **Marketplace Offer** means a listing or offer for SUSE Products in the relevant Marketplace, where the price for the Marketplace Subscription (and any applicable discounts) is displayed to You in the non-public Marketplace portal.

20.22 **Marketplace Subscription** has the meaning given in Appendix 1 (Marketplace Transactions).

20.23 **Metrics** means the quantitative data points and measurements generated by the Customer's systems, including but not limited to resource utilization, application performance, and network statistics, which are collected and analyzed by SUSE Cloud Observability to provide insights into system health and performance.

20.24 **Online Order** means the purchase of a User Subscription for SUSE Cloud Observability by: (a) placing and making payment for, an order online at www.suse.com; (ii) placing an order that incorporates the terms of this Subscription Agreement using the online portal made available by SUSE from time to time; or (iii) purchasing a Marketplace Subscription on a Marketplace.

20.25 **Order** means the purchase of a User Subscription for SUSE Cloud Observability by: (a) placing an Online Order; or (ii) executing this Subscription Agreement and together with any SUSE purchase and ordering document, which may include a Statement of Work;

20.26 **Permitted Observable Environment** means those elements of the Customer System that the Customer has configured to be accessible by SUSE Cloud Observability service for the purpose of monitoring and observing.

20.27 **Proceeding** has the meaning given in Section 17.1.

20.28 **Renewal Period** has the meaning given in Section 16.2.

20.29 **Renewal Price** means the price applicable to each Renewal Term which shall be the Fees applicable to the same User Subscription tier on www.suse.com at the commencement of the Renewal Period, whichever is lower;

20.30 **Standard Listing** means a listing or offer for SUSE Products in the relevant Marketplace, where the price for the Marketplace Subscription (and any applicable discounts) is publicly displayed.

20.31 **SUSE Cloud Observability** means the hosted system observability software and associated hosting services made available by SUSE via a private login page designated by SUSE, which SUSE makes available to customers for a fee. "SUSE Cloud Observability" does not include (a) any services provided without charge or any alpha, beta or other pre-commercial releases of a SUSE product or service (or feature of functionality of a Service); and (b) any tools, software or other services that SUSE makes available pursuant to separate commercial terms;

20.32 **SUSE Privacy Policy** means the policy available at https://www.suse.com/company/legal/ from time to time.

20.33 **SUSE Professional Services Addendum** means the document available at https://www.suse.com/licensing/eula/download/suse_professional_services_addendum.pdf from time to time.

20.34 **SUSE Subscription Terms** means the terms and conditions that are available at https://www.suse.com/products/terms_and_conditions.pdf

20.35 **Subscription Term** has the meaning given in Section 16.2

20.36 **Supported Integrations** means integrations between SUSE Cloud Observability and the third party services listed in the Community Support Resources from time to time.

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20.37 **Term** has the meaning given in Section 16.1

20.38 **Traces** means the detailed records of individual transactions or requests as they propagate through the Customer's system, capturing the flow of execution across various components, services, and hosts. These are collected by SUSE Cloud Observability to provide end-to-end visibility, performance monitoring, and root cause analysis.

20.39 **User Subscription** means the user subscriptions purchased by the Customer pursuant to Section 3 which entitle Authorized Users to access and use SUSE Cloud Observability services in accordance with this Subscription Agreement.

20.40 **Virus** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

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Appendix 1
Marketplace Transactions

1. **General**

1.1 **Purpose.** This Addendum applies when You purchase User Subscriptions on the Marketplace(s) only (such User Subscriptions being "**Marketplace Subscriptions**"). In order to purchase Marketplace Subscriptions from a Marketplace under this Agreement, You must first have entered an agreement with the relevant Marketplace Operator permitting You to purchase Marketplace Subscriptions on that Marketplace, such agreement being the **"Customer Marketplace Contract".** You must not: (a) attempt to purchase or use Marketplace Subscriptions via any reseller of Marketplace Subscriptions other than the Marketplace Operators under this Agreement; or (b) attempt to use Marketplace Subscriptions purchased from one Marketplace on a different Marketplace offered by a different Marketplace Operator. You may place an order for those User Subscriptions Listed by SUSE on the Marketplace. If a subscription for a product or service You wish to purchase is not listed on a specific Marketplace, SUSE has no obligation to make a subscription for that product or service available on that Marketplace.

1.2 **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 Marketplace Subscriptions from that Marketplace under this Agreement. Unless the facts giving rise to the Marketplace Notice are also grounds for termination of this Agreement, all Marketplace Subscriptions purchased as at the effective date of termination shall remain in effect.

1.3 **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 User Subscriptions for SUSE Cloud Observability 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.

1.4 **Indirect Transaction Structure.** You may purchase Marketplace Subscriptions from a reseller authorized by SUSE to resell Marketplace Subscriptions 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 Marketplace Subscriptions.

2. **Term and Ordering**

2.1 **Term of a Marketplace Subscription.** The term of each Marketplace Subscription, and your entitlement to access SUSE Cloud Observability shall: (i) commence on the date an order you placed for that Marketplace Subscription 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 on the Marketplace for Your Marketplace Subscription at the time You place your order, unless the Marketplace Subscription is terminated earlier in accordance with the Agreement.

3. **Ordering and Payment**

3.1 **Ordering.** The Fees for the Marketplace Subscriptions 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.

3.2 **Payment and Taxes.** You must make timely payment of the Fees for the Marketplace Subscription 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:

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(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.