

SUSE Subscription Terms



SUSE Subscription Terms

1. Purpose

These SUSE Subscription Terms ("**Subscription Terms**") are entered into between the SUSE entity specified in Section 2 below ("**SUSE**") and you ("**You**"), and describe the terms and conditions under which You purchase, (either directly from SUSE or through an Authorized Reseller), receive and access SUSE Products and SUSE Offerings.

2. SUSE Contracting Entity

You are entering the Agreement with the SUSE entity that corresponds to the location of Your registered office or headquarters address, as follows:

Your Location	SUSE Entity	Notices	Governing Law & Jurisdiction
Americas (except Canada) APAC (except India and Japan)	SUSE LLC	Post: Attention Contract Admin Team, 1221 S Valley Grove Way #500, Pleasant Grove, UT 84062 Email: finops.row.contractsupport@suse.com	The laws of the State of New York, USA, with exclusive jurisdiction in the state and federal courts located in New York County, New York, and each party irrevocably waives trial by jury.
Canada	SUSE Software Solutions Canada ULC		
Japan	SUSE Software Solutions Japan KK		
Europe, the Middle-East, Africa (EMEA)	SUSE Software Solutions Ireland Ltd	Post: Attention: Contract Admin Team, 38/39 Fitzwilliam Square West, Dublin 2, D02 NX53, Ireland Email: finops.emea.contractsupport@suse.com	The laws of England & Wales, with the courts of England having exclusive jurisdiction.
India	SUSE Software Solutions India Private Ltd		

3. Structure

This Agreement ("**Agreement**") consists of the following, which to the extent of any conflict or ambiguity, will apply in accordance with the following order of precedence: (a) the applicable Transaction Document; (b) any applicable Appendix to these Subscription Terms; (c) these Subscription Terms; (d) the Product Appendices; and (e) the EULA. Capitalized terms used but not defined in the body of these Subscription Terms are defined in Section 30.

4. Formation

- 4.1. **Agreement Effective Date.** The Agreement is legally binding upon the earlier of: (i) the date SUSE accepts an order against a Transaction Document referencing or incorporating these Subscription Terms; or (ii) the date You accept these Subscription Terms online or by signature; or (iii) the first date You receive access to a SUSE Offering (the "**Agreement Effective Date**").
- 4.2. **Term of a SUSE Offering.** Each SUSE Offering shall have a fixed term defined by the start date and end date specified in the applicable Transaction Document. These Subscription Terms, in the version effective at the Agreement Effective Date, shall govern the SUSE Offering for the duration of its term. Each Subscription will automatically renew for successive terms equal in length to the original Subscription term specified in the applicable Transaction Document, unless either party gives written notice to the other of its intention not to renew at least ninety (90) days before the commencement of the next renewal term. The fees for each renewal term will be calculated by reference to SUSE's then-current price list for the relevant SUSE Offering as at the start of that renewal term, less the same percentage discount applied to the original Subscription under the applicable Transaction Document.

- 4.3. **Renewals and new purchases.** Each time You renew or purchase a new SUSE Offering, the then-current version of these Subscription Terms shall apply to that renewal or purchase.

5. Subscription Benefits

For each Subscription, subject to registration in accordance with Section 5.1, You are entitled to receive the Technical Support Services, Updates and Upgrades as set out in this Section 5.

- 5.1. **Registration of Subscriptions.** Your entitlement to Subscription Benefits in respect of any deployment of SUSE Products is conditional upon You having first registered Your Subscription, together with the system on which it is installed, on the SCC. SUSE reserves the right to refuse to provide Subscription Benefits unless and until You have registered each deployment.
- 5.2. **Technical Support Services.** Each Subscription entitles you to Technical Support Services as set forth in the Technical Support Handbook at <https://www.suse.com/support/handbook/>. SUSE offers various tiers of support. The level of Technical Support Services to which You are entitled is determined by the type of Subscription and the tier specified in the Transaction Document as set out in the Technical Support Handbook valid at the time of purchase. SUSE is not liable or responsible for any issues arising from: (i) any non-SUSE modification of SUSE Products; (ii) any use of non-SUSE software, equipment or data; (iii) any decision by You not to implement, or any delay or failure by You to implement, Updates, Upgrades, patches or fixes provided by SUSE; or (iv) any of the exceptions specified at: <https://www.suse.com/support/handbook/what-is-not-supported/>.
- 5.3. **Updates and Upgrades.** If SUSE commercially releases any Updates and/or Upgrades during the term of Your Subscription, SUSE will make such Updates and/or Upgrades available to You for download in the SCC or a registry. You will be entitled to install and use Upgrades and/or Updates up to the number of deployments for which You have purchased a Subscription. Use of Updates and Upgrades is subject to the terms of the EULA provided with them.
- 5.4. **Product Support Lifecycle and Application of Current Software.** SUSE provides Subscription Benefits for each SUSE Product during that product's lifecycle as described at <https://www.suse.com/support/policy.html> and <https://www.suse.com/lifecycle/>. Subscription Benefits are conditional on You having applied the most current Update and/or Upgrade available; for example, once a new Service Pack becomes available, support may be conditioned on You having applied that Service Pack. Similarly, support for modules is conditioned on You having updated to the most recent module version made available by SUSE. SUSE's support obligations for each SUSE Product cease at the end of that SUSE Product's lifecycle.
- 5.5. **Community Software.** Where a Subscription includes access to Community Software, Community Software may not be supported by SUSE or may be subject to different or reduced levels of Subscription Benefits, in each case, as specified on the webpage or repository from which the Community Software is made available by SUSE for download.

6. Units of Measure for Subscriptions

- 6.1. **Coverage Requirement for SUSE Products.** When You acquire a Subscription for a SUSE Product, You must also acquire sufficient Subscriptions in the applicable Units to cover all installations and deployments of that SUSE Product (including variants or components thereof). By way of example, if the Unit is per device on which a SUSE Product is installed, then You must acquire a Subscription for each device on which that SUSE Product is installed. Upon renewal of a Subscription for a SUSE Product, your payment of Subscription fees will be deemed a representation of the number of Units installed or deployed, for that SUSE Product. Without limiting the foregoing, the coverage requirement applies to all SUSE Products containing "SUSE Linux Enterprise" or "SLE" in the product names as if they were one SUSE Product. This means that, for example, if You have a Subscription for SLES, You must also maintain Subscriptions for all of your installations or deployments of SLES for SAP, and vice versa. If during the term of the Agreement, the number of Units You install or deploy exceeds the number of Units for which You have paid, You must (i) promptly report to SUSE or its Authorized Reseller the number of such additional Units, and (ii) place an order for additional Subscriptions to cover such installations or deployments within no later than thirty (30) days after first installation or deployment. SUSE or its Authorized Reseller will invoice You and You agree to pay for such additional Subscriptions in accordance with Section 12.

- 6.2. **Coverage Requirement for non-SUSE Branded Products.** When You acquire a Subscription for a non-SUSE branded open-source software product (e.g. a Subscription for SUSE Multi Linux Support), You must also acquire sufficient Subscriptions in the applicable Units to cover all installations or deployments of that open-source software product (including variants or components thereof) (a) that are registered in SUSE Multi-Linux Manager or the SCC; and/or (b) for which Subscription Benefits have been accessed to update, bug fix or otherwise support that installation or deployment, in each case, whether directly or indirectly, within the preceding twelve (12) months. In this context, indirectly means downloading or accessing a Subscription Benefit for one installation or deployment, and applying the benefit of that support to another installation or deployment.
- 6.3. **No Mixing of Subscriptions.** Subscriptions may only be applied to the exact SUSE Product for which the Subscription was acquired. By way of example and not limitation, You cannot apply Subscription Benefits for the x86 platform version of SUSE Linux Enterprise Server (SLES) to the zSystem platform version of SLES, nor may you apply Subscription Benefits for SLES to SLES for SAP Applications. You may not mix 1-2 Virtual Machine Subscriptions with Unlimited Virtual Machine Subscriptions on the same Physical Server. All Subscriptions must be of the same type on a Physical Server.

7. Special Types of Subscriptions

- 7.1. **Evaluation Subscriptions.** Where SUSE provides Subscriptions for evaluation purposes (“**Evaluation Subscription**”), these are time limited for sixty (60) days. You agree not to use such Subscriptions in any Production Environment or for any commercial purpose.
- 7.2. **Developer Subscriptions.** Where SUSE provides Subscriptions for development purposes (“**Developer Subscription**”), these Subscriptions are time limited for one (1) year. You agree not to use such Subscriptions in any Production Environment or for any commercial purpose other than development and testing.
- 7.3. **Breach of Subscription Restrictions.** If You use any Evaluation or Developer Subscription in breach of the restrictions set out above, SUSE shall be entitled to invoice You, and you agree to pay to SUSE, for the price of the equivalent Subscription, in respect of each deployment of the relevant SUSE Product, and You shall pay such invoice within 30 days from the date of invoice.
- 7.4. **Additional Promotional Terms.** As a condition of Your use and receipt of certain promotional Subscriptions (each being a “**Promotional Subscription**”), SUSE may include limited exceptions or additional terms or restrictions (“**Promotional Conditions**”) applicable to Your use of certain Subscription as specified: (a) in a Transaction Document; or (b) on www.suse.com at the time a Transaction Document is entered into.

8. Bring Your Own Subscription (“BYOS”)

- 8.1. **Transferring or deploying Subscriptions to a Public Cloud.** SUSE operates a ‘Bring Your Own Subscription’ (BYOS) policy that allows You, subject to compliance with the remainder of this Section 8, to use SUSE Products in those Public Clouds that are certified by SUSE and are listed at <https://www.suse.com/programs/cloud/public/> (“**Eligible Public Clouds**”) and to ‘transfer’ existing Subscriptions in respect of ‘on premise’ deployments to those SUSE Products. In order to use such SUSE Products on an Eligible Public Cloud, you must first register the Subscription in the SCC.
- 8.2. **Reporting.** You consent to the Eligible Public Cloud vendor reporting to SUSE your usage of SUSE Products and corresponding Subscriptions in the vendor's Eligible Public Cloud.
- 8.3. **Removal of Public Cloud Vendor from Eligibility.** SUSE may remove a particular Eligible Public Cloud vendor by giving You sixty (60) days’ prior written notice. You may continue to use such Subscriptions that have already been validly transferred to that Eligible Public Cloud vendor under Section 8.1 hereto during this sixty-day notice period or for the remainder of the term of the Subscriptions, whichever is shorter. You may, subject to Section 8.1, also transfer Your Subscriptions to another eligible Public Cloud vendor or (back) to your premises.

9. Subscription Usage Rights

- 9.1. **General.** Subject to Section 11, You may use the SUSE Offerings, in the Territory and during the term of the SUSE Offering, solely as permitted in this Section 9.

- 9.2. **Internal Use.** Subject to Section 9.3, or unless you acquire usage rights under Section 9.4, each Subscription is solely for Your internal use and internal benefit and the respective SUSE Product may be deployed only on infrastructure (including standalone devices and edge infrastructure) owned, leased or managed by You or managed on Your behalf, in each case, exclusively for Your internal benefit. Subject to Section 11.2, You may not: (a) use any Subscription or SUSE Offering for the benefit, directly or indirectly, of any third party, which includes making the Subscription or SUSE Offering available as part of any product or service that is sold, leased, rented or otherwise made available by You; (b) allow a third party to use or access, directly or indirectly, any of Your Subscriptions for that third party's own benefit; or (c) assign or transfer the Subscription to any third party. The usage rights and restrictions set out in this Section 9.2 are "**Internal Use**".
- 9.3. **SUSE Partner Use.** If You are a SUSE Partner, Your usage rights are as set out in the Partner Terms.
- 9.4. **Integrated Use:** During the term of the relevant Subscription, if and to the extent the applicable Transaction Document gives you the right to use the SUSE Offering for integrated use, You may only use the SUSE Offerings to develop, maintain and support Integrated Solutions, subject to compliance with the terms and conditions set out in (a) to (h) below.
- a) The Integrated Solution must include at least one material value-added application beyond the SUSE Product.
 - b) You must distribute the Integrated Solution together as one single package. If the user of the Integrated Solution is required to install the Integrated Solution, they must not be required to install the SUSE Product separately.
 - c) The Integrated Solution must be designed, marketed, and technically restricted to perform a predefined, dedicated task or set of tasks (e.g., a medical imaging device, a network firewall, or a specialized industrial controller). You must ensure the Integrated Solution is not configured or utilized as a general-purpose platform that allows users to install, execute, or manage unrelated third-party applications or workloads.
 - d) You will implement reasonable physical and/or logical measures to restrict the users of the Integrated Solution from being able to access the SUSE Products incorporated into the Integrated Solution.
 - e) The Integrated Solution features as a single line item in Your invoices; the SUSE Product and the Subscription must not be listed separately.
 - f) You acknowledge and agree that You are solely responsible for, and shall comply with, any obligations You may have, and any conditions to which You may be subject, under any open source licenses applicable to open source code contained in the SUSE Products. For the avoidance of doubt, SUSE shall have no responsibility or liability for Your compliance with such open source licenses.
 - g) You are solely responsible for the provision of the Integrated Solution and any associated support to your customers and/or the users of the Integrated Solution. SUSE will not provide SUSE Products or the Subscription Benefits directly to your customers and/or users of the Integrated Solution, except as otherwise agreed between SUSE, You and/or those customers and/or users.
 - h) If You are permitted to market the Integrated Solution using the SUSE Marks, You may use the SUSE Marks solely to the extent necessary to promote and market the Integrated Solution and in accordance with SUSE's trademark usage policies (see <https://brand.suse.com>), as updated from time to time.
- 9.5. **Software-as-a-Service.** SUSE makes certain software available on a 'software as a service' basis. When You purchase a Subscription for such software, You agree that Your access to and use of that software is governed by the terms set out in the SUSE SaaS Addendum at www.suse.com/contracts/saas_addendum, which apply in addition to the terms of the Agreement. Where there is a conflict between the terms of the Agreement and the terms set out in the SUSE SaaS Addendum, the terms set out in the SUSE SaaS Addendum shall prevail.

10. Software Licensing

- 10.1. **General.** The SUSE Products are licensed under the EULA and the open source components within the SUSE Products are licensed under their respective open source licenses. Your use of SUSE Products will be subject to Your compliance with the EULA and the open source licenses. Nothing in the Agreement shall restrict or limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any open source licenses applicable to open source code contained in the SUSE Products.

10.2. Integrated Use.

Only if and to the extent the applicable Transaction Document gives You the right to use the SUSE Offering for integrated use, You may, during the term of the relevant Subscription, use the SUSE Products to create, distribute, maintain and support an Integrated Solution, subject to Your compliance with Section 9.3 above.

10.3. SUSE Observability.

- a) The EULA does not apply to SUSE Observability.
- b) SUSE grants You a non-exclusive, revocable, non-transferable, license to install and use SUSE Observability for as long as You maintain the number of Subscriptions for Your deployments of SUSE Rancher Prime that are required by the Subscription Terms. This license is non-sublicensable except to the extent permitted by Section 11.3 where You are deploying SUSE Observability on behalf of Your Affiliate. You may use SUSE Observability licensed under this Section 10.3 for Internal Use.
- c) You shall not (and shall not permit Your employees, agents, contractors or any third party to): (a) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to SUSE Observability in whole or in part except as permitted by applicable law; or (b) alter or remove any of SUSE's or its licensors' copyright or proprietary rights notices or legends appearing on or in SUSE Observability.

10.4. Proprietary License & Support

SUSE licenses and supports certain third-party software that is made available on proprietary license terms. When You purchase a Subscription for such software, You agree that Your access to and use of that software is governed by the proprietary license terms and other terms set out in the Vendor Software Addendum at suse.com/contracts/vendor_software_addendum, which apply in addition to the terms of the Agreement. Where there is a conflict between the terms of the Agreement and the terms set out in the Vendor Software Addendum, the terms set out in the Vendor Software Addendum shall prevail.

11. Third Party Use

11.1. **No Redistribution.** Subject to Sections 11.2 and 11.3 below, You may not sell, resell, distribute, or otherwise make available to third parties, the Subscriptions or SUSE Products.

11.2. **Outsourced Services.** You may permit a third party provider of outsourced information technology services to access and use the Subscriptions solely to the extent necessary to perform its contractual obligations to You, provided that: (a) the third party is bound by the terms of these Subscription Terms in respect of such use and access; and (b) You remain responsible for the acts and omissions of the third party with respect to such use and access.

11.3. **Affiliates.** Your Affiliate may access and use SUSE Offerings only as follows:

- a) **Participation Agreements.** The SUSE entity that corresponds to Your relevant Affiliate's location (as per Section 2) may enter into separate participation agreements with Your Affiliates for the purchase of SUSE Offerings. Such participation agreements shall be independent contracts and shall incorporate these Subscription Terms.
- b) **Managing or Procurement Entity.** You may purchase SUSE Offerings for access or deployment by your Affiliates, subject to the following conditions:
 - (i) You ensure that such Affiliates comply with these Subscription Terms and that SUSE has an enforceable right vis-à-vis such Affiliates to verify compliance;
 - (ii) You are responsible for such Affiliates' non-compliance with these Subscription Terms as if it were Your own;
 - (iii) You are liable for the payment of all SUSE Offerings accessed or deployed by such Affiliate;
 - (iv) such Affiliates shall not have the right to enforce the Subscription Terms directly against SUSE;
 - (v) You agree that delivery (including delivery of credentials for accessing Subscription Benefits) is to You and not to any Affiliate; and

- (vi) You remain responsible for onward provision to Your Affiliates and for payment of all taxes arising from such onward provision, and You will indemnify SUSE for such taxes.

12. Fees and Payment

- 12.1. **Reseller Orders.** If You purchase through an Authorized Reseller, fees and payment terms are as agreed between You and the Authorized Reseller. You will pay the Authorized Reseller directly in accordance with such terms. Any payment disputes must be resolved directly between You and the Authorized Reseller.
- 12.2. **Direct Orders placed with SUSE.** If You purchase directly from SUSE, the following applies:
- a) **Payment terms.** The SUSE Products and SUSE Offerings to be provided by SUSE and the pricing applicable to those SUSE Products and SUSE Offerings (and period of validity and/or quantities for that pricing, if any) are as specified in the Transaction Document and apply only to that purchase. Subscription fees are calculated on an annual basis (or are based on a SUSE buying program that is referred to in the Transaction Document) and are due and payable in advance. SUSE will invoice You at the frequency specified in the Transaction Document, and You will pay fees within thirty (30) days from the date of the invoice. Invoices not paid when due under the Agreement will accrue interest from the date due to the date fully paid at the lesser of (a) 1% per month and (b) the highest rate allowed by applicable law. Fees are non-refundable except as expressly provided otherwise in this Agreement. You must place an order with SUSE for the appropriate renewal of SUSE Offerings at least 5 days prior to the expiration date of Your then-current SUSE Offerings ("**Order Due Date**"). Orders submitted after the Order Due Date will incur a late order fee equal to a maximum of ten percent (10%) of the renewal fee due. The late order fee is in addition to annual fees, late payment interest, and other obligations that may be due and payable.
 - b) **Invoices.** You agree to give SUSE written notice of any questions or concerns You may have with regard to any invoice issued by SUSE to You within thirty (30) days from the date of the invoice. If You fail to provide such notice within this period, the invoice will be deemed accepted as accurate.
 - c) **Taxes.** All fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with activities under the Agreement, including sales, use, excise, and value added taxes but excluding taxes based upon SUSE's net income, capital, or gross receipts. If You are required to withhold or deduct any taxes from the fees or expenses, then You will increase the amount payable to SUSE by the amount of such taxes so that SUSE receives the full amount of all fees and expenses. If SUSE is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse SUSE within thirty (30) days after SUSE notifies You in writing of such remittance. You will provide SUSE with valid tax exemption certificates in advance of placing an order where such certificates are applicable. Except as provided otherwise in this Agreement, all payments are non-refundable.
- 12.3. **Marketplace.** The purchase of SUSE Offerings on a Marketplace shall be governed by the Marketplace Terms. The Marketplace websites are currently (a) <https://aws.amazon.com/marketplace/>; (b) <https://azuremarketplace.microsoft.com/en-us/>; (c) <https://cloud.google.com/marketplace?hl=en>; and (d) <https://marketplace.oracle.com/>.

13. Professional Services

SUSE offers optional professional services including Training and Consulting, which are as described in a statement of work entered into between You and SUSE or in standard service descriptions available online at <https://www.suse.com/services/> and referenced in the Transaction Document. The provision of such professional services is governed by the then-current version of the SUSE Professional Services Terms available at <https://www.suse.com/licensing/>.

14. SUSE AI Products

- 14.1. **Infrastructure Management Software.** The "**SUSE AI Products**" are infrastructure management software designed to enable You to manage, deploy, and interact with AI applications and AI models. The SUSE AI Products are not themselves AI: they do not autonomously generate content, make decisions, or implement changes without human instruction. To the extent the SUSE AI Products facilitate the deployment or operation of AI models, You remain solely responsible for the outputs, decisions, and actions of those AI models.

- 14.2. **SUSE's Status under the EU AI Act.** SUSE is not a provider or deployer of a High-Risk System to its customers under the EU AI Act (Regulation (EU) 2024/1689 of 13 June 2024, as amended from time to time) ("**EU AI Act**"), and You warrant that You will not represent SUSE or the SUSE AI Products as such. In this Section, "High-Risk System" has the meaning given to it in the EU AI Act.
- 14.3. **Third-Party AI Tools and Your Responsibilities.** The SUSE AI Products may provide integrations or connectivity with third-party AI tools or other third-party offerings, which may generate, suggest, and/or implement actions or recommendations, including enabling You to automate the implementation of such actions or recommendations in Your IT environment (together, "**AI-Enabled Actions**"). SUSE is not responsible for any AI-Enabled Actions. You acknowledge that You have the sole discretion to enable or disable such automations and that You are responsible for: (a) maintaining human oversight of all AI-Enabled Actions implemented in Your IT environment; (b) the review, validation, and verification of all outputs of the SUSE AI Products (whether used on their own or in connection with third-party products) and AI-Enabled Actions, including by means of appropriate human review; (c) conducting appropriate testing of all SUSE AI Products and AI-Enabled Actions before deployment in Production Environments or in any context in which errors, failures, or unexpected behavior could result in loss or harm (whether physical, operational, or financial); and (d) Your own compliance with Your obligations.
- 14.4. **EU AI Act Cooperation.** Where You create, adapt, or deploy a High-Risk System that uses or integrates SUSE AI Products, SUSE will, upon Your reasonable written request and subject to the payment of SUSE's then-current professional services rates, use reasonable efforts to provide such information, capabilities, and technical access as SUSE reasonably considers necessary (based on the generally acknowledged state of the art) to assist You in complying with Your obligations under the EU AI Act, provided that: (a) SUSE's obligation under this Section 14.4 is limited to information and access relating to the SUSE AI Products and does not extend to third-party components, AI models, or services not developed by SUSE; (b) You shall first have exhausted publicly available documentation and resources made available by SUSE; and (c) SUSE shall not be required to disclose trade secrets, proprietary algorithms of third parties, or information that SUSE does not itself possess or control.
- 15. Your Responsibilities relating to SUSE Products and SUSE Offerings**
- 15.1. **Testing.** You are responsible for testing the SUSE Products, Updates, Upgrades, 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) integrating them into processes that could affect Your or Your customers' business or data.
- 15.2. **Security and Backup.** You acknowledge that while SUSE Products and SUSE Offerings may contain features designed to improve the functionality or security of Your environment, You are solely responsible for implementing appropriate measures to protect the confidentiality, integrity and availability of Your systems, processes and data. Without limiting this, You are solely responsible for: (a) backing up Your data and systems on a regular basis and making those backups available to SUSE if needed for support; (b) adopting and implementing business continuity and disaster recovery measures, including manual workarounds for operations intended to be performed or assisted by SUSE Products; and (c) implementing appropriate physical and logical access controls, firewalls, malicious-code scanning and detection, intrusion detection and regular security updates, in line with industry practice for Your business and risk. If You sustain any 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 or data, You must implement industry-standard safeguards in accordance with least-privilege principles.
- 15.3. **Applying Updates.** Except in relation to SaaS Offerings, You acknowledge that You are responsible for applying Updates provided by SUSE as soon as possible.
- 15.4. **Third-Party Integrations.** You are solely responsible for procuring and complying with all licenses and terms for third-party software and services with which SUSE Products can integrate, including AI models, which SUSE does not distribute or license.
- 15.5. **Interfaces.** You are responsible for procuring, implementing, securing and maintaining Your systems, hardware, networks and environment on which SUSE Products are installed and/or that they monitor, manage or observe. You are solely responsible for setting up all interfaces and configurations between Your systems and SUSE Products and for ensuring the integrity, completeness, accuracy, reliability, suitability and availability of necessary inputs from

Your environment into SUSE Products.

- 15.6. **Integrations with Third-Party Sites.** SUSE Products may enable or assist You and/or Your customers to access, interface with or purchase products and services from third-party websites or services ("**Third-Party Sites**"). You and Your customers do so solely at Your and their own risk. SUSE makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content, outputs or use of any Third-Party Site, including the integrity, completeness, accuracy, reliability, suitability and availability of any data sent from or to a Third-Party Site.
- 15.7. **Compliance-Related Features.** SUSE Products and/or SUSE Offerings may contain features intended to assist in addressing certain legal, regulatory or policy requirements. Such features are provided solely for general informational purposes. SUSE does not provide legal advice, and SUSE does not promise that SUSE Products or SUSE Offerings ensure or achieve compliance with any laws, obligations, or other requirements applicable to You, or with which You choose to comply (together, "**Your Obligations**"). You are solely responsible for determining whether, and ensuring that, Your use of SUSE Products and SUSE Offerings satisfies Your Obligations.
- 15.8. **Failure to Comply.** SUSE is not responsible for any loss or damage that could have been avoided, or reduced, had You fulfilled Your responsibilities under this Section 15.

16. Technical Usage Data

- 16.1. **Data Collection and Usage.** SUSE collects and generates technical usage data relating to Your installations and deployments of SUSE Products and other software distributed or made available by SUSE or its Affiliates, including community and open-source projects sponsored, maintained or distributed by SUSE (such as K3s and RKE2), including error logs, usage patterns, workload types, the software environment, update status, hardware data (for example, GPU vendor and drivers), network architectures, and information about the systems on which SUSE Products and SUSE-distributed Software are deployed, but in all cases excluding Personal Data ("**Technical Usage Data**"). A list of the Technical Usage Data collected by the SCC is available at [SUSE Documentation](#). SUSE may collect Technical Usage Data: (a) via in-product telemetry or features; (b) via tools or applications that You install or run which capture Technical Usage Data, including by inspecting system service metadata, installed binaries and their version information; (c) via Your registration of deployments in the SCC; and (d) for deployments on third-party cloud infrastructure or SaaS Offerings, via tools or software incorporated into the cloud provider's platform.
- 16.2. **Purpose and Consent.** As a condition of Your use of and access to SUSE Offerings, You agree that SUSE may collect and generate Technical Usage Data to: (i) perform its obligations under the Agreement; (ii) improve SUSE products and services; (iii) develop new products and services; (iv) monitor Your (and, where applicable, Your customers' and their customers') compliance with the Agreement; and (v) improve the overall security and functionality of the SUSE ecosystem. To the extent Technical Usage Data identifies You, Your customers or their customers or contains Confidential Information, the confidentiality obligations of the Agreement apply.

17. Records and Verification

- 17.1. **Records.** During the term of the Agreement and for 2 (two) years afterwards ("**Verification Period**"), You must keep complete and accurate records of all copying and use (and, where applicable, distribution and sale) of SUSE Products and/or SUSE Offerings. You will implement internal safeguards to prevent unauthorized copying, distribution, installation, use of or access to SUSE Products and/or SUSE Offerings and will keep records sufficient to demonstrate compliance with the Agreement (the "**Records**").
- 17.2. **Verification Process.** On SUSE's written request during the Verification Period, You will, within 30 days, (i) execute and run a SUSE-designated tool or application on the relevant IT systems and environments to assist with or achieve the reporting referenced in this Section 17 and provide SUSE with the resulting report, complete and unaltered; and (ii) allow a SUSE representative or independent auditor (in each case, an "**Auditor**") to inspect the Records, either remotely or on Your premises, during business hours, and the systems (or portions of those systems) to which those Records relate, in each case only to the extent to verify compliance with the Agreement. Any Auditor will be bound by confidentiality obligations substantially similar to those in the Agreement; will comply with Your reasonable security and physical safety procedures whilst on Your premises; and will not access any system or data that does not concern Your deployment of SUSE Products or access to SUSE Offerings.

- 17.3. **Verification Results.** If a verification process or other information available to SUSE reveals that You have not complied with Your obligations under the Subscription Terms and Product Appendices at any time and this has resulted in a shortfall in required Subscriptions, You will, within 30 days, purchase sufficient Subscriptions to cover any shortfall at then-current full list price, without benefit of discount, together with late-payment interest calculated at 8% per annum or, if lower, the maximum lawful rate under the governing law, for the period of the shortfall. If a shortfall of five per cent (5%) or more is found, You will reimburse the reasonable costs incurred by SUSE in relation to the verification process.
- 17.4. **Survival.** The rights and obligations under this Section will survive expiry or termination of the Agreement for the Verification Period.
- 17.5. **Confidentiality.** Information obtained or disclosed under this Section 17 is Confidential Information subject to the confidentiality obligations set out in Section 25.1, except that SUSE may use and disclose such information to the extent necessary to enforce its rights. No separate confidentiality or non-disclosure agreement shall be required as a condition for undertaking the verification process in accordance with Section 17.2.

18. Technical Preview

SUSE may, from time to time, give you the option to have early access to new, beta, or pre-release product features and functionality for You to test, experiment with, and provide feedback on (such products and features being “**Technical Previews**”). Technical Previews are not provided as part of any SUSE Offering. You agree not to use Technical Previews in any Production Environment. Technical Previews are governed exclusively by this Section 18, all other rights or obligations in the Agreement are inapplicable to them, and any support provided to You in relation to a Technical Preview is provided on an informal basis without reference to any rights or obligations in the Agreement. You may need an Evaluation Subscription in order to access Technical Previews, in which case Section 7.1 applies as well. Your use of the Technical Previews is subject to the EULA and any additional documentation referenced by SUSE at the time of provision.

19. Intellectual Property

No title to or ownership of any intellectual property rights related to the SUSE Products and/or any SUSE Offerings is transferred to You, or otherwise acquired by You, under these Subscription Terms.

20. SUSE Warranties

- 20.1. **Warranties.** SUSE warrants that (a) it has the authority to enter into the Agreement; (b) it will provide the SUSE Offerings with reasonable skill and care; and (c) in providing the SUSE Offerings, it will comply in all material respects with laws applicable to SUSE as provider of the SUSE Offerings. If a SUSE Offering fails to conform to the foregoing service warranty, SUSE will, upon receipt of prompt notice describing the non-conformity, re-perform the affected services or otherwise remedy the non-conformity within a reasonable time; if SUSE is unable to do so within a reasonable time, You may, as Your sole and exclusive remedy, terminate the Agreement and receive a pro-rata refund of prepaid fees corresponding to the unused portion of the term of the affected SUSE Offering as at the effective date of termination (calculated in accordance with Section 26.3(e)). For the avoidance of doubt, any refund provided under this Section 20.1 shall not be cumulative with a refund under Section 26.3(e) in respect of the same SUSE Offering. Nothing herein shall be interpreted to require SUSE to provide a refund both to an Authorized Reseller and to You in connection with any specific transaction.
- 20.2. **Disclaimer.** Except as set out in this Section 20 and to the fullest extent permitted by applicable law, SUSE, on behalf of itself and its Affiliates and suppliers, excludes all implied warranties, including merchantability, satisfactory quality, title, non-infringement and fitness for a particular purpose. SUSE does not warrant that the SUSE Offerings, SUSE Products, Technical Previews or software will meet any specific user's requirements, that operation will be uninterrupted or error-free, that all intrusions, vulnerabilities or other security issues will be prevented, detected or remedied. All outputs, analyses, or recommendations generated by or together with the SUSE Products are provided solely to support decisions, must not be relied on as the sole basis for any action, and must be independently reviewed and validated by You. SUSE and its Affiliates reserve all rights not expressly granted and grant no rights by implication, estoppel or otherwise.
- 20.3. **Third party products.** SUSE shall not be liable to You, and shall not be in breach of any of its obligations under the Agreement, to the extent that any errors or defects in the operation of any SUSE Product are caused by a

third-party product with which that SUSE Product interacts or interfaces.

21. Your Warranties

- 21.1. You warrant that (a) you have the authority to enter into the Agreement, and (b) your use, resale, distribution, integration or other exploitation of the SUSE Products and SUSE Offerings, as applicable under the Agreement, will comply with applicable laws. You are solely responsible for ensuring that Your use of SUSE Products or Offerings is lawful and for configuring and operating Your systems to protect the security, confidentiality and integrity of data processed by those systems. SUSE may provide technical tools and implementation guidance, but SUSE does not provide legal advice on the lawfulness of Your use of SUSE Products or system configurations.
- 21.2. You will not make any representations, warranties or guarantees with respect to the specifications, features or capabilities of the standalone SUSE Products or SUSE Offerings, or create the impression that SUSE has approved or otherwise endorsed any solution or services into which you incorporate the SUSE Products or SUSE Offerings.

22. Limitation of Liability

- 22.1. **DISCLAIMER OF DAMAGES** To the extent permitted by applicable law, neither party nor its Affiliates will be liable for (A) loss of revenue, loss of profits, loss of goodwill, business interruption, failure to realize anticipated savings, or loss or corruption of data, in each case whether direct or indirect, or (B) for any indirect, special, incidental, consequential or exemplary damages, however caused and under any legal theory, arising out of or in connection with the Agreement, whether or not the party was advised of the possibility of such losses.
- 22.2. **LIMITATION OF LIABILITY.** Subject to Section 22.3 below, the aggregate liability of each party and its Affiliates to the other party and its Affiliates arising out of or in connection with: (a) any SUSE Offering provided by SUSE under a Transaction Document, is limited to the greater of the fees received by SUSE under the respective Transaction Document for the relevant SUSE Offering in the twelve (12) months preceding the first incident giving rise to the first claim relating to that SUSE Offering and USD 5,000; and (b) all other claims under or in connection with the Agreement, is limited to USD 5,000. This limitation applies regardless of the nature of the claim, whether in contract, tort (including negligence), statute or otherwise.
- 22.3. **EXCLUSIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL EXCLUDE OR LIMIT LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY THAT CANNOT BE LAWFULLY EXCLUDED OR LIMITED. NOTHING IN THE AGREEMENT LIMITS YOUR OBLIGATION TO MAKE PAYMENT OF FEES DUE AND PAYABLE UNDER THE AGREEMENT OR YOUR LIABILITY (IF APPLICABLE) UNDER SECTION 23 BELOW.

23. Your Indemnification

If and to the extent the applicable Transaction Document gives you the right to use the SUSE Offering for embedded use, You will indemnify SUSE and its Affiliates from and against damages, costs and expenses, including reasonable legal fees, arising from any third-party claim resulting from your or your authorized resellers' (if applicable) actions, products or services, including your distribution of the SUSE Offerings or your provision of services or products using or incorporating the SUSE Offerings or SUSE Products.

24. SUSE Indemnification

- 24.1. **Indemnity.** Subject to Sections 24.2 and 24.3 below, SUSE will indemnify you from and against damages, costs and expenses, including reasonable legal fees, finally awarded against you (or approved by SUSE in writing in settlement), arising from a third-party claim alleging that your use of a Subscription in accordance with these Subscription Terms infringes that third party's copyright or trademark. In order to benefit from the indemnity, you must (a) notify SUSE promptly and in any event within ten (10) days of receiving the claim, (b) grant SUSE sole control of the defense and settlement, (c) not make any admission or take any action which may be prejudicial to the claim without SUSE's prior written consent (such consent not to be unreasonably withheld or delayed), and (d) provide SUSE with reasonable assistance in defending the claim (at SUSE's cost). You must take reasonable steps to mitigate losses and the consequences of any alleged infringement.
- 24.2. **Repair and Replace.** If any Subscription becomes, or in SUSE's reasonable opinion is likely to become, the subject of an infringement claim, You will permit SUSE, at SUSE's expense, to (a) procure the right for You to continue to use, or (b) replace or modify the Subscription to be non-infringing with substantially the same or improved functionality

and performance. If those measures at (a) and/or (b) are not available on terms SUSE considers commercially reasonable, SUSE may terminate the affected Subscription and, upon Your discontinuance of use, provide a pro-rata refund of prepaid fees corresponding to the unused portion of the term of that Subscription as at the effective date of termination. For the avoidance of doubt, any refund provided under this Section 24.2 shall not be cumulative with a refund under Section 26.3(e) in respect of the same Subscription.

- 24.3. **Exceptions to SUSE's Indemnification Obligation.** SUSE has no obligation to defend or indemnify: (a) if at any time You were in breach of the Agreement; (b) in respect of any claim arising after Your last active Subscription has expired; or (c) to the extent the infringement claim arises from (i) Your designs, specifications or instructions; (ii) use of a release other than the current release of the SUSE Products, where use of the current release would have avoided the infringement; (iii) Your failure to implement promptly an Update, Upgrade, patch or fix provided by SUSE where use of the Update, Upgrade, patch or fix would have avoided the infringement; (iv) any modification of SUSE Product not required or authorized by SUSE in writing; (v) use of a Subscription or SUSE Product with non-SUSE software, equipment or data; (vi) the furnishing to You of any information, service, or technical support by a third party; (vii) incorporation of a Subscription or SUSE Product into your products or services; (viii) Your use of the SUSE Product or Subscription other than for Internal Use; or (ix) Community Software.
- 24.4. **Sole Remedy.** This Section 24 sets out SUSE's exclusive obligations, and Your sole and exclusive remedies, for third-party claims alleging infringement or misappropriation of any third party's intellectual property rights.

25. Confidentiality and Publicity

- 25.1. **"Confidential Information"** means the provisions of the Agreement 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 does 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 the Agreement; (d) rightfully received by the receiving party from a third party without obligation of confidence; (e) released for disclosure by the disclosing party with its written consent; and (f) licensed under an open source license (as defined by the Open Source Initiative (<https://opensource.org/>)). 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 and its Affiliates' 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 the Agreement. The obligations in this Section 25.1 will not apply to information to the extent that information is required to be disclosed by law, regulation, or court order.
- 25.2. **Publicity.** You hereby grant SUSE such rights as are necessary to use Your name, logo and, 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 Subscriptions unless You otherwise inform SUSE in writing.

26. Termination

- 26.1. **Termination for Cause.** Either party may terminate, in whole or in part, this Agreement upon written notice if the other party: (i) commits a material breach that cannot be cured; or (ii) fails to cure a material breach within thirty (30) days of receiving written notice.
- 26.2. **Suspension.** Without limiting its other remedies, if You (i) breach the Agreement and/or (ii) fail to meet Your payment obligations and this failure continues for ten (10) days following receipt of written notice from SUSE, SUSE may, as an alternative to termination, suspend performance of its obligations and/or Your access to a SUSE Offering until such time as Your breach is remedied.
- 26.3. **Effect of Termination on Usage Rights.** Upon expiration of a SUSE Subscription and/or termination of the Agreement:
- a) all usage rights granted under Section 9 shall immediately end;

- b) if You use a SUSE Product for integrated use in accordance with Section 10.2 above, You must (i) immediately cease creating Integrated Solutions; (ii) within 90 days after the effective date of termination, cease making the Integrated Solutions available to Your customers and/or other users, provided however that nothing in this Section 26.3(b) requires You to remove or replace SUSE Products in Integrated Solutions created prior to the effective date of termination; and
- c) use of any SUSE Product shall remain to be governed by the EULA.

Furthermore, upon termination of the Agreement, all fees, charges, and other amounts accrued or owing under this Agreement (whether or not invoiced) shall become immediately due and payable. Except where this Agreement is terminated for SUSE's material breach (including pursuant to Sections 20.1 and 24.2), no refund of any fees paid or payable shall be given. Where this Agreement is terminated for SUSE's material breach, SUSE shall provide You with a pro-rata refund of prepaid fees corresponding to the unused portion of the term of the affected SUSE Offering as at the effective date of termination

26.4. **Survival.** The provisions of these Subscription Terms that by their nature extend beyond termination, will survive termination or expiration of these Subscription Terms.

27. Governing Law

- 27.1. These Subscription Terms are governed by, construed in accordance with, and enforced under the substantive law as set out in the table at Section 2 above.
- 27.2. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

28. Compliance

- 28.1. **Privacy & Security.** Each party will comply with all privacy and security laws applicable to its business. Without limiting this, SUSE's privacy policy (<https://www.suse.com/company/legal/>) applies to Your use of the SUSE Offerings. To the extent that SUSE acts as a processor on behalf of You when performing services under these Subscription Terms, SUSE's Data Processing Addendum available at <https://www.suse.com/contracts/SUSE-Data-Processing-Addendum.pdf> applies.
- 28.2. **Export Compliance.** The parties acknowledge that while much of the SUSE Products provided under these Subscription Terms may be considered "publicly available" and therefore not subject to certain export control regulations, certain aspects of the SUSE Products and SUSE Offerings, including, but not limited to, related services, Technical Support, Updates, Upgrades, or technical information, may be subject to export control laws and regulations of the United States, the European Union, and other applicable jurisdictions. If and when applicable, each party agrees to comply with all applicable export control and economic sanctions laws, including but not limited to the U.S. Export Administration Regulations (EAR), U.S. Office of Foreign Assets Control (OFAC) regulations, EU Dual-Use Regulation (Regulation (EU) 2021/821), and any other relevant national or international export control and economic sanctions legal requirements. The parties further agree not to export, re-export, transfer, provide access, or otherwise make available any SUSE Products or SUSE Offerings (i) to any individual or entity listed on applicable U.S., EU, or other government restricted party lists or any entity or individual otherwise the subject of export controls or economic sanctions restrictions, (ii) to any country or territory subject to comprehensive embargoes or sanctions, (iii) for any use related to nuclear, missile, chemical, and/or biological weapons, or (iv) any end use prohibited by applicable law. It is the responsibility of each party to obtain any required licenses, authorizations, or item classifications prior to exporting, re-exporting, importing or otherwise transferring or making available any SUSE Products or SUSE Offerings. Additional information regarding SUSE's export compliance is available at <https://www.suse.com/company/legal/eccn/>. Upon request, SUSE can provide information regarding applicable restrictions; however, SUSE assumes no responsibility for Your failure to obtain any necessary approval.
- 28.3. **Anti-Corruption Laws.** Each party and its Affiliates, and persons acting on their behalf in connection with these Subscription Terms, 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 offer, promise, authorize, give, request or accept any bribe or improper advantage. Neither party nor its officers, employees, agents or subcontractors will engage in conduct that would cause the other to violate anti-corruption laws. Each party will promptly disclose to the other any breach or alleged breach of this Section 28.3 (the "**Anti-Corruption Obligation**"). A party may terminate these Subscription Terms immediately on written notice if the other breaches or is reasonably suspected of breaching

the Anti-Corruption Obligation.

28.4. **SUSE Policies.** Access to and use of SUSE Subscriptions is subject to SUSE's policies available at <https://www.suse.com/company/legal/>, as updated from time to time.

28.5. **SUSE Marks.** Except as expressly permitted in writing, You will not alter, remove or obscure any proprietary or trademark notice on SUSE Products, will not affix SUSE Marks to non-SUSE products, and will not apply for or register in any jurisdiction any trademarks, service marks, service or trade names, logos, product names, designations or domain names that are identical with or confusingly similar to SUSE Marks. You acknowledge SUSE's ownership of and goodwill in the SUSE Marks. Any goodwill arising from permitted use of SUSE Marks accrues to SUSE.

29. Miscellaneous

29.1. **Delivery.** SUSE Products and keys will be delivered to You in binary (electronic) format through electronic software distribution. All rights, title, and interest (including beneficial ownership and the risk of loss) of the copy of the keys and such SUSE Product shall be deemed to transfer to You at the location of download and completed installation onto the end-user's device used to access the key and SUSE Product. You agree to indemnify, defend, and hold harmless SUSE from and against any and all taxes, levies, duties, or similar governmental charges (including those noted in Section 12.2(c) together with any related interest, penalties, or legal fees) arising out of or resulting from the download or utilization of the software or keys by You or any authorized third-party service provider where such tax liability arises from a download location outside of Your primary corporate location.

29.2. **Superior Agreement.** The Agreement comprises the whole agreement between the Parties and supersedes all prior oral and written representations or agreements between the Parties relating to its subject matter. Any terms contained in a purchase order or any other document which you provide to SUSE shall be void and shall not become part of the Agreement. Each party acknowledges that it has not relied on any statement or representation not set out in these Subscription Terms, but nothing excludes or limits liability for fraud.

29.3. **Severability/Waiver.** If any provision of these Subscription Terms is held invalid or unenforceable, the remaining provisions remain in full force, and the Parties will amend these Subscription Terms to reflect the original intent to the maximum extent possible. A waiver of any right must be in writing and signed by an authorized representative of the waiving party. A waiver of a breach is not a waiver of any other or subsequent breach.

29.4. **Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

29.5. **Transfer and Assignment.** Neither party may assign, novate or otherwise transfer the Agreement without the other party's prior written consent, except that SUSE may assign or novate, without consent, to an Affiliate capable of performing the Agreement or in connection with a merger, reorganization, sale of all or substantially all assets or equity, or change of control. Any other attempted transfer is void.

29.6. **Subcontracting.** You may not delegate or subcontract any duties under the Agreement, in whole or in part, without the prior written consent of SUSE, which will not be reasonably withheld or delayed.

29.7. **Force Majeure.** Neither party is liable for delay or failure to perform caused by events beyond its reasonable control and without its fault or negligence. The affected party will give prompt notice of any condition likely to cause any delay or default, and performance will be deferred for a period of time equal to the time lost by reason of the delay. This Section 29.6 does not relieve either party of its obligation(s) to make payments.

29.8. **Notices.** Notices given under the Agreement must be in writing. Notices to SUSE will be sent by email and post to the addresses provided in Section 2 (as may be updated in writing to the other party). Notices to You will be sent to Your address stated in the Agreement or, if not stated, to Your registered address (or for US based entities, Your headquarter's address).

30. Definitions and Interpretation

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).

Agreement has the meaning given in Section 3.

Agreement Effective Date has the meaning given in Section 4.1.

Authorized Reseller means a third party which is authorized by SUSE to resell SUSE Offerings.

Community Software means software that is: (i) developed by an entity other than SUSE or a SUSE Affiliate; (ii) published by that entity subject to an open source license; and (iii) made available (or access provided) by SUSE as part of a Subscription.

Consulting means the delivery of specialized services, such as project-based services, or consulting services charged on, e.g., a time and materials basis.

EULA means the end user license agreement that governs the use of SUSE Products, as available at <https://www.suse.com/licensing/eula/> from time to time.

Integrated Solution means Your product, device, or service that incorporates, embeds, or is combined with a SUSE Product for use by third parties.

Internal Use has the meaning given in Section 9.2.

Marketplace has the meaning given in Appendix 1.

Marketplace Terms means Appendix 1 (Marketplace Terms).

Partner Terms means the terms and conditions upon which a SUSE Partner is authorized to engage in collaborative innovation with SUSE, promote and/or provide SUSE Products and SUSE Offerings as available at <https://www.suse.com/contracts/partnerterms.pdf>.

Personal Data means any information relating to, identifying, describing or reasonably capable of being associated with or linked (directly or indirectly) to, a natural person or household, and any other information regulated by applicable data privacy laws.

Physical Server means a physical computer system, whether in a network that is shared by multiple Users or on its own, regardless of whether the physical computer system has been partitioned by software. A Physical Server may contain one or multiple CPUs, cores, or processors, regardless of production capacity.

Product Appendices means the product appendices available at https://www.suse.com/products/product_appendices.pdf which specify the Units of measure applicable to Subscriptions.

Production Environment is the set of computers and/or virtual machines where finished, user-ready software is deployed and executed for live, usable operation for the intended Users.

SCC means the SUSE Customer Center available at <https://scc.suse.com>.

Service Pack is a periodically released, installable collection of Updates, fixes, and code enhancements.

Subscription means a time-bound right to receive Technical Support Services, Updates and Upgrades for a SUSE Product from SUSE as further defined in the Product Appendices.

Subscription Benefit means the benefits set out in Section 5.

SUSE AI Product has the meaning given to it in Section 14.1.

SUSE Offering means services offered by SUSE, including Subscriptions, Consulting, Training, and other services.

SUSE Marks means SUSE's and SUSE's Affiliates' trademarks, service marks, service or trade names, logos, product names, designations, or domain names, whether registered or unregistered.

SUSE Observability means the proprietary SUSE software solution designed for full-stack, cloud-native monitoring and analysis as described at <https://www.suse.com/products/rancher/observability/>.

SUSE Partner means an entity that has been accepted by SUSE as a partner in the SUSE Partner Program and that has entered into the Partner Terms.

SUSE Product means: a software product (including Updates and Upgrades) that you obtain directly from SUSE or

indirectly from SUSE (for example, via an Authorized Reseller), that is made available for download by SUSE on a trusted SUSE registry, the SCC (or other SUSE-authenticated portal) and for which Subscriptions are made available, including without limitation, all of the SUSE Products listed in the Product Appendices.

SUSE SaaS Addendum means the terms and conditions that govern Your access and use of any software that is made available to You on a 'software as a service' basis and accessible at www.suse.com/contracts/saas_addendum

Technical Support Services means the delivery of problem resolution and customer support activities as set out in Section 5.2.

Territory means worldwide, unless a specific geographic area is notified to You by SUSE, but in any case, excluding any countries to which SUSE Products may not be exported under Section 28.2.

Training means the provision of instructional services by SUSE, delivered onsite or remotely.

Transaction Document means (a) SUSE's quote for the SUSE Offering, (b) the online purchasing form used to order the SUSE Offering from SUSE; or (c) in the case of Consulting, the statement of work. Any conflicting or additional terms and conditions set forth in a purchase order shall not form part of a Transaction Document and shall not apply to a SUSE Offering.

Unit means a single increment of the metric identified under the "Unit of Measure" column for that row in the Product Appendices.

Update means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in SUSE Products. An Update can contain one or multiple files to replace or enhance existing executables, programs, applications or documents.

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 9.x to 10.x). If a question arises as to whether a product offering is an Upgrade or a new SUSE Product, SUSE's opinion will prevail, provided that SUSE treats the SUSE Products the same for its customers generally.

User is a user or entity accessing the system and establishing a connection to the system, or an entry in a directory, regardless of which kind, e.g., a person, an object such as a company name.

Vendor Software Addendum means the terms and conditions that govern Your access and use of any third-party software that is made available to You and accessible at suse.com/contracts/vendor_software_addendum.

Appendix 1 – Marketplace Terms

1. Purpose

This Appendix applies to SUSE Products and SUSE Offerings purchased on a Marketplace (“**Marketplace Offering**”) and forms part of the Agreement. By electronically accepting, placing an order against, or otherwise executing the Agreement on the Marketplace, You agree that Your access to and use of Marketplace Offerings is governed by this Appendix and the Subscription Terms.

2. Definitions

Capitalized terms in this Appendix shall have the meanings given to them below. Capitalized terms used but not defined in this Appendix have the meaning given to them elsewhere in the Subscription Terms.

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, <https://azuremarketplace.microsoft.com/en-us/>; (c) in the case of Google LLC, <https://cloud.google.com/marketplace?hl=en>; and (d) in the case of Oracle America, Inc., <https://marketplace.oracle.com/>, in each case, as may be updated from time to time.

Marketplace Operator means: (i) Amazon Web Services, Inc. (**AWS**) and any of its affiliates that operate its Marketplace; (ii) Microsoft Corporation and any of its affiliates that operate its Marketplace; (iii) Google LLC and any of its affiliates that operate its Marketplace; and (iv) Oracle America, Inc. and any of its affiliates that operate its Marketplace, as applicable.

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

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

3. Contracting Entity

Contracting Entities. Notwithstanding Section 2 of the Subscription Terms, this Appendix shall apply as between You and the relevant SUSE entity determined in accordance with this Section 3:

- (i) where the Marketplace Offering is purchased on the AWS Marketplace or the Microsoft Azure Marketplace, the SUSE entity that corresponds to Your location, as set out in Section 2 of the Subscription Terms; or
- (ii) where the Marketplace Offering is purchased on the Oracle Marketplace or the Google Marketplace, SUSE LLC.

4. General

4.1. **Ordering.** In order to purchase Marketplace Offerings from a Marketplace under the Agreement, You must first have entered an agreement with the relevant Marketplace Operator permitting You to purchase Marketplace Offerings on that Marketplace, such agreement being the “**Customer Marketplace Contract**”. You must not: (a) attempt to purchase or use Marketplace Offerings via any reseller of Marketplace Offerings other than the Marketplace Operators under the Agreement; or (b) attempt to use Marketplace Offerings purchased from one Marketplace on a different Marketplace operated by a different Marketplace Operator. You may place an order for those Marketplace Offerings listed by SUSE or an Authorized SUSE Reseller on the Marketplace. If a subscription for a product or service that 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.

4.2. **Compliance.** You shall at all times remain in compliance with the Customer Marketplace Contract(s). If a Marketplace Operator issues You with a notice of breach of the Customer Marketplace Contract by You or termination of the Customer Marketplace Contract (each a “**Marketplace Notice**”), You shall immediately notify SUSE. SUSE may, in the event of a Marketplace Notice, immediately suspend or terminate Your rights to purchase additional Marketplace Offerings from that Marketplace under the Agreement. Unless the facts giving rise to the Marketplace Notice are also grounds for termination of the Agreement, all Marketplace Offerings purchased as at the effective date of termination shall remain in effect.

4.3. **Direct Transaction Structure.** By providing You with a Marketplace Private Offer or offering a Standard Listing on the

Marketplace, SUSE offers to sell to You the Marketplace Offerings specified in the Marketplace Private Offer, in the relevant Marketplace specified in the Marketplace Private Offer or in the Marketplace in which that Standard Listing is published, at the prices specified in the Marketplace Private 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 Private Offer or Standard Listing. The pricing specified in a Marketplace Private 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.

- 4.4. **Indirect Transaction Structure.** You may purchase Marketplace Offerings from a reseller authorized by SUSE to resell Marketplace Offerings on the Marketplace. If You purchase from a reseller, compliance with the terms of the 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 Offerings.

5. Term of a Marketplace Subscription

The term of each Marketplace Offering shall commence on the date an order You placed for that Marketplace 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 on the Marketplace for Your Marketplace Offering at the time You place Your order, unless the Marketplace Offering is terminated earlier in accordance with the Agreement.

6. Ordering and Payment

- 6.1. **Ordering.** The fees for the Marketplace Offerings 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.

- 6.2. **Payment and Taxes.** You shall make timely payment of the fees for the Marketplace Offering 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:

- 6.2.1. **For AWS.** Please refer to the 'Taxes', 'International Indirect Taxes' section on the AWS website ([Tax Help – AWS Marketplace Sellers \(amazon.com\)](https://aws.amazon.com/tax-help/marketplace-sellers/)), and the 'AWS MP Seller Tax Grid' for a detailed guidance (<http://aws.amazon.com/tax-help/marketplace-sellers/tax-grid>). Where a country is marked 'Yes' in the 'MPF rule' column, the country has a Marketplace Facilitator Rule which deems the Marketplace Operator (AWS) as the responsible party for Indirect Tax collection and remittance. 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.

- 6.2.2. **For Microsoft.** For countries listed as 'Microsoft-managed countries/regions' or 'Reseller countries/regions' on the Microsoft website ([Tax details for Microsoft commercial marketplace – Marketplace publisher | Microsoft Learn](https://www.microsoft.com/en-us/tax/marketplace)), 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'), each party agrees to comply with all relevant tax reporting obligations as determined by the appropriate taxing authorities.

7. Support and Services

- 7.1. **General Support.** Except as specified in this Section 7, SUSE will provide support for the Marketplace Offerings as described in the Subscription Terms and the documents incorporated into them.
- 7.2. **Support for Community Software.** Marketplace Offerings may include access to Community Software applications that are developed by third parties and packaged and distributed by SUSE. Community Software may not be supported by SUSE or may be subject to different levels of support, in each case, as specified on the webpage or registry from which the Community Software is made available for download by SUSE or on the Marketplace.