

# Terms & Conditions for the Purchase of Goods and Services



## 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply to these terms and conditions.

**"Affiliate"** means in relation to a company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**"Assigned Rights"** has the meaning set out in clause 14.3.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in the country in which SUSE is based.

**"Business Hours"** means between 9am and 5pm on any Business Day.

**"Completion Date"** means the date specified in the Purchase Order or the Statement of Work (if any) for the completion of the Services.

**"Commissioned Designs"** has the meaning set out in clause 14.2.

**"Confidential Information"** has the meaning set out in clause 11.1.

**"Contract"** means an agreement between SUSE and the Supplier for the supply and purchase of Goods and/or Services on the basis of these terms and conditions and the Purchase Order.

**"Data Processing Addendum"** means a data processing addendum to reflect the Parties' agreement with respect to the processing by the Supplier of SUSE personal data in a form to be provided by SUSE.

**"Data Protection Laws"** means all applicable laws, as may be amended, superseded or replaced, relating in any way to the privacy, confidentiality, data protection or security of personal data, including, without limitation, the GDPR.

**"Delivery"** means the completion of unloading and stacking of the Goods by the Supplier at the Delivery Location; and **"Deliver"** and **"Delivered"** shall be construed accordingly.

**"Delivery Location"** means the place of delivery specified in the Purchase Order.

**"Developments"** has the meaning set out in clause 14.2.

**"GDPR"** means (i) Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as may be amended, superseded or replaced and (ii) the GDPR as it forms parts of the United Kingdom domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018, as may be amended, superseded or replaced.

**"Goods"** means the goods specified in the Purchase Order (including any part or parts of them) required to be Delivered.

**"IPR claim"** has the meaning set out in clause 14.6.

**"Laws"** means any laws, rules, regulations, legislation (primary or secondary), order, directive, codes of practice and standards or other legal or regulatory requirement in any relevant jurisdiction, as amended from time to time.

**"Losses"** has the meaning set out in clause 9.4.

**"Master Services Agreement"** means (where applicable) the master services agreement entered into between the Parties for the supply by the Supplier to SUSE of the Goods and Services (together with additional goods and/or services, as applicable).



**"MSA Offence"** means any activity, practice or conduct that would constitute an offence under the UK's Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

**"MSA Statement"** means SUSE's anti-slavery and human trafficking statement from time to time in force, the latest version of which is published on SUSE's website at <https://www.suse.com/legal/anti-slavery/>

**"Price"** has the meaning set out in clause 7.1.

**"Purchase Order"** means the SUSE purchase order for the supply of Goods and/or Services (where applicable, entered into pursuant to a Statement of Work) to which these terms and conditions are annexed.

**"Relevant Policies"** has the meaning set out in clause 20.1.

**"Relevant Requirements"** has the meaning set out in clause 20.1.

**"Relevant Site"** has the meaning set out in clause (c).

**"Rights"** has the meaning set out in clause 14.1.

**"SCOBE"** has the meaning set out in clause 3.11.

**"Services"** means any services ordered by SUSE and to be provided by the Supplier or to be rendered in connection with the Delivery of the Goods to be delivered by the Supplier, which in both cases are specified in either the Purchase Order or the Statement of Work (if any).

**"Start Date"** has the meaning set out in clause 2.4.

**"Statement of Work"** means the statement of work or letter of engagement attached to or clearly referred to in the Purchase Order, which sets out the Services to be performed by the Supplier and comprising all documents, standards and drawings therein referred to.

**"Supplier"** means the person or firm identified in the Purchase Order from whom SUSE purchases the Goods and/or Services, as identified in the Purchase Order.

**"SUSE"** means the SUSE company placing the Purchase Order.

**"SUSE Designs"** has the meaning set out in clause 14.2.

**"Terminating Party"** has the meaning set out in clause 12.2.

**"TUPE"** has the meaning set out in clause 19.3.

- 1.2 The term **"Party"** shall refer to SUSE and the Supplier individually and the term **"Parties"** shall refer to SUSE and the Supplier collectively.

## 2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 These terms and conditions (together with any applicable SOW(s) and/or Master Services Agreement) apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (unless expressly agreed in accordance with clause 2.5), or which are implied by law, trade custom, practice or course of dealing.
- 2.2 In the event of any conflict or inconsistency between these terms and conditions, the Purchase Order, the Statement of Work, and/or the Master Services Agreement, the following order of precedence shall apply to the extent of the conflict or inconsistency: (i) the Master Services Agreement, (ii) the Statement of Work, (iii) these terms and conditions, and (iv) the Purchase Order.



- 2.3 The Purchase Order constitutes an offer by SUSE to purchase the Goods and/or Services in accordance with these terms and conditions.
- 2.4 The Purchase Order shall be deemed to be accepted by the earlier of: (a) the Supplier issuing written acceptance of the Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence (the "**Start Date**").
- 2.5 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation or acceptance of a Purchase Order, specification or similar document shall form part of the Contract unless expressly agreed by SUSE upon signature of an amendment to these terms and conditions executed by an authorized representative of SUSE and incorporated in the Purchase Order and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.6 The Parties agree that SUSE may permit other SUSE Affiliates to use or benefit from the use of the Goods and Services without the consent of the Supplier and without payment of any additional fees.

### **3. WARRANTIES**

#### **(A) General (Goods and/or Services)**

- 3.1 The Supplier warrants, represents and undertakes that the Goods and/or the Services: (a) shall not be changed without the prior written consent of SUSE and (b) conform to the Purchase Order and the Statement of Work (if any) as well as generally recognized commercial practices and Laws applicable to the supply of such Goods and/or Services.
- 3.2 The Supplier warrants, represents and undertakes that it shall at all times during the duration of this Contract and at its own expense:
  - (a) maintain all licenses and consents necessary for the performance of its obligations under the Contract;
  - (b) adopt safe working practices and at the proper time supply and install within the original contract price such guards and safety devices as may be necessary to comply with the provisions of all health and safety Laws and shall not in the performance of the Contract in any manner endanger the safety of or unlawfully or unreasonably interfere with the convenience of any other person, including employees and/or contractors of SUSE;
  - (c) to the extent that the Supplier performs any of the Services at the premises of SUSE or its customers (a "**Relevant Site**"), ensure that (in performing its obligations under the Contract) it does not cause any disturbance or damage to the operations and property of SUSE or its customers at the Relevant Site;
  - (d) comply with SUSE (or its customers') conditions in relation to any Relevant Site (including but not limited to health and safety conditions, safety management systems, hygiene policies and security policies) and SUSE code of conduct and code of ethics made available to the Supplier from time to time;
  - (e) assist SUSE (and any person nominated by SUSE) in the investigation of any accident or incident or the resolution of any dispute, which assistance shall include, but not be limited to, making personnel available for interview, providing access to documents and records and providing information reasonably requested by SUSE;
  - (f) notify SUSE as soon as it becomes aware of any breach of Laws or any health and safety hazard or issue which arises in relation to the Goods or Services (which notification shall not



release the Supplier from any liability and/or obligations in respect of such breach, hazard or issue); and

(g) co-operate with SUSE in all matters relating to the Services or supply of Goods.

- 3.3 At any time prior to Delivery of the Goods to SUSE or performance of the Services, SUSE (or its nominee) shall have the right to inspect and test the Goods or inspect the work being carried out in performance of the Services.
- 3.4 If the results of such inspection or testing cause SUSE to be of the opinion (acting reasonably) that the Goods and/or Services do not conform or are unlikely to conform with the Purchase Order or the Statement of Work, or that the Goods and/or Services may not be delivered on time, SUSE may at its option:
- (a) inform the Supplier in writing, following which the Supplier shall immediately take such action as is necessary to ensure conformity;
  - (b) reject the Goods or Services; or
  - (c) require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and the Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.6 The warranties given under this clause 3 (in all of its parts A, B and C) shall survive any performance, acceptance or payment pursuant to the Contract and shall be extended to any repaired or replacement Goods or substituted or remedial Services provided by the Supplier.

#### **(B) Goods**

- 3.7 The Supplier warrants, represents and undertakes that the Goods shall:
- (a) be of the best available design, of the best quality and workmanship subject to any Statement of Work and in any case without fault or defect (including latent defect);
  - (b) be complete and fully operational and shall be delivered with all parts (and also those parts that are not specified in the Purchase Order but which are required for proper operation and also including the usual safety devices or special tools);
  - (c) be accompanied by all appropriate information, warnings, instructions and documentation in relation to the safe use, handling, storing, operation, consuming, transportation and disposal of any Goods or parts or materials including paper and/or electronic operation manuals or those available via a functioning web link, in particular in relation to hazardous materials which will be clearly identified to SUSE; and
  - (d) comply with any applicable national and international quality assurance standards from time to time published under which the Supplier is approved; and/or as reasonably requested by SUSE.
- 3.8 The Supplier warrants, represents and undertakes that the Goods shall conform with all Laws applicable to such Goods as regards the design, manufacture, quality, packaging, storage, transportation, delivery, labelling, health, safety and environmental standards and use of such Goods which are in force at the time of supply.

#### **(C) Services**

- 3.9 The Supplier warrants, represents and undertakes that the Services shall be performed with reasonable skill, care and diligence, in accordance with generally recognized commercial



practices and standards for similar services and any agreed service levels and the Statement of Work (if any).

- 3.10 The Supplier warrants, represents and undertakes that the Services shall conform with all Laws applicable to such Services including in relation to health, safety, human rights and environmental standards.
- 3.11 The Supplier warrants, represents and undertakes that it has read and understood SUSE's Supplier Code of Business Ethics Policy as amended by SUSE from time-to-time, available at <https://www.suse.com/company/legal/> (the "SCOBÉ"). At all times during the term of the Contract, the Supplier warrants that it will comply with, and where applicable, procure all of its subcontractors and suppliers comply with, the SCOBÉ.

#### **4. DELIVERY, ACCEPTANCE AND REJECTION**

##### **(A) General (Goods and/or Services)**

- 4.1 Time shall be of the essence in respect of the Delivery of the Goods and/or performance of the Services.
- 4.2 Delivery of the Goods shall take place at the Delivery Location and the Services shall be performed at the place specified in the Purchase Order or to such other place as is agreed by SUSE in writing prior to Delivery of the Goods or the performance of the Services, or where necessary agreed by SUSE orally prior to such Delivery or performance and subsequently confirmed in writing.
- 4.3 Where SUSE agrees in writing to accept Delivery of Goods or performance of the Services by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle SUSE at its option to treat the whole Contract as repudiated.

##### **(B) Goods**

- 4.4 The Supplier shall unload the Goods at its own risk as directed by SUSE. Unless otherwise stipulated by SUSE in the Purchase Order, deliveries shall only be accepted by SUSE in Business Hours.
- 4.5 The date for Delivery shall be specified in the Purchase Order, or if no such date is specified then Delivery shall take place within 5 days of the Purchase Order.
- 4.6 The Supplier shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 4.7 The Supplier shall ensure that each Delivery of Goods is accompanied by a delivery note, which shows among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. Any delivery which is not accompanied by a delivery note in accordance with this clause 4.7 may, at SUSE's discretion, be rejected without liability or penalty on the part of SUSE. In the case of rejection of the delivery by SUSE, the Supplier shall, at its own expense promptly remove all Goods which were the subject of the delivery.
- 4.8 All Goods shall be packaged by the Supplier so as to ensure that they will be in good condition upon arrival at their destination. If the Supplier requires SUSE to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to SUSE and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.9 If the Goods are delivered to SUSE in excess of the quantities ordered, SUSE shall be entitled to reject the excess Goods and shall not be bound to pay for the excess and any excess shall be



and shall remain at the Supplier's risk and shall be available for collection at the Supplier's expense within 3 months. Thereafter SUSE may dispose of such excess Goods at the Supplier's expense.

4.10 SUSE shall not be deemed to have accepted the Goods until it has had 7 Business Days to inspect them following Delivery.

### **(C) Services**

4.11 The Supplier shall meet the Completion Date and all other applicable dates for the performance of the Services stated in the Purchase Order or the Statement of Work (if any).

4.12 The Supplier shall co-operate with SUSE in all matters relating to the Contract and comply with all reasonable instructions of SUSE.

## **5. RISK/TITLE**

5.1 The Goods shall remain at the risk of the Supplier until Delivery, at which point risk in the Goods shall pass to SUSE (save where SUSE rejects the Goods in accordance with clause 4.7).

5.2 Title to the Goods shall pass to SUSE on the earlier of (a) Delivery; and (b) payment in accordance with clause 8 below.

## **6. CONSEQUENCES OF DEFAULT**

### **(A) General (Goods and/or Services)**

6.1 Without limiting SUSE's other rights and remedies under the Contract or otherwise, and subject to clause 6.2 below, if the Supplier breaches any provision of the Contract, then SUSE shall, where practicable, first seek to meet and discuss the situation with the Supplier as soon as possible, but reserves the right to avail itself of any one or more of the remedies set out in clause 6.3 at its discretion, whether or not any part of the Goods and/or the Services have been accepted by SUSE.

6.2 If the Supplier breaches any of the warranties set out in clauses 3.1, 3.7 or 3.9, the remedies set out in clause 6.3 shall only be available where SUSE notifies the Supplier of the failure of the Goods or Services to comply with the Contract or the breach of warranty prior to the latest of:

- (a) 24 months after the Delivery or date of acceptance (whichever is later) of the relevant Goods and/or performance of the relevant Services; or
- (b) where the Supplier has repaired or replaced Goods or provided substitute Services pursuant to clause (b), 24 months after the date of acceptance of such repaired or replacement Goods or the date of performance of the substitute Services.

6.3 The remedies available to SUSE following the occurrence of one of the events referred to in clause 6.1 are:

- (a) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that the Supplier shall immediately pay to SUSE a full refund for the Goods so returned;
- (b) to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or substitute Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled within a reasonable period specified by SUSE;
- (c) to refuse to accept any further deliveries of the Goods or subsequent performance of the Services which the Supplier attempts to make, in each case without any liability to the Supplier;



- (d) to carry out or procure that some other person carries out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract (including but not limited to freight, disassembly and re-assembly);
- (e) to obtain substitute goods or purchase substitute services elsewhere and recover from the Supplier any expenditure reasonably incurred by SUSE in obtaining the goods or services in substitution from another supplier;
- (f) to recover from the Supplier (under the indemnity granted to SUSE by the Supplier pursuant to clause 9.4 or otherwise through a contractual claim for damages) such Losses as may have been sustained by SUSE in consequence of the Supplier's breach or breaches of the Contract; and
- (g) in the event of any failure by the Supplier to fulfil its obligations under clause (a) to (f), or to the extent there is any other material or persistent default by the Supplier of its obligations under the Contract, which being capable of remedy are not remedied within 14 days of notice of such default, to terminate the Contract in whole or in part or to rescind the Purchase Order, in each case without any liability to the Supplier.

## **(B) Goods**

- 6.4 If SUSE exercises its rights under clause (b), (d) and/or (e) above in respect of Goods which do not, in SUSE's opinion, meet the requirements specified in the Contract, the Supplier grants to SUSE the right to utilize the relevant Goods until such time as they meet those requirements.

## **7. PRICE**

- 7.1 The price of the Goods and/or Services shall be stated in the Purchase Order or the Statement of Work (if any) and unless otherwise agreed in writing by SUSE shall be exclusive of value added tax but inclusive of all other charges (including but not limited to packaging, insurance and carriage charges) (the "**Price**").
- 7.2 No variation in the Price nor extra charges shall be accepted by SUSE unless formally agreed in writing.

### **Invoicing**

- 7.3 In respect of the Goods provided, the Supplier shall invoice SUSE at any time after Delivery of the Goods to SUSE.
- 7.4 In respect of the Services, the Supplier shall invoice SUSE at any time after the Completion Date.

## **8. PAYMENT**

- 8.1 Unless otherwise agreed in writing in advance by the Parties, SUSE shall pay all undisputed amounts within 60 days of receipt of a valid and correct invoice.
- 8.2 Without prejudice to any other right or remedy, SUSE reserves the right to set off any amount owing at any time from the Supplier to SUSE against any amount payable by SUSE to the Supplier under the Contract.
- 8.3 If any sum under the Contract is not paid when due, then that sum shall bear interest from the due date until payment is made in full, both before and after any judgment. Interest under this clause will accrue each day at two percent (2%) per annum above the Bank of England base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods and/or Services as a result of any sums being outstanding.





## 9. LIABILITY AND INDEMNITY

- 9.1 Subject to clause 9.3, the aggregate liability of SUSE to the Supplier under or in connection with any Contract whether arising from negligence, breach of contract or otherwise shall not exceed an amount equal to the Price paid or payable by SUSE to the Supplier for the relevant Goods and/or Services under that Contract.
- 9.2 Subject to clause 9.3, SUSE shall not be liable to the Supplier for any loss of:
- (a) profit, goodwill, revenue, anticipated savings or any other like economic loss (whether direct or indirect); or
  - (b) any indirect or consequential loss or damage, or loss of business opportunity whether arising from negligence, breach of contract or otherwise.
- 9.3 Nothing in these terms and conditions excludes or limits:
- (a) either Party's liability for death or personal injury arising from its negligence or that of its employees, agents or subcontractors;
  - (b) either Party's liability for fraud;
  - (c) SUSE's liability to pay the Price pursuant to clauses 7 and 8;
  - (d) the Supplier's liability under clause 17 (Data Protection); or
  - (e) the Supplier's liability under the indemnities contained in clauses 14 (Intellectual Property Rights), 19 (Employees) and 20 (Anti-Bribery and Corruption).
- 9.4 The Supplier shall indemnify and keep SUSE indemnified on demand against all direct, indirect or consequential losses and/or liabilities (all of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), damages, injury, claims, charges, demands, actions, costs and expenses (including legal and other professional fees and expenses) (together the "**Losses**") awarded against or incurred or paid by SUSE as a result of or in connection with:
- (a) any third-party claim arising from or in connection with the Supplier's negligence, default or breach of the Contract;
  - (b) any third-party claim made against SUSE in respect of any Losses sustained by SUSE's employees or agents, contractors or by any customer or third party to the extent that such Losses were caused by, relate to or arise from the Goods or the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier; and
  - (c) the Supplier's negligence, default or breach of the Contract.

## 10. INSURANCE

- 10.1 The Supplier shall maintain, with a reputable insurance company, appropriate professional indemnity insurance, product liability insurance, public liability insurance, and such other insurance as may reasonably be expected to be held and maintained by a supplier of goods and services of a similar nature to the Goods and Services, to cover the liabilities that may arise under or in connection with the Contract. If the Supplier fails to do so, SUSE may insure and charge the Supplier the cost. On request, the Supplier will provide a copy of the insurance contract to SUSE.



## 11. CONFIDENTIALITY

- 11.1 For the purposes of this clause 11, "**Confidential Information**" shall mean all documentation, knowledge, information and material, including notes and reports incorporating such information, whether of a technical, commercial, operational or financial nature or otherwise relating in any manner to the business affairs of the Parties including SUSE's Rights and Developments as separately defined in clause 14 (in whatever form and including, without limitation, business plans, research and development material, marketing strategies, specifications, processes, designs, drawings, initiatives and inventions) disclosed directly or indirectly by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or which become available or apparent to the Receiving Party in the course of performing the Contract.
- 11.2 Information that would be Confidential Information pursuant to clause 11.1 shall not be treated as such to the extent that such information is:
- (a) already lawfully known to the Receiving Party prior to disclosure by the Disclosing Party;
  - (b) legitimately disclosed to the Receiving Party by a third party on a non-confidential basis from a person who is not under any confidentiality obligation in respect of that information; or
  - (c) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Receiving Party in breach of the Contract.
- 11.3 The Receiving Party shall use the Confidential Information only for the purposes of performing its obligations under or in connection with the Contract.
- 11.4 The Receiving Party shall keep in strict confidence and not disclose all Confidential Information disclosed to it by the Disclosing Party or its agents, save for:
- (a) to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Receiving Party's obligations to the Disclosing Party and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Receiving Party; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 12. TERMINATION

- 12.1 SUSE shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier 30 days' written notice whereupon all work on the Contract shall be discontinued and SUSE shall pay to the Supplier compensation for any costs properly and reasonably incurred on Services already performed at the time of such notice of termination. Under no circumstances shall SUSE be liable under the Contract for any loss of anticipated profits or any consequential or indirect loss.
- 12.2 Without prejudice to its other rights or remedies, SUSE shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract in whole or in part forthwith:
- (a) in accordance with clause (g);
  - (b) if any distress, execution or other process is levied upon any of the assets of the Supplier;
  - (c) on the Supplier being unable to pay its debts or the commencement of, or any application, order, resolution or appointment being made for, in respect of the Supplier, a distress, execution, composition or arrangement with creditors, insolvency proceedings, winding up, dissolution, administration, liquidation, receivership (administrative or otherwise),



bankruptcy, the suspension of payments, any form of seizure not lifted within two months, a moratorium of indebtedness or any similar proceedings in any jurisdiction;

- (d) if there is a change in the ownership, control or management of the Supplier that SUSE considers will materially affect the interests of SUSE; or
- (e) any other event giving rise to a right of SUSE to terminate under another clause in these terms and conditions occurs.

12.3 The termination or expiry of the Contract shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force of any other conditions of the Contract which are expressly or by implication intended to come into force or continue to be in force on or after such termination or expiry.

### 13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract, the Supplier shall immediately deliver to SUSE all Goods and Developments whether or not then complete, and return all SUSE Designs. If the Supplier fails to do so, then SUSE may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract shall not affect the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

### 14. INTELLECTUAL PROPERTY RIGHTS

14.1 "**Rights**" means all registered or unregistered patent rights, rights to inventions, copyright and related rights, moral rights, trade marks and design rights, utility model rights, database rights, know how, and other intellectual property rights which subsist or will subsist now or in the future in any part of the world.

14.2 If Goods are manufactured or supplied or Services rendered according to SUSE's designs or specifications (the "**SUSE Designs**"), or where the Supplier has provided any design or development Services to SUSE (the "**Commissioned Designs**"), the Rights in relation to SUSE Designs and the Commissioned Designs together with any other information, knowledge, idea, design, material, or invention and any expression of any idea created by the Supplier (or its agents or employees) in connection with the Purchase Order (the "**Developments**") shall be the exclusive property of SUSE.

14.3 The Supplier hereby assigns to SUSE absolutely with full title guarantee all its right, title and interest in and to the Rights in the Developments (the "**Assigned Rights**"), including:

- (a) the absolute entitlement to any registrations granted pursuant to any of the applications comprised in the Assigned Rights;
- (b) all goodwill attaching to the Assigned Rights and to that part of the Supplier's business that relates to the goods or services for which the Assigned Rights are registered or used; and
- (c) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights whether occurring before, on, or after the date of these terms and conditions.



- 14.4 The Supplier shall fully disclose all Developments to SUSE and shall not use the Developments for its own purposes or those of any third party nor disclose the Developments without the prior written consent of SUSE. The Supplier, at the expense and by agreement with SUSE, will take all measures which may be necessary to vest ownership of all Rights in the Developments in SUSE or its nominee and shall assist SUSE in establishing and protecting such Rights, including if necessary, doing all such acts and executing all such documents which SUSE deems necessary. To the extent permitted by applicable Laws, the Supplier shall waive or shall procure the waiver of moral rights in the Developments.
- 14.5 The Supplier warrants that no Rights (including any Rights belonging to any third party) are violated or infringed through the supply of any Goods or the rendering of any Services by the Supplier or through the use of such Goods or Services. The Supplier shall indemnify and keep indemnified SUSE on demand in respect of all Losses awarded against or incurred by SUSE in connection with any claim that the use or possession of any Goods or Services supplied by or on behalf of the Supplier infringes any Rights of any third party (an "IPR claim").
- 14.6 If any IPR claim is made, or in the Supplier's reasonable opinion is likely to be made, the Supplier shall promptly and at its cost either: (a) obtain for SUSE the right to continue using the relevant materials which were the subject of the IPR claim or (b) modify or replace the infringing part of the materials so as to avoid the infringement or alleged infringement, but in such a way that it complies with the representations and warranties in the Contract.
- 14.7 All SUSE's Rights and all products, samples, documents and information provided by SUSE to the Supplier (including copyright therein) shall remain the property of SUSE. Their use by the Supplier shall only be allowed within the limits of the purpose of each Purchase Order or another written agreement between the Parties.

## 15. ASSIGNMENT

- 15.1 The Supplier may assign or transfer the Contract or any part of it and/or any rights and obligations arising under it (including the benefit of any guarantee or warranty) to any person, firm or company, provided that it receives the prior written consent of SUSE, and SUSE shall if required (and at the Supplier's cost), enter into a novation agreement with the Supplier and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.
- 15.2 SUSE may assign or transfer the Contract or any part of it and/or any rights and obligations arising under it (including the benefit of any guarantee or warranty) to any person, firm or company and the Supplier shall if required by SUSE, enter into a novation agreement with SUSE and the transferee or such other documentation as is necessary to give effect to any such assignment or transfer.

## 16. SUB-CONTRACTING

- 16.1 The appointment of sub-contractors or the performance of the Supplier's obligations by or through any person other than the Supplier shall be subject to the prior written approval of SUSE unless such other person is identified on the Purchase Order as acting in such capacity. However, SUSE's approval shall not discharge the Supplier in any respect from its duty to properly and punctually meet its obligations under the Contract and the Supplier shall remain liable to SUSE for any performance or non-performance of such obligations, whether by the Supplier or any of its sub-contractors.
- 16.2 The Supplier shall promptly and fully inform each subcontractor as to the provisions contained in the Contract (including these terms and conditions) which apply to them and shall ensure that each sub-contract with its sub-contractors ensure that such sub-contractors are bound



to such provisions of the Contract, as relevant as if those provisions were incorporated in that sub-contract.

## 17. DATA PROTECTION

17.1 The following terms apply as defined in the Data Protection Laws: "**controller**", "**processor**", "**data subject**", "**personal data**", "**personal data breach**", "**processing**", "**supervisor authority**" and "**appropriate technical and organisational measures**".

17.2 SUSE and the Supplier will comply with the Data Protection Laws.

17.3 To the extent that the provision of the Services or supply of Goods by the Supplier requires the processing of personal data in respect of which SUSE is a controller, the Supplier agrees to:

- (a) if required by SUSE, execute and comply with the terms of a separate Data Processing Addendum;
- (b) process that personal data only on the documented written instructions of SUSE, unless the Supplier is required by applicable Law to otherwise process that personal data (in which case it shall promptly notify SUSE of such processing unless applicable Law prohibits such a notification);
- (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, having regard to the state of technological development and the cost of implementing any measures;
- (d) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (e) not transfer any personal data outside of the UK unless the prior written consent of SUSE has been obtained and the following conditions are fulfilled:
  - (i) the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by SUSE with respect to the processing of the personal data;
- (f) assist SUSE, at the Supplier's own cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify SUSE without undue delay on becoming aware of a personal data breach;
- (h) at the written direction of SUSE, delete or return personal data and copies thereof to SUSE on termination of the Contract unless required by applicable Law to store the personal data; and
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 17.



17.4 The Supplier cannot appoint any third party processor of personal data under the Contract without the prior written consent of SUSE.

## **18. INFORMATION SECURITY**

18.1 Throughout the Term the Supplier shall implement and maintain cyber security / information security (technical and organizational) measures in accordance with ISO 27001, NIST CSF, SOC 2, CIS Controls V8 or with other comparable standards to ensure adequate protection of the confidentiality, integrity and availability of the systems and networks it uses to provide Services to SUSE or that it makes available to SUSE for SUSE's use.

18.2 Without prejudice to clauses 11 and 17, the Supplier shall ensure protection of data/information and other assets provided to the Supplier by SUSE or processed on behalf of SUSE. The Vendor shall meet requirements stated by applicable Laws governing information security and data protection.

18.3 The Supplier shall also:

- (a) ensure that any subcontractors it uses in connection with this Contract meet the obligations set out in clauses 18.1 and 18.2 above;
- (b) perform information security and privacy evaluation of any suppliers it uses in connection with this Contract on a regular basis (at least once every two years) or following an identified cyber security incident or a change in relevant regulations regarding security or data protection and address any risks identified. If Supplier is unable, for whatever reason, to meet this obligation it must notify SUSE as soon as it becomes aware of that position and provide details of any alternate actions it intends to take to ensure its suppliers maintain an adequate level of information security and privacy. SUSE reserves the right to reject any such alternate actions;
- (c) cooperate with SUSE so SUSE can regularly evaluate the Supplier from an information security and privacy perspective;
- (d) regularly perform information security and privacy awareness training in the Supplier's organization.
- (e) regularly test, assess and evaluate the effectiveness of the technical and organizational measures required under this clause 18 to reasonably ensure their effectiveness by way of regular self-audits;
- (f) at SUSE's sole choice, transfer, destroy and/or delete any data/information, documents, source code or information required to run SUSE's systems for which SUSE acts as a controller or in a similar role within the scope of this Contract in the event of termination of this Contract (for whatever reason). Any transfer pursuant to this sub-clause shall be done in a commonly used, machine-readable format;
- (g) inform SUSE without undue delay, and in any event no later than after 48 hours, about any cyber security / information security incident which might affect SUSE and shall without undue delay mitigate the risks and damages that result to SUSE to a level generally accepted on the relevant market.

## **19. EMPLOYEES**

19.1 Nothing in the Contract shall be taken to mean that any individual employed or engaged in the provision of the Services or supply of the Goods by the Supplier or any of its subcontractors is an employee, worker, officer or agent of SUSE.



- 19.2 The Supplier shall indemnify SUSE against any costs, expenses, liabilities, damages and losses arising out of any claim, demand, action or proceeding made or brought by any of the individuals employed or engaged in the provision of the Services or supply of the Goods which arises or is alleged to arise out of any act or omission of the Supplier (or any of its agents or subcontractors). The Supplier shall further indemnify SUSE for any liability for income tax, national insurance contributions and/or social security charges or similar statutory payments (or penalties or interests thereon) which may be found due from SUSE in respect of any individuals employed or engaged in the provision of the Services or supply of the Goods.
- 19.3 To the extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") apply to the Contract, or any equivalent Laws in any jurisdiction in which goods and/or services are provided by the Supplier pursuant to a Purchase Order, the Supplier shall comply with its obligations under such Regulations and/or Laws (as applicable).
- 19.4 The Supplier shall indemnify SUSE for itself and any future provider of services to SUSE against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise by virtue of the operation of TUPE in connection with the termination of the provision of any of the Services or supply of the Goods (including without limitation in relation to any dismissal or alleged dismissal of any individual employed or engaged or formerly employed or engaged in the provision of the Services or supply of the Goods).

## 20. ANTI-BRIBERY AND CORRUPTION

- 20.1 The Supplier shall, and shall procure that persons associated with it or other persons who are performing Services, or providing Goods, in connection with these terms and conditions shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (the "**Relevant Requirements**"), including but not limited to the Bribery Act 2010;
  - (b) not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (c) comply with SUSE anti-bribery policy at <https://www.suse.com/company/legal/> (as SUSE may update from time to time) (the "**Relevant Policies**");
  - (d) not do, or omit to do, any act that will cause or lead SUSE to be in breach of any of the Relevant Requirements or Relevant Policies;
  - (e) promptly report to SUSE if it becomes aware of any breach of clauses (a) or (b) or has reason to believe that it has received a request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Contract;
  - (f) establish and maintain in place through the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and enforce them where appropriate;
  - (g) if requested, provide SUSE with any reasonable assistance, at SUSE's reasonable cost, to enable SUSE to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies; and
  - (h) within one month of the date of the Contract, and annually thereafter, certify to SUSE in writing signed by an officer of the Supplier, compliance with this clause 20 by the Supplier





and all persons associated with it or other persons who are performing Services or supplying Goods in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as SUSE may reasonably request.

20.2 The Supplier warrants and represents that:

- (a) its responses to SUSE' anti-bribery and anti-corruption due diligence questionnaire (if applicable) are complete and accurate;
- (b) neither the Supplier nor any of its officers, employees or other persons associated with it:
- (c) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
- (d) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
- (e) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or other government contracts;
- (f) none of the officers or employees of the Supplier or any person associated with it or any other person who is performing Services or providing Goods in connection with the Contract is a foreign public official; and
- (g) no foreign public official owns a direct or indirect interest in the Supplier or any person associated with it or any other person for whom the Supplier is responsible under clause (d) and no foreign public official has any legal or beneficial interest in any payments made by SUSE under the Contract.

20.3 The Supplier shall promptly notify SUSE if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 20.2 at the relevant time.

20.4 Breach of this clause 20 shall be deemed a material default under clause (g) and SUSE shall be entitled to terminate the Contract without any liability to the Supplier in accordance with such clause and, in particular, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

20.5 Regardless of any other provisions in the Contract, SUSE shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

20.6 The Supplier shall indemnify SUSE against any losses, liabilities, damages, costs (including, but not limited to, legal fees) and expenses incurred by, or awarded against, SUSE as a result of any breach of this clause 20 by the Supplier.

## **21. MODERN SLAVERY**

21.1 The Supplier hereby undertakes, warrants, and represents that:

- (a) neither the Supplier nor any of its officers, employees, agents or subcontractors has:
- (b) committed an MSA Offence; or
- (c) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or





- (d) awareness of any circumstances within its business or supply chain which are reasonably likely to give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and
  - (e) it shall comply with the Modern Slavery Act 2015 and SUSE's MSA Statement.
- 21.2 Any breach of clause 21.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle SUSE to terminate the Contract in accordance with clause (e).
- 21.3 The Supplier shall:
- (a) take all reasonable steps to ensure that slavery, servitude, human trafficking, forced or compulsory labour, and/or child labour do not take place in its supply chains and/or in any part of its business (including making all necessary enquiries with its suppliers and, to the extent reasonable, other parties in its supply chain);
  - (b) have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;
  - (c) maintain a complete set of records to trace the supply chain of all Goods and/or Services provided to SUSE in connection with these terms and conditions which can be inspected by SUSE at any time; and
  - (d) include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 21.
- 21.4 The Supplier shall notify SUSE immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under this clause 21. Such notice must set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

## 22. VENUE HIRE AND EVENTS

- 22.1 In the event that the Contract relates to the hire of any venue by SUSE or purchase of any event involving attendees invited by SUSE:
- (a) SUSE may cancel the Contract without liability if a Force Majeure Event results in the reduction of attendance of a minimum of ten percent (10%) of the number of participants that were expected at the time the Contract was made. In such circumstance, if SUSE cancels the Contract due to a Force Majeure Event, all deposits will be refunded within seven (7) business days and no cancellation fees will apply. Notification of cancellation due to a Force Majeure Event will be given in writing to the other Party as soon as reasonably practicable, but no longer than seven (7) days after identifying the reason for cancellation; and
  - (b) Should SUSE choose to continue performance despite the inability of any number of participants to attend related to a Force Majeure Event, neither the contracting party for the venue, nor the venue, will charge damage fees for any short fall in performance provided. Proportionate reductions in space will apply for any reduction in total rooms. If lower rates are published to the general public following a Force Majeure Event, SUSE will be given the lower rates and any other additional incentives or concessions offered by the other Party and/or the venue, if applicable.

## 23. FORCE MAJEURE

- 23.1 Provided it has complied with clause **Error! Reference source not found.** below, a Party shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its



obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including (without limitation): acts of God, political unrest or civil disorder, acts of war including armed conflict, acts of terrorism, any law or action by any governmental authority, epidemic or pandemic, flood, fire, drought, earthquake, or other natural disaster, strikes (other than by the Party seeking to rely on this clause or companies in the same group as that Party), shortage, and disruption or failure of the power supply or other essential utility services (each a "**Force Majeure Event**"). The time for performance of such obligations shall be extended accordingly.

23.2 The Party affected by the Force Majeure Event shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.3 If the period of delay or non-performance continues for 1 month, the Party not affected by the Force Majeure Event may terminate the Contract by giving 5 days' written notice to the affected Party.

## 24. GENERAL

24.1 Each right or remedy of SUSE under the Contract is without prejudice to any other right or remedy of SUSE whether under the Contract or not and is in addition to any conditions implied in favour of SUSE by Law.

24.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed deleted and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. If any provision of the Contract is deemed deleted under this clause 24.2 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24.3 Failure or delay by SUSE in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

24.4 Any waiver by SUSE (which must be evidenced in writing) of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

24.5 Other than in respect of other SUSE group companies, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24.6 The Contract constitutes the entire agreement between the Supplier and SUSE relating to the sale and purchase of the Goods and/or Services. Each Party acknowledges that in entering into the Contract it has not relied on any representations, agreements, warranties or other assurances (other than those repeated in the Contract) and waives all rights and remedies which but for this clause 24.6 would be available to it. Nothing in this clause 24.6 excludes or limits any liability for fraud.

24.7 Nothing in the Contract is intended to, or shall operate to, create a partnership or joint venture between the Parties, or to authorize either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way



(including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24.8 Any notice given to SUSE by the Supplier under or in connection with the Contract shall be in writing and shall be sent by email to the following addresses: Procurement@suse.com. Any notice shall be deemed to have been received at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

## **25. GOVERNING LAW AND JURISDICTION**

25.1 Subject to clause 25.3 the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

25.2 Subject to clause 25.3, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and conditions or their subject matter or formation.

25.3 Where the Goods and/or Services are provided in the United States of America, the laws of Utah (without regard to its choice of law rules) shall govern these terms and conditions and each Party irrevocably agrees that the state and/or Federal courts of Utah shall have exclusive jurisdiction to settle any dispute or claim.

25.4 Where clause 25.3 applies to these terms and conditions, all references to applicable Laws or to specific legislative acts or orders in these terms and conditions shall be deemed to be references to any equivalent legislation or legislation having essentially the same purpose applicable under the laws of Utah.

