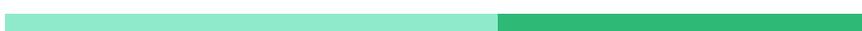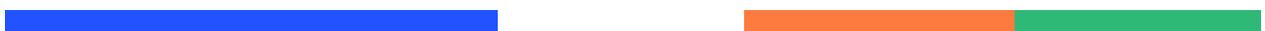# SUSE Rancher Hosted Terms

SUSE

Agreement for Use of the SUSE Rancher Hosted service.

PLEASE READ THIS AGREEMENT CAREFULLY. BY PURCHASING, INSTALLING, DOWNLOADING OR OTHERWISE USING THE SUSE RANCHER HOSTED SERVICE (INCLUDING ITS COMPONENTS) (THE "SERVICE"), YOU AGREE TO THE TERMS OF THIS AGREEMENT AND ANY CHANGES TO THIS AGREEMENT SUSE MAY MAKE IN THE FUTURE. IF YOU DO NOT AGREE WITH THESE TERMS, YOU ARE NOT PERMITTED TO USE THE SERVICE AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SERVICE TO OBTAIN A REFUND. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY.

These terms (the "Agreement") is a legal agreement between You (an entity or a person) and SUSE LLC ("Licensor"). SUSE (including Rancher) software products for which You have acquired licenses, any media or reproductions (physical or virtual) and accompanying documentation (collectively the "Software") are protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. If the laws of Your principal place of business require contracts to be in the local language to be enforceable, such local language version maybe obtained from Licensor upon written request and shall be deemed to govern Your purchase of licenses to the Software. Any add-on, extension, update, mobile application,module, adapter or support release to the Software that You may download or receive that is not accompanied by a license agreement is Software and is governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order toinstall or use the update or support release. You agree to all terms contained in the SUSE Combined License Agreement found here: https://www.suse.com/licensing/eula/#combined-june21

SUSE RANCHER HOSTED ADDITIONAL TERMS

1.   **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:

1.1   <u>Affiliate</u> means any person or entity directly or indirectly controlling, controlled by or under common control with a Party as of or after the Effective Date, for so long as that relationship is in effect (including affiliates subsequently established by acquisition, merger or otherwise).

1.2   <u>Control Plane Environment ("CPE")</u> means the following that are created by you, are under your control: Rancher Software hosted via the Rancher Hosted Service or data that you or any End User transfers to us for processing, storage or hosting via the Service in connection with your SUSE Rancher Hosted Service account and any resulting electronic files or logs that you or any End User derive from the foregoing through use of the Service.

1.3   Cloud Hosting Provider means Amazon Web Services cloud computing platform and services or any other similar provider Rancher uses after giving proper notice under this Agreement.

1.4   Customer Information means any data, information, software or other materials that Customer provides to SUSE under the Agreement.

1.5   End User means any individual or entity that directly or indirectly through another user: (a) accesses or uses your CPE; or (b) otherwise accesses or uses the SUSE Rancher Hosted Service under your account.

1.6   Effective Date means the date You accepted the terms of the Agreement.

1.7   Fees are the amounts to be paid by Customer to SUSE for the Rancher Hosted Service.

1.8   Order Form means SUSE's standard ordering document used to order SUSE products or services.

1.9   SUSE Rancher Hosted Service (also the "Service") means SUSE's support staff monitoring and maintaining Customer's SUSE Rancher Software deployed on a Cloud Hosting Provider's infrastructure (using the most current supported version of the SUSE Rancher Software as defined in the SUSE Support Handbook found here: https://www.suse.com/support/handbook/ according to the terms of the Service Level Agreement defined in Section 13.

1.10 Rancher Support Service means the delivery of problem resolution and customer support activities by SUSE Personnel or contractors subject to the SUSE Rancher Support Terms of Service

1.11 Hosted Service – Service Level Agreements (HS SLA) means in addition to the platinum support service level agreements defined in SUSE Rancher Support Terms of Service which are included with SUSE Rancher Hosted Service, additional service level agreements that we offer specifically for the Rancher Hosted Service, which are contained in Section 13.

1.12 SUSE Rancher Support Terms of Service are those terms of service governing SUSE's support for Rancher software found here https://www.suse.com/support/handbook/.

1.13 Rancher Software means SUSE Rancher branded software governed by this Agreement and the SUSE Rancher End User License Agreement found here https://www.suse.com/licensing/eula/download/combined-june21/suse-combined-eula-june-2021-en.pdf.

1.14 SUSE Rancher Support Subscription Term means the period during which Customer is entitled by to use, receive, access or consume SUSE Rancher Support Services pursuant to an Order Form.

1.15 Supplier means a third party that provides service(s) to SUSE in order for SUSE to offer the SUSE Rancher Hosted Service to its customers.

1.16 SUSE Personnel means SUSE employees.

1.17 SUSE means the legal entity with its SUSE business unit named below depending on Customer's region/country.

Region / Country	Legal Entity as contracted Party:

Americas (except Canada), Asia-Pacific (except India and Japan)	SUSE LLC
Canada	SUSE Software Solutions Canada ULC
India	SUSE Software Solutions India Private Ltd
Japan	SUSE Software Solutions Japan KK
Europe, the Middle-East, Africa (EMEA)	SUSE Software Solutions Ireland Ltd

1.18 Taxes means any form of taxation of whatever nature and by whatever authority imposed, including any interest, surcharges or penalties, arising from or relating to this Agreement or any SUSE products, other than taxes based on the net income of SUSE.

2 ORDERING.

2.1 **Ordering Rancher Hosted Service.** SUSE Rancher Hosted Service fees are due and payable in advance. The initial subscription fee will be calculated from the first day of the subscription period indicated on the SUSE order form.

2.2 **SUSE Rancher Support Subscription.** Customer agrees that at all times during the Agreement Term it will maintain a current Rancher Support Services subscription. Failure to maintain a current Rancher Support Services subscription during the Agreement Term will be a material breach of this agreement.

3 TERM AND TERMINATION

3.1 **Agreement Term.** The Agreement begins on the Effective Date and continues until it is terminated as set forth below.

3.2 **SUSE Rancher Hosted Service Term.** The Service will start on the specified Service subscription start date as identified in the applicable Order Form and end at the expiration of the Service term as defined in the applicable Order Form unless sooner terminated according to this Agreement. Service subscriptions automatically renew for successive twelve (12) month terms unless either party gives written notice to the other party of its intention not to renew. Notice of non-renewal must be given at least sixty (60) days before the expiration of the applicable subscription term.

3.3 **Termination for Cause.** Either party may terminate this Agreement (in whole or with respect to any Order Form) by notice to the other party if (a) the other party materially breaches this Agreement, and does not cure the breach within thirty (30) days after written notice (except in the case of a breach of Section 8 (Representations and Warranties) in which case no cure period will apply), or (b) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. SUSE may elect to terminate this Agreement by providing thirty (30) days written notice if Customer has no active subscription for the Service.

3.4 **Effect of Termination; Survival.** The termination or suspension of an individual Order Form will not terminate or suspend any other Order Form, or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order Form(s) will terminate. If this Agreement or any Order Form is terminated, Customer agrees to pay for all items specified in the applicable Order Form that Customer used or deployed or that were provided by SUSE up to the date of termination and that SUSE will not issue any refunds for any Fees paid. Except in the case of termination for SUSE's breach, Customer shall remain liable

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for all Fees stated in the applicable Order Form. During the 30 days following the termination date: a) SUSE will not take action to remove from the SUSE systems any of Customer's CPEs as a result of the termination, and b) SUSE will allow Customer to retrieve your CPE from the SUSE Rancher Hosted Service only if you have paid all amounts due under the Agreement. For any use of the SUSE Rancher Hosted Service after the Termination Date, the terms of the Agreement and this Addendum will apply and you will pay the applicable fees at the rates specified under the Agreement. All sections of this Agreement which by their nature should survive the termination of the Agreement will survive any termination.

4. FEES AND PAYMENT

4.1 **Payment**. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for orders whose currency is the Euro, the purchase orders must be issued, and the fees paid, in Euros. Orders issued in response to quotes must correspond to the currency in which the quote was made. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser of the rate of 12% per year or the highest rate allowed by applicable law. If an invoice is disputed, Customer will provide SUSE with written notice describing the basis for the dispute prior to the due date.

5. TAXES

5.1 Taxes. The Fees are exclusive of all applicable taxes. Customer will pay and bear the liability for taxes associated with the SUSE Rancher Hosted Service, including sales, use, excise, and added value taxes but excluding taxes based upon SUSE's net income, capital, or gross receipts, or any withholding taxes imposed. In the event Customer is required to withhold taxes, Customer will furnish SUSE all required receipts and documentation substantiating such payment. If SUSE is required by law to remit any tax or duty on Customer's behalf or for Customer's account upon delivery, Customer agree to reimburse SUSE within 30 days after SUSE notifies Customer in writing of such remittance. Customer will provide SUSE with valid tax exemption certificates in advance of any remittance otherwise required to be made by SUSE on Customer's behalf or for Customer's account where such certificates are applicable.

6. REPRESENTATIONS AND WARRANTIES

6.1 SUSE represents and warrants that (a) it has the authority to enter into this Agreement, (b) the Service will be performed in a professional and workmanlike manner by qualified SUSE Personnel, (c) to its knowledge, the SUSE Rancher Software does not, at the time of delivery to Customer, include malicious mechanisms or code for the purpose of damaging or corrupting the SUSE Rancher Software, and (d) that SUSE will comply with applicable US laws governing its performance under this Agreement. Customer represents and warrants that (a) it has the authority to enter into this Agreement, and (b) its use of Service will comply with all applicable laws (c) it's use of the Service will comply with all provisions of Section 13, and (d) and it will not use the Service for any illegal activity.

6.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, THE SUSE RANCHER SOFTWARE AND THE SERVICE ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, AND SUSE DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY THE COURSE OF DEALING OR USAGE OF TRADE. SUSE AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, SECURE, ERROR FREE, ACCURATE OR COMPLETE OR COMPLY WITH REGULATORY REQUIREMENTS, OR THAT SUSE

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WILL CORRECT ALL ERRORS. IN THE EVENT OF A BREACH OF THE WARRANTIES SET FORTH IN SECTION 8.1, CUSTOMER'S EXCLUSIVE REMEDY, AND SUSE'S ENTIRE LIABILITY, WILL BE THE RE-PERFORMANCE, OR REDELIVERY OF THE DEFICIENT SUSE RANCHER SOFTWARE OR SERVICE, OR IF SUSE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, TERMINATION OF THE RELEVANT SUSE RANCHER SOFTWARE OR SERVICE, IN WHICH CASE CUSTOMER MAY RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SUSE RANCHER SOFTWARE OR SERVICE AS OF THE EFFECTIVE DATE OF TERMINATION.

6.3 The SUSE Rancher Software and the Service have not been tested in all situations under which they may be used. SUSE will not be liable for the results obtained through use of the SUSE Rancher Software or the Service and Customer is solely responsible for determining appropriate uses for the SUSE Rancher Software or the Service and for all results of such use. For example, SUSE Rancher Software and the Service are not specifically designed, manufactured or intended for use in (a) the design, planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft control, navigation, or communication systems (c) weapons systems, (d) direct life support systems (e) or other similar hazardous environments.

7. CONFIDENTIALITY

7.1 **Definition**. For purposes of this Agreement, "**Confidential Information**" means written, documentary, oral or visual information of any kind disclosed by either Party to the other, including, but not limited to: (i) the terms and conditions of this Agreement; (ii) any Order Form; (iii) source code, libraries, build procedures, utilities, lifecycle artifacts, any and all written or digital intellectual property, computer programs, documentation, training materials and techniques and (iv) information of a business, planning, marketing or technical nature, including, financial data, plans, specifications, forecasts, market intelligence, concepts, fixed assets, customer and/or employee information, strategies, agreements or other proprietary or confidential material which the disclosing party may, at its sole discretion, disclose to the receiving party; (v) models, tools, processes and procedures, and software; and (vi) any documents, reports, memoranda, notes, files or analyses prepared by or on behalf of the receiving party that contain, summarize or are based upon any Confidential Information. Information disclosed orally shall be considered Confidential Information if a reasonable person at the time of disclosure would consider such information to be confidential.

7.2 **Exclusions.** Information shall not be considered Confidential Information if: (a) the information is or becomes publicly available other than as a result of the Recipient's, or its agent's breach of this Agreement, (b) the Recipient, at the time of disclosure, knows or possesses the information without obligation of confidentiality or thereafter obtains the information from a third party not under an obligation of confidentiality; (c) the Recipient independently develops the information without use of the Discloser's Confidential Information, (d) is independently developed by Rancher employees without reliance or reference to Confidential Information, or (e) the information is licensed under an Open Source License (as defined by the Open Source Initiative (https://opensource.org/).

7.3 **Restrictions.** "Recipient" is the party receiving Confidential Information under this Agreement. "Discloser" is a party disclosing Confidential Information under this Agreement. Recipient (a) may not disclose Confidential Information of a Discloser to any third party unless Discloser approves the disclosure in writing or the disclosure is otherwise permitted under this Section 6; (b) will use the same degree of care to protect Confidential Information of Discloser as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care; and (c) may disclose Confidential Information of the Discloser only to its employees, personnel, Affiliates, agents and contractors with a need to know, and to its auditors and legal counsel, in

each case, who are under a written obligation (or other professional obligation) to keep such information confidential using standards of confidentiality no less restrictive than those required by this Section 9. These obligations will survive this Agreement and continue until the Confidential Information lawfully becomes known to the public, as defined in Paragraph 9.2.

7.4   **Disclosures Required by Law.** The receiving Party may disclose the Confidential Information of the other to the extent required under order of a court of competent jurisdiction, a valid administrative or congressional subpoena, law, rule, regulation (including any securities exchange regulation), or other governmental action provided that the receiving Party (i) promptly notifies the disclosing Party in writing prior to disclosure of the information, and (ii) assists the disclosing Party, at the disclosing party's expense, in any attempt by the disclosing Party to limit or prevent the disclosure of the Confidential Information.

7.5   **Remedies Upon Breach.** Each Party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this Section 9 and, accordingly, that either party may be entitled (in addition to any legal or equitable remedies available to such party) to injunctive or other equitable relief to prevent or remedy such breach.

7.6   **Return or Destruction.** Confidential Information that is disclosed prior to termination of this Agreement will remain subject to this Agreement for the period set forth above. Upon written request of the Discloser, the Recipient will promptly return or destroy all Confidential Information, except for Confidential Information stored in routine back-up media not easily accessible during the ordinary course of business.

7.7   **Personal Data.** Receiving the SUSE Rancher Hosted Service does not require the Customer to provide any Personal Data to SUSE. The Parties agree that, except for Personal Data contained in the Agreement, or necessary to provision the Support Services, Customer agrees it will not transmit to SUSE any Personal Data from the Customer, Customer's employees, agents, contractors, customers, or affiliates. For purposes of this paragraph Personal Data means: Any information relating to an identified or identifiable natural person, including, but not limited to: any information that is clearly about a particular person and can be used to identify such person, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. If Customer inadvertently transmits to SUSE any Personal Data the Parties agree: (i) SUSE will destroy such Personal Data, (ii) Customer will indemnify and hold SUSE harmless from any third-party claim brought against SUSE or its Affiliates arising out of Customer's transmittal to SUSE of Personal Data.

8.   **USE OF PRODUCT INFORMATION, FEEDBACK, RESERVATION OF RIGHTS, AUDIT.**

8.1   **Use of Product or Services Information.** If Customer provides SUSE information in connection with Customer's use of or access to the Service, Customer agrees that, subject to Section 9, SUSE and its Affiliates may use such Customer's use of the Service information in connection with providing the Service. Customer agrees that its provision (and SUSE's use) of this information under this Agreement does not require any additional consents or licenses, will be in compliance with applicable law, and will not violate any intellectual property, proprietary, privacy, or other right of any third party. As between SUSE and Customer, Customer retains all other rights in and to this information. SUSE grants to Customer only those rights expressly granted in the Agreement with respect to the Service and reserves all other rights in and to the Service (including all intellectual property rights). SUSE may collect and use for any purpose aggregated anonymous benchmark

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data about Customer's use of the Service. Nothing in this Agreement will limit SUSE from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Customer. The terms of Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

8.2 **Feedback.** If Customer chooses to voluntarily provide any Feedback to SUSE regarding the Service, SUSE may use such Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve SUSE products and other SUSE offerings without attribution or compensation. Customer grants SUSE a perpetual and irrevocable license to use all Feedback for any purpose. Customer agrees to provide Feedback to SUSE only in compliance with applicable laws and Customer represents that it has the authority to provide the Feedback and that Feedback will not include proprietary information of a third party. SUSE acknowledges and agrees that any feedback provided by the client under this agreement is on an "as is" basis, without any warranty of any kind.

8.3 **Audit**. Customer will keep complete and accurate records of all Rancher Software use. SUSE may at its expense and upon no less than 5 working days written notice audit Customer's installation, use, or access of the Rancher Software and Customer's related records and payments. As part of such audit, SUSE is entitled to obtain physical and electronic data concerning all Rancher Software installation, use. An audit will be conducted no more often than once per calendar year unless a previous audit disclosed a material discrepancy. If an audit shows Customer has underpaid fees, Customer must promptly purchase from SUSE at list price sufficient subscriptions to support the actual deployment, including subscriptions for the time period of the shortfall. If an audit shows Customer has underpaid amounts owing by more than 5%, Customer will also within 30 days pay the reasonable expenses of the audit.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

9.1 **Customer Indemnification.** Customer will defend, indemnify, and hold harmless SUSE, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any losses arising out of or relating to any third-party claim arising out of: (a) Customer or any of its End Users' use of the Service (including any activities under Customer Service account and use by Customer employees and personnel); (b) breach of this Agreement or violation of applicable law, by Customer or its End Users; or (c) a dispute between Customer and any End User. Customer will reimburse SUSE for reasonable attorneys' fees, as well as SUSE's employees' and contractors' time and materials spent responding to any third party subpoena or other compulsory legal order or process associated with third party claims described in (a) through (c) above at SUSE's then-current hourly rates.

10. LIABILITY LIMITATIONS.

10.1 Indirect Damages. TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER SUSE NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY

OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

10.2 Other Damages.   SUSE AND ITS AFFILIATES WILL NOT BE LIABLE TO CUSTOMER FOR OR BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SERVICE, INCLUDING AS A RESULT OF ANY: (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENTS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER CONTENT OR OTHER DATA.

10.3 Direct Damages. SUSE's liability for damages of any type arising out of or related to this Agreement shall be limited to the lesser of twice the actual amounts paid by Customer for the Service in preceding twelve months, or US$100,000. This subsection does not apply to SUSE's liability for intellectual property indemnification described above, nor does it apply to any damages for personal injury or tangible property caused by the negligence or willful default of SUSE.

11.   RANCHER HOSTED SERVICE PROGRAM TERMS

11.1 Use of the SUSE Rancher Hosted Service. Subject to Customer's timely payment of Fees, Customer may access and use the SUSE Rancher Hosted Service in accordance with the terms of this Agreement.

11.2 Changes To The Service. SUSE may change or discontinue any of the SUSE Rancher Hosted Service if SUSE are required to do so because of contractual requirements with our service providers or circumstances qualifying as Force Majeure under the Agreement. Other than for changes resulting from Force Majeure, if such changes materially and adversely affect your use of the Service SUSE may, after a sixty (60) day notice period, at its election: a) terminate this Agreement and pay Customer a pro rata refund of unused Fees within thirty days of terminating the SUSE Rancher Hosted Service, or b) provide the SUSE Rancher Hosted Service by alternate means which do not materially and adversely affect Customer's use of the SUSE Rancher Hosted Service.

11.3 Security and Data Privacy

11.3.1 Security. SUSE will implement commercially reasonable and appropriate measures designed to secure Customer's CPE against accidental or unlawful loss, access or disclosure.

11.3.2 Data Privacy. Customer consents to the storage of Customer's CPE in, and transfer of your CPE into, the Amazon Web Services regions available with the Service and chosen by you. SUSE will not access or use Customer's CPE except as necessary to maintain or provide the Service, or as necessary to comply with the law or a binding order of a governmental body. SUSE will not move Customer's CPE from the AWS regions selected by Customer except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, SUSE will give Customer notice of any legal requirement or order referred to in this Section 13.3.2.

11.4 Customer Responsibilities

11.4.1 Customer CPE. Except for the activities SUSE undertakes on Customer's behalf within Customer's CPE pursuant to this Agreement, and except to the extent caused by SUSE's breach of this

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Agreement, (a) Customer is responsible for all activities that occur under Customer's CPE, regardless of whether the activities are authorized by Customer or undertaken by Customer, Customer employees or a third party (including Customer contractors, agents or End Users), and (b) SUSE and its affiliates are not responsible for unauthorized access to Customer CPE. Customer will ensure that its CPE and Customer End Users' use of Customer CPE or the Service will not violate the Agreement, the Acceptable Use Policy, or applicable law. Customer is solely responsible for the Customer's development, operation, maintenance, and use of Customer's CPE.

11.4.2 Customer Security and Backup. Customer is responsible for properly configuring and using the Service and otherwise taking appropriate action to secure, protect and backup Customer accounts and Customer CPE in a manner that provides appropriate security and protection, which might include use of encryption to protect Customer's CPE from unauthorized access and routinely archiving the Customer CPE.

11.4.3 Log-In Credentials and Account Keys. Service log-in credentials are for Customer internal use only and Customer will not sell, transfer or sublicense them to any other entity or person, except that Customer may disclose log in credentials to its agents and subcontractors performing work on its behalf.

11.4.4 End Users. Customer is responsible for End Users' use of its CPE and the Service. Customer will ensure that all End Users comply with Customer's obligations under this Agreement. If Customer becomes aware of any violation of its obligations under this Agreement caused by an End User, Customer will immediately suspend access to its CPE and the Service by such End User.

11.5   Temporary Suspension

11.5.1 Generally. SUSE may suspend Customer or any End User's right to access or use any portion or all of the Service immediately upon notice to Customer if SUSE determines: a) Customer or an End User's use of the Service (i) poses a security risk to the Service or any third party, (ii) could adversely impact SUSE systems, the Service or the systems of any other SUSE customer, (iii) could subject SUSE, its affiliates, or any third party to liability, or (iv) could be fraudulent, b) Customer or any End User is, in breach of this Agreement, c) Customer is in breach of its payment obligations under the Agreement.

11.5.2 Effect of Suspension. If SUSE suspends your right to access or use any portion or all of the Service: (a) Customer remains responsible for all fees and charges Customer incurs during the period of suspension; and (b) Customer will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

11.6 Acceptable Use Policy

11.6.1 General. This Acceptable Use Policy (the "Policy") describes prohibited uses of the Service. The examples described in this Policy are not exhaustive. SUSE may modify this Policy at any time by giving Customer thirty days written notice. If Customer violates the Policy or authorizes or helps others to do so, SUSE may suspend or terminate Customer's use of the Service.

11.6.2 No Illegal, Harmful, or Offensive Use or Content. Customer may not use, or encourage, promote, facilitate or instruct others to use the Service for any illegal, harmful, fraudulent, or infringing purpose, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, or infringing. Prohibited activities or content include: a) any activities that are illegal, that violate the rights of others, or that may be harmful to others, SUSE operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes,

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ponzi and pyramid schemes, phishing, or pharming; b) Content that infringes or misappropriates the intellectual property or proprietary rights of others; c) Content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, or d) Content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots.

11.6.3 No Security Violations. Customer may not use the Service to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a "System"). Prohibited activities include: a) Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled, b) Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective, c) Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques, d) Operating network services like open proxies, open mail relays, or open recursive domain name servers, or e) Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

11.6.4 SUSE Monitoring and Enforcement. SUSE reserves the right, but does not assume the obligation, to investigate any violation of this Policy or misuse of the Service. SUSE may: a) investigate violations of this Policy or misuse of the Service or b) remove, disable access to, or modify any content or resource that violates this Policy or any other agreement we have with Customer for use of the Service.

11.7 Service Level Agreement. This Service Level Agreement ("SLA") is a policy governing the use of the Service and applies separately to each instance of the Service purchased on an Order Form.

11.7.1 Service Commitment. SUSE will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.90% during any month as defined below (the "Service Commitment"). Monthly Minutes are calculated by multiplying the number of days in a calendar month by 1,440. Monthly Uptime Minutes are calculated by multiplying the Monthly Minutes, less the scheduled maintenance window minutes and any other exclusions as defined below, by 99.90%. Actual Monthly Uptime Minutes are calculated according to the terms of Section 13.7.2.

11.7.2 Monthly Uptime Measurement. The Parties agree SUSE will measure up-time using a third party, up-time monitoring system. Data points will be collected at least once a minute. The endpoint for the Customer's instance of the SUSE Rancher Software will be queried and must respond within 5 seconds with an HTTP 200 return code to be considered within the SLA. No response, non-HTTP 200 return code, or a response longer than 5 seconds will be considered downtime. This will be the only measurement for SUSE compliance with the Service Commitment. All minutes qualifying under this section will be counted in the Actual Monthly Uptime Minutes.

11.7.3 Uptime Details. The following exclusions apply to both Actual Monthly Uptime Minutes and Monthly Uptime Minutes measurements: a) Weekly scheduled maintenance windows will not be included in the calculation of Monthly Uptime Percentage. The customer must select a one-hour weekly maintenance window (day of week and time of day) from the following range of options: i) Tuesday: 00:00 – 01:00 UTC, or ii) Thursday: 17:00 – 18:00 UTC, b) Service Level Credits shall not be provided for: a) any failures to meet the SLAs caused by Customer, its employees, agents, subcontractors or End Users; b) an outage in the underlying infrastructure required to provide the Service that is not controlled by SUSE and neither will be included in the Monthly Uptime measurement. This includes, but is not limited to: Cloud Provider – Amazon Web Services (AWS) outages (http://aws.amazon.com and any successor or related site designated by SUSE), Internet network or backbone outages, Internet DNS outages, power outages, SUSE's suspension or

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termination of your right to use the Service in accordance with the Agreement, or any event qualifying under the Force Majeure provisions of the Agreement.

11.7.4 Service Level Credits. The Service Level Credit will be calculated on a monthly basis. In the event that SUSE fails to meet the Service Commitment, SUSE will credit to the Customer an amount calculated as follows: For the Service Level Credit the Effective Monthly Fees will mean: the yearly fees paid for the Service and corresponding Rancher Support Services divided by twelve. The Service Level Credit will be calculated as follows: The Effective Monthly Fees divided by Monthly Uptime Minutes (the "Per Minute Credit") multiplied by the Monthly Uptime Minutes minus the Actual Monthly Uptime Minutes (the Service Commitment Default Minutes). For illustrative purposes, if the Monthly Uptime Minutes were 42,897 and the total number of Actual Monthly Uptime Minutes were 41,000, and the Effective Monthly Fees were \$8,333.33, the Service Level Credit would be calculated as follows: Per Minute Credit X Service Commitment Default Minutes or (8,333.33 ÷ 42,897) X (42,897 – 41,100). In no case will the Service Level Credit exceed the amount of fees (calculated on a monthly basis) the Customer paid for the Service.

11.7.5 Service Level Credit and Payment. Service Level Credits will not entitle the Customer to any refund or other payment from SUSE. A Service Level Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one hundred dollars (\$100 USD). Service Level Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, the Customer's sole and exclusive remedy for any unavailability or non-performance or other failure by SUSE to provide the Service is the receipt of a Service Level Credit in accordance with the terms of this SLA.

11.7.6 Service Level Credit Requests. To receive a Service Level Credit Customer must submit a request by opening a support ticket by sending an email to: support@suse.com. The email must include: a) the words SLA Credit Request, b) the billing cycle and to which Customer is claiming a Service Level Credit, together with the dates and times of each Monthly Uptime breakdown you are claiming. If SUSE confirms it did not meet the Service Commitment, then SUSE will issue the Service Level Credit to Customer within one billing cycle following the month in which the request occurred. Customer's failure to provide the request and other information as required above will disqualify it from receiving a Service Credit. Requests for a Service Level Credit must be made within thirty days of the end of the month during which Customer claims the Service Commitment failure occurred.

12 GENERAL.

12.1 <u>Choice of Law</u>. The Agreement will be governed by the substantive laws of the State of Utah without regard to its choice of law provisions, unless the laws of the state, province, or country of Customer's domicile require otherwise, in which case the laws so required will govern.

12.1.1 However, if Customer's principal place of business is in (a) a member state of the European Union or (b) a member state of the European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Customer's principal place of business (and for Canadian Customers, the law of the Province of Ontario). If Customer's principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Customer's principal place of business is in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

12.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order

or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

12.2 <u>Assignment</u>. Neither party may transfer or assign any Agreement right or obligation without the prior written consent of the other. Either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition. If SUSE transfers a software product to a third party, it may assign Agreement rights or obligations related to that product to the third party. SUSE may assign the Agreement or obligations with respect to a specific product to its parent company or an entity under common control with the parent company.

12.3 <u>Publicity</u>. Customer agrees that unless it informs SUSE otherwise in writing SUSE may use Customer's use of the Service as a commercial reference.

12.4 <u>Entire Agreement</u>. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

12.5 <u>Severability/Waiver</u>. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

12.6 <u>Notices</u>. Notices to a party must be in writing and sent to the party's address indicated below or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

> If to Customer: The address reflected on Customer's ordering documents.

> **If to Suse:** SUSE LLC, ATTN Legal Dept., 1800 S Novell Place, Provo, UT 84606.

12.7 <u>Force Majeure</u>. Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

12.8 <u>Survival</u>. The provisions of this Agreement which by their nature extend beyond termination of the Agreement, including sections 3, Licensing, 7.7, Audit, 9, Intellectual Property Indemnification, 10, Limited Warranty, 11, Limitation of Liability, and 12, General. will survive termination of the Agreement.

12.9 <u>Intellectual Property Rights/Remedies</u>. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to SUSE to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which Customer may use the Software.

12.10 <u>Export Compliance</u>. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply

with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: www.bis.doc.gov before exporting or re-exporting items subject to the EAR. Refer to: www.suse.com/company/legal/ for more information on exporting Software. Upon request, SUSE can provide information regarding applicable export restrictions. However, SUSE assumes no responsibility for Customer failure to obtain any necessary export approvals.

SUSE DATA PROCESSING AGREEMENT

SUSE DATA PROCESSING AGREEMENT

CUSTOMER DETAILS

Customer	As found in the SUSE ordering document
Customer address	As found in the SUSE ordering document
Role	Controller
Contact person for data protection queries	As found in the SUSE ordering document

CUSTOMER AFFILIATES

Customer Affiliate	Customer Affiliate address	Customer Affiliate contact person for data protection queries
As identified to SUSE		

BACKGROUND

(A)   SUSE has agreed to provide support, on-site and remote training and specialised, project-based services to the Customer in connection with the Customer's use of SUSE's software products (collectively, the **"Services"**) on the terms of an agreement entered into between SUSE and the Customer (the **"Agreement"**).

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(B)   To the extent that SUSE processes any personal data as a processor on behalf of the Customer (or, where applicable, the Customer Affiliate) in connection with the provision of the Services, where that personal data falls within the scope of the GDPR, the Parties have agreed that it shall do so on the terms of this Data Processing Agreement (the "**DPA**"). This DPA forms part of the Agreement.

1.   DEFINITIONS

1.1   Terms defined in the Agreement shall, unless otherwise defined in this DPA, have the same meanings when used in this DPA and the following capitalised terms used in this DPA shall be defined as follows:

"**Customer**" means the entity identified in the "Customer Details" section at the top of this DPA;

"**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;

"**Customer Personal Data**" means the personal data processed by SUSE on behalf of the Customer in connection with the provision of the Services, as further described in Schedule 1;

"**EEA**" means the European Economic Area;

"**GDPR**" means Regulation (EU) 2016/679 (the "**EU GDPR**") or, where applicable, the "**UK GDPR**" as defined in section 3 of the UK Data Protection Act 2018;

"**Member State**" means a member state of the EEA, being a member state of the European Union, Iceland, Norway, or Liechtenstein;

"**Parties**" means SUSE and the Customer;

"**Processor Clauses**" means the standard contractual clauses annexed to Commission Implementing Decision (EU) 2021/915 on standard contractual clauses between controllers and processors under Article 28(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council and Article 29(7) of Regulation (EU) 2018/1725 of the European Parliament and of the Council, as set out at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021D0915&locale-en*;

"**sub-processor**" means a processor appointed by SUSE to process Customer Personal Data;

"**SUSE**" means SUSE Software Solutions Ireland Limited, an Irish company with company number 633362 and its registered office at 4 – 5 Burton Road, Nesta Business Centres Rooms 204 & 209, Sandyford Dublin 18, D18 A094;

"**Technical and Organisational Measures Addendum**" means the addendum annexed to this DPA, detailing the policies, procedures, guidelines and technical and physical controls to

implemented by SUSE to protect the personal data processed from accidental loss, unauthorised access, disclosure or destruction;

"**UK Data Protection Laws**" has the meaning given in clause 5.1 (c).

1.2 The terms "**personal data**", "**controller**", "**processor**", "**data subject**", "**process**" and "**supervisory authority**" shall have the same meaning as set out in the GDPR.

1.3 The terms "**Agreement**", "**Services**" and "**DPA**" have the meanings given to them in the Background.

2. INTERACTION WITH THE AGREEMENT

2.1 This DPA supplements the Agreement with respect to any processing of Customer Personal Data by SUSE on behalf of the Customer and any Customer Affiliate that agrees to this DPA and either:

(a) is listed in the "Customer Affiliates" section at the top of this DPA (as amended from time to time by written agreement between the Parties); or

(b) submits to SUSE an executed copy of this DPA.

2.2 The Customer warrants that, with respect to the Customer Affiliates listed in the "Customer Affiliates" section at the top of this DPA, it is duly authorised to enter into this DPA for and on behalf of any such Customer Affiliates, and that, upon executing this DPA or a written amendment to the Customer Affiliates listed in the "Customer Affiliates" section at the top of this DPA, each Customer Affiliate shall be bound by the terms of this DPA as if they were the Customer.

2.3 The Customer warrants that it is duly mandated by any Customer Affiliates on whose behalf the Processor processes Customer Personal Data in accordance with this DPA to:

(a) enforce the terms of this DPA on behalf of the Customer Affiliates, and to act on behalf of the Customer Affiliates in the administration and conduct of any claims arising in connection with this DPA; and

(b) receive and respond to any notices or communications under this DPA on behalf of the Customer Affiliates.

2.4 The Parties agree that any notice or communication sent by SUSE to the Customer shall satisfy any obligation to send such notice or communication to a Customer Affiliate.

2.5 In the event of any conflict between the Agreement, this DPA and the Processor Clauses, the following order of precedence shall apply:

(a) The Processor Clauses (or, with respect to transfers of Customer Personal Data subject to the UK GDPR, the Processor Clauses as amended by clause 5.1).

(b) The main body of this DPA.

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(c)   The Agreement.

3.   PROCESSOR CLAUSES

3.1   Subject to clause 5.1, the Processor Clauses shall apply to any transfers of Customer Personal Data falling within the scope of the GDPR from the Customer (as controller) to SUSE (as processor).

3.2   For the purposes of the Processor Clauses:

(a)   references to Regulation (EU) 2018/1725 shall be deemed deleted;

(b)   Annex I (*List of Parties*) shall be deemed to incorporate:

(i)   with respect to the Customer and Customer Affiliates the information set out in the "Customer Details" and "Customer Affiliates" sections at the top of this DPA; and

(ii)   with respect to SUSE, the following information;

Name: SUSE Software Solutions Ireland Limited;

Address: 4-5 Burton Hall Road, Sandyford, Dublin 18, D18 A094

Contact person: privacy@suse.com

(c)   Annex II (*Description of the processing*) shall be deemed to incorporate the information in Schedule 1;

(d)   Annex III (*Technical and Organisational Measures*) shall be deemed to incorporate the information set out in the Technical and Organisational Measures Addendum.

4.   SUBPROCESSORS

4.1   For the purposes of clause 7.7(a) of the Processor Clauses:

(a)   Customer grants SUSE general authorisation to engage any of its Affiliates as a sub processor and / or any sub-processors from an agreed list, as set out at in Schedule 1, Paragraph 7 ("**Agreed List**");

(b)   SUSE shall notify the Customer of any changes to the Agreed List at least thirty (30) days in advance.

4.2   If the Customer objects to any changes to the Agreed List under clause 7.7(a) of the Processor Clauses, SUSE may, without liability, terminate the portion of the Services that requires the use of the sub-processor to which the objection relates.

5.   PROCESSING SUBJECT TO UK GDPR

5.1   With respect to any transfers of Customer Personal Data falling within the scope of the UK GDPR from the Customer (as controller) to SUSE (as processor):

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(a) the Processor Clauses shall be read and interpreted in the light of the provisions of all laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018 (together, the "**UK Data Protection Laws**");

(b) the Processor Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in UK Data Protection Laws;

(c) the Processor Clauses are deemed to be amended to the extent necessary so they operate:

   (i) for processing by SUSE (as processor) on behalf of the Customer (as controller), to the extent that UK Data Protection Laws apply to such processing; and

   (ii) to ensure compliance with Article 28(3) and (4) of the UK GDPR; and

(d) the amendments referred to in clause **Error! Reference source not found.** include (without limitation) the following:

   (i) references to "Regulation (EU) 2016/679" or "that Regulation" are replaced by "UK GDPR" and references to specific Article(s) of "Regulation (EU) 2016/679" are replaced with the equivalent Article of the UK GDPR;

   (ii) references to Regulation (EU) 2018/1725 are removed;

   (iii) references to the "Union", "EU" and "EU Member State" are all replaced with the "UK"; and

   (iv) references to the "competent supervisory authority" shall be to the Information Commissioner.

6. INSTRUCTIONS FOR DATA PROCESSING

6.1 The Parties agree that, for the purposes of clause 7.1(a) of the Processor Clauses, the Agreement and this DPA shall be the Customer's instructions for the processing of Customer Personal Data.

6.2 To the extent that any of the Customer's instructions require processing of Customer Personal Data in a manner that falls outside the scope of the Services, SUSE may:

(a) make the performance of any such instructions subject to the payment by the Customer of any costs and expenses incurred by SUSE or such additional charges as SUSE may reasonably determine; or

(b) terminate the Agreement and the Services.

7.   CUSTOMER WARRANTIES AND UNDERTAKINGS

7.1   The Customer warrants and undertakes that:

(a)   it has provided all applicable notices to data subjects and, to the extent required, obtained consent from data subjects in each case as required for the lawful processing of Customer Personal Data in accordance with the Agreement and this DPA; and

(b)   it shall not share with SUSE any personal data other than the Customer Personal Data.

(c)   it shall not share any Customer Personal Data with SUSE unless that Customer Personal Data is accurate, relevant and limited to what is necessary in order for SUSE to perform the Services.

8.   SECURITY AND AUDITS

8.1   SUSE may, by written notice to the Customer, vary the security measures set out at Technical and Organisational Measures Addendum, provided that such variation does not reduce the overall level of protection afforded to the Customer Personal Data by SUSE under this DPA.

8.2   With respect to any audits conducted under clauses 7.6(c) and (d) of the Processor Clauses, the Parties agree that:

(a)   all such audits shall be conducted:

(i)   on reasonable written notice to SUSE;

(ii) only during SUSE's normal business hours; and

(iii) in a manner that does not disrupt SUSE's business; and

(b)   the Customer (or, where applicable, a third party independent auditor appointed by the Customer) shall:

(i)   enter into a confidentiality agreement with SUSE prior to conducting the audit in such form as SUSE may request; and

(ii) ensure that its personnel comply with the SUSE's and any sub-processor's policies and procedures when attending the Processor's or sub-processor's premises, as notified to the Customer by the Processor or sub-processor.

9.   COSTS

9.1   The Customer shall pay to the Processor on demand all costs and expenses incurred by SUSE in connection with:

(a)   facilitating and contributing to any audits of SUSE under or clauses 7.6(c) and (d) of the Processor Clauses;

(b)   providing assistance to the Customer in accordance with clause 8 of the Processor Clauses;

10.   LIABILITY

10.1   Any exclusions or limitations of liability set out in the Agreement shall apply to any losses suffered by either Party (whether in contract, tort (including negligence) or for restitution, or for breach of statutory duty or misrepresentation or otherwise) under this DPA.

11.   DURATION AND TERMINATION

11.1   SUSE shall, within 30 days of the date of termination or expiry of the Agreement:

(a)   if requested to do so by the Customer within that period, return a complete copy of all Customer Personal Data by secure file transfer in such a format as notified by the Customer to the Processor; and

(b)   other than any Customer Personal Data retained by SUSE after termination of the Agreement in accordance with clause 10(d) of the Processor Clauses, delete and use all reasonable efforts to procure the deletion of all other copies of Customer Personal Data processed by SUSE or any sub-processors.

12.   LAW AND JURISDICTION

12.1   Notwithstanding the provisions of the Agreement, this DPA and the Processor Clauses shall (to the extent permitted under applicable law) be governed by, and construed in accordance with:

(a)   where the Customer is established in the UK, the law of England and Wales;

(b)   where the Customer is established in a jurisdiction other than in the UK, the law of Ireland.

12.2   Notwithstanding the provisions of the Agreement, the Parties submit themselves to the jurisdiction of the following courts:

(a)   where the Customer is established in the UK, the courts of England and Wales;

(b)   where the Customer is established in a jurisdiction other than in the UK, the Irish courts.

SCHEDULE 1

DETAILS OF PROCESSING

1.   Categories of data subjects whose personal data is processed

- Business partners and vendors of Data Exporter

- Employees or contact persons of customers or the Data Exporter

- Agents, advisors, contractors or users of Data Exporter

2.   Categories of personal data processed

- Registration information: name, company / employer, email, phone, title, position, security questions and answers;

- Host and usage information: connection data, localisation data, session sequence number, session start and end times, session duration, logs of modifications made to customer system during Service, screencast of protocol;

- Usability and platform stability: last sign-in, locale, terms acceptance, logfiles, IP address;

- User-generated information: chat, free text, uploaded files

3.   Special categories of personal data (if applicable)

None

4.   Nature of the processing

Collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, restriction, erasure and destruction.

5.   Purpose(s) for which the personal data is processed on behalf of the controller

The provision of the Services, including:

- Creation and maintenance of accounts;
- Allowing users to contact SUSE
- Enabling user verification and login
- Service personalisation
- Monitor system security
- Diagnose technical and security issues
- Creation and maintenance of remote sessions
- Maintain access and modification logs
- Customer satisfaction surveys

6.   Duration of the processing

Until termination or expiry of the Agreement.

The personal data will be retained for as long as necessary in connection with the Agreement, and in accordance with applicable laws.

7.   Sub-processor (if applicable)

Sub-processor	Subject matter and nature of processing	Duration
Okta	To provide identity management services enabling customers to create and maintain accounts	Until termination or expiry of the Agreement, unless applicable European Union or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.
Salesforce	To provide customer relationship management software to SUSE.	Until termination or expiry of the Agreement, unless applicable European Union or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.
Amazon Web Services	To provide computing software support to SUSE.	Until termination or expiry of the Agreement, unless applicable European Union or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.
SAP Qualtrics	To provide customer experience software support to SUSE.	Until termination or expiry of the Agreement, unless applicable European Union or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.
Marketo	To provide marketing software support to SUSE.	Until termination or expiry of the Agreement, unless applicable European Union

		or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.
SUSE Affiliates from time to time	To facilitate the provision of the Services offered by SUSE to the Customer.	Until termination or expiry of the Agreement, unless applicable European Union or Member State law (or law applicable in any part of the United Kingdom) requires longer storage of the personal data.

Technical and Organisational Measures Addendum

This Security Statement will provide you with more details about our security practices and controls at SUSE.

Organizational Security

At SUSE, we have defined information security roles and responsibilities. We have a dedicated cybersecurity team led by CISO responsible for the information security within the organization. Members of these team are located in several countries. This team closely cooperate with other teams within SUSE, including the legal department, compliance team, privacy team (including the data protection officer) and the team responsible for security of our products. This team relies on the best practices, stated mainly in ISO 27001 and 27701, but also in other standards.

Information Security Policy

At SUSE, we have a documented Information Security Policy that defines the security framework, security principles and protected entities, as well as classification scheme for information.

This policy is regularly, at least once a year, reviewed. That applies to all of our ISMS related policies.

Asset Management

IT assets at SUSE are managed and documented. The asset repository is regularly updated.

Personnel Security and Awareness

Background checks are conducted in accordance with the best practices and applicable law. SUSE employees are required to follow company's guidelines related to business ethics and confidentiality. Employees are bound by non-disclosure or confidentiality rules. All new hired employees are required to complete mandatory security trainings and awareness is managed on the continuous basis. HR security policy is currently being reviewed by W. Council.

Change Management

At SUSE, we control and manage changes to services and associated IT infrastructure components. SUSE established internal bodies to decide on the deployment of changes. Security evaluation is part of this decision making process.

Third Party Security

At SUSE, we rely on the best legal and security practices to mitigate the risk that our suppliers would not be in compliance with applicable law or would have a low level of information security. We established internal body and documented processes to promote the area of third-party security.

The Service is hosted on Amazon Web Services ("AWS"). Policies governing AWS security can be found here: https://www.amazontrust.com/repository/.

Vulnerability Management and Patch Management

At SUSE, we have a dedicated Vulnerability Management Policy. Vulnerability management help us to discover previously unpatched and/or unmitigated system and application exploits. Vulnerability Management process is initiated and coordinated by security team and includes 6 stages: preparation, communication, vulnerability assessment, findings evaluation, remediation and validation.

Security patches and updates to applications, operating systems and network infrastructure are applicable to prevent the introduction of new vulnerabilities.

Authentication and Authorization

Access and Password Management Policy enforces requirements for authenticated access, basic password rules, locking-out access, disclosing passwords and password storage, strong authentication, privileged access, technical access and system communication. The minimum length of a password must be 14 characters and consist of at least lowercase and uppercase letters. User passwords don't expire.

Software Development Lifecycle

At SUSE, we focus on how to manage development securely and effectively. Security is implemented during the whole software development lifecycle. SUSE has a dedicated security team for our products.

Incident Management

In case of an information security incident, SUSE has a documented Incident Management Process defining the major incident management steps, including identification, evaluation and closure. We also pay attention to communication of security incidents.

Network Security

At SUSE, all entry and exit points are protected by at least one layer of firewalling. Wired LAN is completely isolated with no access to internal SUSE parts or DNS. Guest wireless is segregated by firewall policies with no access to SUSE internal networks.

Physical Security

We have implemented Physical Security Policy that enforces requirements for protecting SUSE physical information systems and includes standards for secure and safe operations. The physical security controls are implemented to our Data Center, computer rooms or office space including fire detection systems, access control systems and cameras and CCTV.