

Professional Services Addendum (PSA)

for SUSE Professional Services Offerings



This Professional Services Addendum (“**PSA**”) is an amendment to, and supplements the agreement entered into between SUSE (as defined below) and Customer (as defined below), pursuant to which SUSE provides Customer with subscription-based support services for SUSE’s open source products (such agreement being the “**Subscription Agreement**”).

1. Purpose

SUSE provides professional services in relation to its open-source products. This PSA sets out the additional terms and conditions that shall apply to Professional Services for Customer. The PSA is incorporated into the Subscription Agreement and all Professional Services by SUSE are governed by the terms of the Subscription Agreement, as supplemented by the terms of this PSA.

2. Definitions and Interpretation

2.1 The following definitions, together with all other capitalized terms defined within clauses in this PSA:

“**Agreement**” has the meaning given in Clause 3.3.

“**Authorized Partner**” means a third party that is authorized by SUSE to sell Pre-Paid Services.

“**Business Day**” means any day on which banking institutions are open for business in, in the case of remote services, the location in which the SUSE personnel provide the Professional Services and, in the case of onsite delivery of Professional Services, in the location in which the Professional Services are performed.

“**Customer**” means the Customer entity that has executed or otherwise entered into, the Subscription Agreement.

“**Customer Specific IP**” means Intellectual Property Rights that are expressly specified in an Agreement as to be generated and delivered by SUSE exclusively for the Customer pursuant to that Agreement, in each case, excluding SUSE IP and Third Party Materials.

“**Deliverable**” means an item, code or Documentation for which SUSE has sole responsibility for creating and providing to Customer, as specified in an Agreement.

“**Effective Date**” means the date that this PSA is executed by Customer and SUSE.

“**Fees**” means all amounts payable under an Agreement, including the Rates payable in respect of SUSE personnel time, and pre-agreed expenses.

“**Intellectual Property Rights**” means patents, trade marks and service marks, copyrights, database rights, design rights, moral rights, and trade secrets, in each case whether registered or not and including those subsisting inventions, drawings, performances, software, databases, semiconductor topographies, business names, goodwill and the style of presentation of goods and services and the applications for the protection thereof.

“**Online Service Description**” means a description of certain, standard professional services made available by SUSE, as set out online at <https://www.suse.com/services/> or at <https://www.suse.com/training/>.



“Order” means a written request submitted by Customer to SUSE, pursuant to an Agreement, that specifies the Service Offerings the Customer wishes to purchase and specifies the reference number of the valid SUSE quote the Customer is accepting.

“Post-Paid Services” means Professional Services invoiced in arrear.

“Pre-Paid Services” means Professional Services for which Customer has paid the Fees in advance of the delivery of the Professional Services.

“Professional Services” has the meaning given in Clause 4.1.

“Project Management Services” means the provision of project management activities by SUSE, in circumstances where SUSE is appointed as the lead project manager, in each case, as expressly described in an Agreement.

“Rate” means the amount payable in respect of each time increment of performance of the Professional Services by SUSE personnel as may be specified in an Agreement or an Online Service Description.

“Scope” means: (a) in the case of a SOW, as specified in Clause 5.2; and (b) in all other cases, the activities to be performed as part of a Service Offering as expressly described in an Online Service Description.

“Service Offering” means Professional Services that are described in an Online Service Description and that can be ordered, conditional on SUSE’s acceptance, by placing an Order subject to the terms of the Subscription Agreement and this PSA.

“Services Commencement Date” means the date on which the provision of the Professional Services shall commence, as set out in an Agreement or as agreed pursuant to Clause 6.2.

“SUSE” means the SUSE entity that has executed or otherwise entered into the Subscription Agreement.

“SUSE Coin” means a contractual entitlement that is made available by SUSE to Customer for purchase, and that can be used by the Customer to order and pay for Service Offerings or Professional Services.

“Specifications” means clear, objective and measurable criteria or specifications that are set out in an Agreement and with which that Agreement provides that SUSE is solely responsible for ensuring a Deliverable complies.

“Statement of Work” (“SOW”) means a written document executed between the parties consisting of a description of the Professional Services to be performed and other associated information such as the term of these services.

“SUSE IP” means Intellectual Property Rights that are owned by SUSE from time to time, including Intellectual Property Rights that are developed by SUSE, in each case, whether under the Agreement or otherwise, and modifications to or derivatives of, such Intellectual Property Rights.

“Third Party Materials” means (i) Intellectual Property Rights and any other proprietary rights, which are owned by a third party, including all modifications to the same; and (ii) all materials licensed under an open source license (as defined by the Open Source Initiative (<https://opensource.org/>)).

“Working Hours” has the meaning given in Clause 7.1.



2.2 Interpretation

- (a) Clause and paragraph headings shall not affect the interpretation of this PSA.
- (b) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (c) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (d) A reference to writing or written does not include email unless expressly stated in this PSA.
- (e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (f) A reference to this PSA or to any other agreement or document is a reference to this PSA or such other agreement or document, in each case as varied from time to time.
- (g) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

3. Rules of Engagement

- 3.1 No Obligation. This PSA by itself does not oblige a party to provide any services, issue a quote or enter into any SOW or Order.
- 3.2 Initiating Services. All Professional Services provided by SUSE to Customer shall be provided pursuant to: (a) individual Statements of Work as agreed in accordance with Clause 5; or (b) Orders, in which case only standard services available as Service Offerings shall be provided.
- 3.3 Agreement Structure. Each SOW and each Order is a standalone contract which each incorporates the terms of this PSA, any Online Service Description that is referred to in it, and the terms of the Subscription Agreement (each such standalone contract being the "**Agreement**"),
- 3.4 Change Order. Changes to this PSA or an Agreement will not be effective unless agreed in a written Change Order signed by both parties.
- 3.5 Order of precedence. To the extent of any conflict or ambiguity within an Agreement, the following order of precedence applies: (1) All change orders, whereby later ones take precedence over earlier ones; (2) the SOW (if any); (3) this PSA; (4) the Subscription Agreement; (5) the Order; and (6) the Online Service Description (if any).
- 3.6 Professional Services under an Agreement. If the Parties have not executed a SOW, the only Professional Services Customer may procure are Service Offerings via Order. A binding contract for the performance of Professional Services with respect to Customer is formed at the time an Order for Service Offerings is placed to and accepted by SUSE.

4. Service Scope

- 4.1 Overview. SUSE shall make available adequately trained personnel to provide the professional services



specified in an Agreement or in an Online Service Description, which may include consultancy, training, project management, implementation services or such other services as specified in an Agreement (“**Professional Services**”). SUSE’s obligation to provide Professional Services are only for the Scope and as outlined in either this PSA, the Online Service Description, or the SOW and, except as specifically identified in an SOW, shall not include any deliverables. The SUSE personnel shall follow the reasonable instructions of the Customer, provided that SUSE personnel shall not be required to perform activities or provide consultancy outside of the Scope. If there is a conflict between an Online Service Description and a SOW, the SOW shall take precedence to the extent of the inconsistency.

4.2 Customer Project Management. Except where the Customer has purchased Project Management Services, the Customer is responsible for managing the timely delivery of the Professional Services in accordance with its requirements, and is responsible for ensuring that the Scope is adequate to meet its requirements.

5. Agreement of SOWs

5.1 Customer’s Request. If requesting Professional Services other than Service Offerings, Customer shall provide written notice of its requirement for Professional Services for SUSE’s consideration. Such notification shall include: (a) in the case of Pre-Paid Services, the number of Units the Customer wishes to consume; (b) if known, the dates during which it wishes the Professional Services to be performed; (c) whether the Professional Services will be performed remotely, at SUSE’s offices or at the Customer’s offices and if they will be at the Customer’s offices, the address of the Customer’s office; and (d) a general description of the nature of the activities to be undertaken including (i) project background (ii) documents or other deliverables to be created (iii) any third party involvement (iv) any particular skillsets or expertise of SUSE personnel required, provided that, in the case of the Pre-Paid Services, the Customer’s Pre-Paid Block includes Units for those skillsets. Unless otherwise agreed in an Agreement or in writing, the time zones applicable to delivery shall be that of the location of the SUSE personnel performing the Professional Services.

5.2 Draft SOW. SUSE shall, within 10 Business Days after receipt of Customer’s request for Professional Services other than Service Offerings, provide customer with a draft SOW for the parties’ joint review and agreement which shall include, in the case of Post-Paid Services, Rates for the SUSE personnel SUSE proposes would perform the Professional Services. Once agreed by the Parties and set out in an executed SOW, the matters referred to in 5.1(i) to (iv) together with any other express requirements of the SOW or a Service Offering, shall be the “**Scope**”.

5.3 Commencement. A SOW will become effective upon execution by authorized representatives of both parties. Unless specified otherwise in an Agreement, the performance of the Professional Services shall commence on the Services Commencement Date and end of the ‘End Date’ specified in the SOW.

6. Pre-Paid Services

6.1 Pre-Paid Block. Customer may elect to pay for the Professional Services by purchasing a ‘block’ of hours, days or other increments as specified in an Agreement, in advance by upfront payment of Fees or SUSE Coin, each such increment being a “**Unit**” and together, all of the Units are the “**Pre-Paid Block**”. The Fees or SUSE Coin (as applicable) for each Unit of the Pre-Paid Block are as set out in the SOW, Online Service Description, or in the Customer’s agreement with the Authorized Partner, as applicable. Each Pre-Paid Block is valid for 12 months from the later of: (a) the date of payment to SUSE or to an Authorized Partner (as applicable); and (b) if applicable, signature of the SOW by all Parties (“**Validity Period**”). Units in a Pre-Paid Block must be consumed within its Validity Period. The Pre-Paid Fees and SUSE Coin are non-refundable. Except where Units are not consumed due to SUSE’s breach or unavailability of SUSE



personnel, Pre-Paid Units that are not used within the Validity Period shall expire and cease to be available for use the Customer.

- 6.2 **Initiation of Engagements.** The Customer may consume the Pre-Paid Block by scheduling Pre-Paid Services in minimum blocks ("**Minimum Blocks**") as outlined in the SOW (each such block being an "**Engagement**"). The Customer may initiate an Engagement by contacting SUSE by email at ServicesManagementOffice@suse.com (or such other address as notified to the Customer from time to time) or as specified in the Agreement. Customer shall provide at least 10 Business Days' written notice of its requirement for an Engagement and such notice shall include: (a) the requested start date of the Engagement; (b) the end-date of the engagement; and (c) the number of Units to be consumed. SUSE shall notify Customer within 3 Business Days after receipt of Customer's request as to whether it can provide SUSE personnel for the Engagement on those dates. The agreed dates for the Engagement shall be documented via email.
- 6.3 **Consumption of Pre-Paid Block.** The Units of each Engagement must be consumed on consecutive days, and, unless otherwise agreed, on Business Days. If, during the course of an Engagement, the Units allocated to that Engagement or Agreement are consumed, the Parties shall discuss a written amendment to increase the Units available for that Engagement or Agreement (as applicable). SUSE shall use reasonable endeavors to accommodate such requests but shall not be liable if there is no availability of SUSE personnel to continue the Pre-Paid Services without a temporary cessation in the performance of the Professional Services. If all of the Units of an Agreement or Engagement are not consumed in the completion of the Scope under that Agreement or Engagement, the Customer may request that SUSE perform additional Professional Services that are the same as or similar to the Scope, and SUSE shall not unreasonably refuse such request. If the Parties cannot agree on such additional Professional Services, acting reasonably, the balance of such Units shall be forfeited and the Customer shall not be entitled to use those Units for any further Professional Services. Once all of the Units in a Pre-Paid Block are consumed, Customer shall have no further entitlement to receive Pre-Paid Services unless it purchases a new Pre-Paid Block.

7. Performance and Time Recording.

- 7.1 **Working Hours.** Unless otherwise agreed, the SUSE personnel will perform the Professional Services during the hours of 9:00 to 18:00 on Business Days ("**Working Hours**"), with one hour for lunch (i.e. an 8 hour day). If the Professional Services are to be performed at the Customer's office, for each calendar day on which such Professional Services are performed, SUSE shall be entitled to invoice (or deduct a Unit) for an entire working day (irrespective of how many hours were spent on the Customer's premises). For services that are to be performed remotely, the minimum amount of time for which SUSE will charge shall be as specified in the Agreement. It is agreed that onsite engagements may also include the performance of associated activities prior to or after leaving the physical delivery location, and SUSE may charge separately for such activities or count them towards a Unit, as agreed in writing.
- 7.2 **Overtime.** If the Customer requires the Professional Services to be performed outside of Working Hours this shall be subject to SUSE's availability and pre-agreed in advance, in writing, and SUSE shall be entitled to invoice at the Rates or deduct Units as follows: (a) 1.5 Units for each Unit worked outside of Working Hours or invoice at a rate of 1.5 times the Rate (as applicable) and/or (b) 2 Units for each Unit worked outside of Working Hours on weekends or public holidays, or invoice at a rate of 2 times the Rate (as applicable).

8. Customer Responsibilities

- 8.1 **Consents.** Customer warrants that it has all consents necessary to grant SUSE the rights to use, and will



provide, all tools, systems, software, documentation and materials that Customer requires SUSE to use to provide the Professional Services.

8.2 **Security.** Customer is solely responsible for implementing, and shall implement, appropriate measures to protect the security, integrity and accuracy of its systems and data, including backing up its systems and data and implementing: (a) appropriate business continuity and disaster recovery measures; and (b) appropriate firewall and malicious code scanning and detection measures. Where SUSE personnel will access Customer systems and data, Customer shall implement appropriate industry standard safeguards in accordance with least privilege principles. Without limiting the foregoing, Customer shall not provide, permit or enable SUSE to access personal data except where specifically agreed in an Agreement and as necessary for the performance of the Professional Services.

8.3 **Relief.** SUSE shall not be liable for any breach of this Agreement, including delay in performing, or failure to perform, the Professional Services to the extent such breach, failure or delay results from: (a) Customer's failure to perform, or delay in performing, Customer's obligations as specified in the Agreement or from any act or omission by Customer (or anyone acting on its behalf) that could reasonably be foreseen as the cause of a delay or failure to perform; or (b) Customer's failure to comply with applicable laws.

9. Security and Data Protection

9.1 **Information Security.** SUSE shall, in the performance of the Professional Services observe and implement the information security measures documented at <https://www.suse.com/company/legal/information-security/>.

9.2 **Customer Premises.** SUSE personnel performing Services on Customer premises shall observe reasonable safety and security protocols of which SUSE is notified in writing in advance of the Services Commencement Date.

9.3 **Data Protection.** The parties will each comply with their obligations under applicable data protection laws. Where SUSE is the data processor, the SUSE Data Processing Agreement shall govern the processing of the Customer's personal data. The SUSE Data Processing Agreement is available at the following link and is hereby incorporated into this PSA and each Agreement: https://www.suse.com/contracts/SUSE_Data_Processing_Addendum.pdf.

10. Invoicing and Payment Terms

10.1 **Payment for Services and Expenses.** If the Parties have agreed that the Customer will pay SUSE directly for the Professional Services, the Fees for the Professional Services shall be set out in the Agreement or in the SUSE quote. If the Parties have agreed the Customer will pay an Authorized Partner acting as a reseller for the Professional Services, the number of Units of Pre-paid Services will be specified in the Agreement or in the SUSE quote provided to the Authorized Partner.

10.2 **Purchase Order.** Prior to the start date of a SOW or Service Offering, Customer shall issue a purchase order equal to Fees payable in respect of that SOW or Service Offering. If Customer does not issue purchase orders, Customer shall provide in the SOW Customer's billing contact and address in the SOW or, if there is no SOW, in another form specified by SUSE from time to time.

10.3 **Exclusions and Expenses.** The Fees do not include, and SUSE shall be entitled to invoice, reasonably incurred out-of-pocket expenses, as pre-agreed with the Customer. Where the Professional Services are to be provided at the Customer's premises, SUSE shall be entitled to invoice the Customer for reasonable



travel and accommodation expenses incurred in connection with such travel. The Fees (or Units) do not include SUSE's provision of tools, licenses or subscriptions for SUSE Products, all of which are the Customer's sole financial responsibility.

- 10.4 Rates for Post-Paid SOWs. The Rate will be as set out in the SOW.
- 10.5 Invoicing. Unless otherwise agreed in a SOW, Fees and expenses shall be calculated by SUSE and invoiced to Customer in accordance with the frequency specified in the SOW or in the Online Service Description.
- 10.6 Payment. Payment of undisputed amounts of Fees shall be made 30 days from the date of receipt of invoice. All payments shall be made in the currency specified in the Agreement. Payments made later than the due date will accrue interest from the date due to the date paid at the rate of the lesser of the maximum allowed by applicable law and 2% per month above the base rate of the central bank of the country in which the Professional Services are performed. If a payment is late, and remains unpaid within 7 days after SUSE notifies the Customer in writing that payment is overdue, SUSE may suspend performance of the Professional Services immediately.
- 10.7 Taxes. Payments made by Customer to SUSE under this PSA are exclusive of applicable taxes. Customer will pay and bear the liability for any taxes associated with the delivery of all Professional Services, including sales, use, excise, and value added taxes ("**VAT**"), but excluding: (i) taxes on SUSE's net income, capital, or gross receipts, or (ii) any withholding tax imposed if such tax is allowed as a credit against U.S. income taxes of SUSE, such as a withholding tax on a royalty payment made by Customer where required by law. If Customer is required to withhold taxes, Customer will furnish SUSE receipts substantiating such payment. If SUSE is required to remit any tax or duty on behalf or for the account of Customer, Customer will reimburse SUSE within 30 days after SUSE notifies Customer in writing of such remittance. Customer will provide a valid tax exemption certificate in advance of any remittance otherwise required to be made by SUSE on behalf or for the account of Customer, where such certificate is applicable.

11. Intellectual Property

- 11.1 License of SUSE IP. SUSE grants to Customer, subject to Customer's payment of Fees due under the Agreement, a worldwide non-exclusive, non-transferable, license to reproduce and use, for its own internal business purposes: (a) for the duration of the relevant Agreement, SUSE IP to the extent necessary to receive the benefit of the Professional Services; and (b) on a perpetual basis, SUSE IP that is embedded in a Deliverable, to the extent necessary to use that Deliverable as specified in the Agreement and provided that Customer may not use such embedded SUSE IP on a stand-alone basis. All proprietary rights notices must be accurately reproduced and included on all copies (including any modifications or adaptations allowed by the Agreement).
- 11.2 License of Customer IP. Customer grants to SUSE and its affiliates and subcontractors, a non-exclusive, non-transferable, worldwide license to, during the term of the relevant Agreement, reproduce and use Intellectual Property Rights provided to SUSE in connection with the performance of the Service, to the extent necessary for SUSE (or its affiliates or subcontractors) to provide the Professional Services.
- 11.3 Ownership of pre-existing rights. Each Party (and/or its licensors) owns all right, title and interest in its pre-existing Intellectual Property Rights. Nothing in the Agreement shall operate to transfer or assign ownership of SUSE IP or any Third Party Materials, which shall remain the property of SUSE or the third party respectively, subject to the limited license specified in Clause 11.1.
- 11.4 Assignment of Customer Specific IP. Customer shall own all right, title and interest (including ownership



of all Intellectual Property Rights, patentable inventions and patents thereon) in and to the Customer Specific IP. To the extent that any such rights do not vest in the Customer by operation of law, SUSE hereby irrevocably assigns, transfers and conveys to Customer all such rights, title and interest (including Intellectual Property Rights).

- 11.5 Reservation of Rights. SUSE reserves all rights not expressly granted to Customer. Except as expressly authorized in the Agreement, Customer shall not sell, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or time share any SUSE IP.
- 11.6 Third Party Materials. Nothing in the Agreement or any related agreement shall: (a) restrict or limit or otherwise affect any rights or obligations Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses or other Third Party Materials; or (b) operate to grant rights in, or transfer ownership in respect of, any Third Party Materials.
- 11.7 Protection of each Party's Rights. Each Party agrees to, at the claiming Party's reasonable expense, do all things reasonably necessary to confirm the ownership of the subject matter and Intellectual Property Rights therein as contemplated in this Clause 11 (Intellectual Property Rights), including executing or procuring the execution of documents or taking other reasonable actions as necessary to perfect ownership or otherwise to give full effect to the licenses granted pursuant to this Clause 11 (Intellectual Property Rights).

12. **Warranty for Deliverables**

- 12.1 Warranty for Deliverables. If an Agreement contains Specifications for a Deliverable, SUSE warrants that that Deliverable will comply with its Specifications for a period of thirty (30) days after delivery of that Deliverable.
- 12.2 Remedy. If SUSE breaches the warranty in Clause 12.1 Customer must provide prompt written notification (including details and evidence) of the non-conformance to SUSE, and SUSE must promptly, and at SUSE's cost, correct the non-conformance which may include replacing the Deliverable and/or re-performing the defective Services. If, upon investigation, SUSE is not in breach of Clause 12.1, SUSE shall be entitled to recover its reasonable costs incurred in investigating and attempting to correct the issue.
- 12.3 Disclaimer. TO THE FULLEST EXTENT PERMITTED BY LAW, A PARTY IS NOT LIABLE TO ANOTHER PARTY FOR A REPRESENTATION, CONDITION, UNDERTAKING OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ANY IMPLIED TERMS AS TO THE CONDITION, PERFORMANCE, FITNESS FOR PURPOSE OR SATISFACTORY QUALITY OF THE PROFESSIONAL SERVICES AND DELIVERABLES, THAT ARE NOT SET OUT IN THE AGREEMENT OR THE AGREEMENTS AND OTHER DOCUMENTS INCORPORATED INTO THE AGREEMENT. SUSE DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES OR ANY DELIVERABLE WILL BE WITHOUT DEFECT OR ERROR.

13. **Cancellation**

- 13.1 Cancellation of Pre-Paid Services. Customer may cancel an Engagement, without forfeiting any Units and at no cost, by providing written notice to SUSE (not to an Authorized Partner) more than five full Business Days prior to the Scheduled Start Date. If Customer cancels more than five full Business Days prior to the Scheduled Start Date, the Units for that Engagement shall be available to the Customer for use on another Engagement during the Validity Period. Customer may cancel an Engagement by providing five full Business Days' written notice or less prior to the Scheduled Start Date provided that if the Customer cancels an Engagement: (a) five full Business Days or less, but more than one full Business Day prior to the Scheduled Start Date, 50% of Units for that Engagement will be forfeited and those



forfeited Units will not be available to the Customer for use under that Agreement; or (b) one full Business Day or less prior to the Scheduled Start Date including during the scheduled duration of the Engagement, 100% of the Units for that Engagement will be forfeited and those forfeited Units shall will not available to the Customer for use under that Agreement. There will be no refund due in respect of the Units forfeited under this Clause.

- 13.2 Cancellation of Post-Paid Services. Customer may cancel an Engagement, at no cost, by providing written notice to SUSE (not to an Authorized Partner) more than five full Business Days prior to the Scheduled Start Date. If Customer cancels more than five full Business Days prior to the Scheduled Start Date, Customer will not be invoiced for the Fees for that Engagement. Customer may cancel an Engagement by providing five full Business Days' written notice or less prior to the scheduled Engagement start date, provided that if the Customer cancels an Engagement in accordance with this paragraph: (a) five full Business Days or less, but more than one full Business Day prior to the Scheduled Start Date, SUSE may invoice for 50% of the Fees that would have been payable for that Engagement; or (b) one full Business Day or less prior to the scheduled Engagement start date or during the scheduled duration of the Engagement, SUSE may invoice the Customer for all of the Fees that would have been payable for that Engagement.
- 13.3 Expenses. If Customer cancels an Engagement and SUSE has already incurred travel or other expenses in accordance with the Agreement and such arrangements cannot reasonably be re-arranged, SUSE shall be entitled to invoice the Customer for such expenses.

14. Term and Termination

- 14.1 PSA Term. This PSA will become effective upon the Effective Date and will remain in effect until the expiry or termination of the Subscription Agreement, at which time this Professional Services Addendum shall automatically terminate.
- 14.2 Termination for Non-Payment. Without limiting any other termination rights in the Subscription Agreement, SUSE may terminate an Agreement immediately if any amount due (whether to SUSE or to an Authorized Partner) in respect of that Agreement remains unpaid within 14 days after receipt of written notice by SUSE (or the Authorized Partner, as applicable) requiring payment.
- 14.3 Effect of Termination. Termination of one Agreement shall not affect the term of any other Agreement. If an Agreement is terminated by SUSE for non-payment, all licenses of SUSE IP granted under the Agreement in respect of that Agreement shall automatically terminate.
- 14.4 Termination Payment. In the event of termination of a Post-Paid SOW, SUSE (or an Authorized Partner on SUSE's behalf) shall be entitled to invoice Customer, and Customer shall pay for: (a) all Professional Services performed but not invoiced, up to and including the effective date of termination; and (b) all costs and expenses, including stranded third party costs, in each case incurred by SUSE in accordance with the SOW, up to and including the effective date of termination.
- 14.5 Survival of Terms. The provisions of the Agreement which by their nature extend beyond termination will survive termination or expiration of the Agreement.

15. General Provisions

- 15.1 Separate Software Subscriptions. Unless otherwise agreed in an Agreement, the Professional Services are in support of the Customer's deployment of SUSE products. SUSE shall not be required to provide the



Professional Services unless and until Customer has acquired subscriptions under the Master Agreement. This PSA does not to modify in any way the licensing, warranty, or other agreement provisions under any other contract with SUSE.

- 15.2 Entire Agreement. The Agreement, and any other documents incorporated into the Agreement (including the terms of this PSA), constitutes the entire agreement and supersedes: (i) any previous agreements between the Parties relating to the subject matter of the Agreement; and (ii) any other terms purporting to apply to the subject matter of this PSA or the Agreement, including without limitation any terms set out in a purchase order. Each Party acknowledges that it has not relied on or been induced to enter into this PSA by a representation other than those expressly set out in this PSA and the agreements and other documents incorporated into this PSA. Nothing in this PSA or in the Agreement excludes or limits a Party's liability in respect of a fraudulent misrepresentation.
- 15.3 Jurisdiction. This PSA shall be construed in accordance with and governed by the laws specified in the Subscription Agreement, and the courts of the jurisdiction specified in the Subscription Agreement shall have exclusive jurisdiction with respect to disputes arising under this PSA.

