

MASTER LICENSE AGREEMENT – Membership Form

This Membership Form (the “Membership Form”) is a contract between “SUSE,” (as the legal entities identified below) and the customer entity named below (“Customer,” “You,” or “Your”), each a “Party” or together, the “Parties”. Participation in the Master License Agreement (“MLA” or “Agreement”) Program is subject to all terms contained herein. Upon acceptance of Your Membership Form, SUSE will assign a unique MLA number to You.

Customer Information:

Customer Name:					
Street Address:					
City, State or Province:		Post Code:		Country:	
Telephone:			Fax:		
Website:					
Customer Contact:				Position:	
Street Address (if different):					
City, State or Province:		Post Code:		Country:	
Telephone:			Fax:		
Email:					
Please specify your organizational relationship to Prime Customer:					
Prime Customer:	<input type="checkbox"/>	Subsidiary, Parent, Department, Division, or Affiliate:	<input type="checkbox"/>	Agency:	<input type="checkbox"/>
		Political Subdivision:	<input type="checkbox"/>		
Prime Customer’s Name:					
Prime Customer’s MLA Contract Number (As assigned by SUSE):					

“SUSE” means the legal entity with its SUSE business unit named below depending on Customer’s region/country listed above:

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

By signing below, You agree to and confirm the following:

- EULA.** Your license grants and restrictions for the Software Product are contained in the most current version of the product End User License Agreement (“EULA”). EULAs may be viewed at: <https://www.suse.com/licensing/eula/>.
- Concurrent Term.** Your MLA Term period will be the same as the Term of Prime Customer. Any termination by Prime Customer or any other member will not terminate Your membership under the MLA Program. Should a Prime Customer’s membership terminate, You agree that SUSE may, upon 30 days written notice and with input from former Prime Customer, designate another member to become the new Prime Customer.
- Transition of Installed Base.** Your installed base (SUSE Product and Subscription Offerings available under the MLA which You acquired outside the MLA) must be transitioned into the MLA, unless expressly allowed otherwise by SUSE. You will pay Subscription fees for all products so transitioned for as long as this agreement remains in effect. To receive Subscription services for installations that are not at the current product version, You must upgrade them by purchasing a Subscription Offering for the same quantity of new installations for the current supported version.
- Taxes.** You will pay and bear the liability for applicable taxes, which are based on the sales transaction or turnover, but not taxes based upon SUSE’s net income or taxes in lieu of net income. If purchases under this Membership Form are sales tax exempt, an exemption certificate for all states that product will be delivered to is required, and must be attached to this application. Sales tax will be charged on all shipments made to any state for which SUSE does not have an exemption certificate. Value Added Tax Number (if applicable): _____.
- Delivery.** Unless otherwise agreed to, the SUSE Product (including its documentation) will be delivered to Customer in binary (electronic) format through electronic software distribution. Your right to use the SUSE Product under this Agreement shall arise at the location of the computer on which the software and documentation is first used by You. Delivery of the SUSE Product and Documentation so supplied shall be deemed to occur where download is made available at the destination computer. For clarity, Delivery occurs at the point of original download from SUSE servers in the United States to Your serves in the United States. In the

event physical media is required, for delivery from the U.S. to destinations within the U.S.A., delivery terms are FOB SUSE's Dock (INCOTERMS 2000). SUSE will ship ground only and prepay freight from SUSE's Dock to Customer's forwarder or named destination. All other freight arrangements will be billed to You. For delivery from the U.S. to destinations outside the U.S.A., delivery terms are DDU-POE (Delivery Duty Unpaid – Port of Entry) as defined in INCOTERMS 2000. SUSE will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees. For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be Carriage Paid To (C.P.T.) Destination, as defined in INCOTERMS 2000. SUSE will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for E.U. countries will be Your nominated delivery point; for non-E.U. countries, destination will be the point of import. The term C.P.T. does not include the payment by SUSE of taxes or any applicable import duties.

- 6 **Title & Risk of Loss.** For shipment within the United States, title to any deliverables, exclusive of SUSE's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with SUSE until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if Customer so requests shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect SUSE's interest until title passes as set forth above.
- 7 **MLA.** You agree to be bound by the terms contained in this Membership Form and the Prime Customer MLA. If there is any inconsistency between these Membership Form terms and the Prime Customer MLA terms the Membership Form terms will prevail. You agree that it is Your responsibility to read and understand the Prime Customer MLA terms, which will apply to You as described above as if fully negotiated and executed between SUSE and You. You further agree to be subject to any changes or amendments to the Prime Customer MLA as executed from time to time between SUSE and Prime Customer, including, but not limited to, any new version of the MLA executed by Prime Customer. You will be responsible to obtain a copy of any such amendments or changes from Prime Customer.

SIGNATURE: Each party confirms that the person signing below is an authorized representative of its respective organization.

SUSE:

Signature: _____
Print Name: _____
Title: _____
Date: _____

CUSTOMER:

Signature: _____
Print Name: _____
Title: _____
Date: _____

SUSE Chief Legal Officer:

Signature: _____
Print Name: _____
Title: _____
Date: _____

Please return this Membership Form, **along with a copy of your initial purchase order**, to:

For EMEA: EMEAcontractadmin@suse.com

For all other regions: contractadmin@suse.com

MASTER LICENSE AGREEMENT – Terms and Conditions

- 1. INTRODUCTION.** This Master License Agreement (“MLA” or “Agreement”) allows You (the customer entity signing the Membership Form) to participate in, and receive benefits related to, the MLA buying program, subject to Your compliance with the Agreement terms and MLA Program requirements. The Effective Date of the MLA is the date the Membership Form is signed by both entities. The MLA Effective Date may be different from the start date of Your Annual Period (defined below). At that time, a contract number will be assigned to You. That contract number is personal and may not be disclosed to third parties, except to Your SUSE-authorized reseller.
 - 2. DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows:
 - 21 Annual Period** means the period beginning on the first day of the month following the Prime Customer’s Effective Date and ending one year later, and each consecutive one-year period thereafter while the Agreement remains in effect.
 - 22 Documentation** means any user documentation and manuals (including electronic versions) provided by SUSE with or for a SUSE Product.
 - 23 Price List** means the price lists for the MLA Program as published by SUSE from time to time.
 - 24 Prime Customer** means the first customer entity who enters into the MLA through completing a Membership Form.
 - 25 Qualified Member** means those entities that have an organizational relationship with Prime Customer (e.g., parent companies, subsidiaries, affiliates, departments, agencies, political subdivisions), and submit their own Membership Forms, which are accepted by SUSE. The Prime Customer will be responsible for ensuring Agreement compliance by those related entities that obtain SUSE Product, Subscription Offerings, and MLA benefits through Prime Customer without submitting their own Membership Form. Any Qualified Member that submitted a completed Membership Form to SUSE under the Prime Customer’s previous MLA is not required to submit a new Membership Form upon execution of these terms. Upon the Effective Date of this Agreement, such Qualified Members shall be governed by the terms and conditions of this new MLA.
 - 26 SUSE Product** means the SUSE software product licensed to You under this Agreement, excluding Services Deliverables.
 - 27 Subscription Offering** (or the “Subscription”) means the subscription offering you purchase under the MLA Program for a SUSE Product, and includes the software upgrades, updates, and technical support for the duration of the subscription period.
 - 28 Patch (Update)** means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in the SUSE Product.
 - 29 Upgrade** means any new version of SUSE Product which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 12.x to 15.x). If a question arises as to whether a product offering is an Upgrade or a new product, SUSE’s opinion will prevail, provided that SUSE treats the product offering the same for its end users generally.
- 3. LICENSING.** The license grants and restrictions for the SUSE Product are contained in the End User License Agreement (“EULA”) accompanying the SUSE Product and the SUSE Subscription Offering Terms and Conditions (the “Subscription Terms”) referenced in each EULA. A copy of the EULA can be obtained at <https://www.suse.com/licensing/eula/>. Subscription Terms describe the counting options and units of measure for all SUSE Software, and may be obtained at https://www.suse.com/products/terms_and_conditions.pdf.

Subject to Your payment of the applicable fees and compliance with this Agreement, the applicable EULA, and the Subscription Terms, Your licenses to use the SUSE Product will be perpetual, except as expressly provided otherwise (such as with beta products). To the extent of any conflict or ambiguity between the terms and conditions of this Agreement, the EULA, and the Subscription Terms, the terms and conditions of this Agreement will prevail. Ownership of SUSE Product is held by SUSE and/or its licensors.



- 4. MLA PROGRAM.** The [MLA Program Guide](#) forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the Program Guide, the terms of this Agreement will prevail. Any changes will apply only to purchases made after the effective date of the changes. If any material change to the Program has an adverse effect on Your participation in it, You will be entitled to terminate Your Agreement by giving written notice to SUSE within 30 days after receiving notice from SUSE of such a change.
- 5. SUBSCRIPTIONS.**
- 5.1** The Subscription benefits described in this section (the provision of Upgrades, Updates and technical support) are a mandatory part of the MLA, and Subscription fees must be paid for such services on all SUSE Products for as long as this Agreement remains in effect. Should You elect to purchase a Subscription for existing Software Products, all Your installations for that product must be covered. Upon renewal, your payment of Subscription fees will be deemed a representation of the number of installations deployed for the SUSE Product. During the period for which fees are fully paid for all installations, SUSE will provide You with the following benefits:
- 5.1.1 Patches and Software Upgrades.** If SUSE commercially releases any Upgrades and/or Updates during the period covered by Your Subscription Offering, SUSE will make such Upgrades and/or Updates or Patches available to You within a reasonable period of time after they become commercially available. To obtain Updates and Upgrades, You will need to subscribe, at no extra cost, to SUSE's Upgrade notification service. You will be entitled to install and use such Upgrades and/or Updates up to the number of installations for which You have purchased a Subscription. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.
- 5.1.2 Technical Support.** SUSE will provide technical support as described in the then-current technical support handbook published at <https://www.suse.com/support/handbook/>, the terms of which are incorporated into this Agreement. You may upgrade Your level of technical support to suit Your needs by purchasing optional technical support services such as Premium Support Services (refer to Section 6, Optional Services, below).
- 5.2 Installed Base.** You must purchase Subscriptions Offerings for all Your installations of the SUSE Product for the full duration of the MLA Term, including SUSE products You previously acquired outside the MLA Program. Subscriptions purchased outside the MLA Program do not count toward the annual spend requirement thresholds for the MLA and may be subject to separate terms and conditions. To receive Subscription Offering benefits for installations that are not at the current product version, You must upgrade them by purchasing a Subscription Offering for the same quantity of new installations for the current supported version. Each copy must be installed on a machine corresponding to the part number describing such product offering (e.g., Customer cannot apply Subscription benefits received pursuant to a particular subscription offering, such as SLES for X-86, to a different platform for which the offering does not apply, such as SLES for zSeries). Any unauthorized use of the Subscription benefits will be treated as a material breach of this Agreement.
- 5.3 Ordering Subscriptions.** Subscription fees are calculated on an annual basis, and all fees are due and payable in advance. Each Subscription period shall expire at the end of each Annual Period (or the end of the multi-year period), no matter when during such Annual Period the Subscription was purchased. The initial Subscription fee will be calculated, on a pro rata basis, from the first day of the month following the earlier of: (a) submission of the purchase order or other order form pre-approved by SUSE, or (b) deployment or use of SUSE Product without an associated Subscription, through the end of the then-current Annual Period.
- 5.4 Ongoing Subscriptions.** While this Agreement remains in effect, You must order Subscriptions on all installations of the SUSE Product by the start of the new Annual Period and pay the associated Subscription fees.
- 5.5 Refunds.** If this Agreement is terminated because of SUSE's breach under section 8.2 below, SUSE will refund any Subscription fees paid for the time period past the first day of the month following the termination date. Subscription fees are not refundable unless expressly stated otherwise.

6. OPTIONAL SERVICES.

6.1 Premium Support, Consulting, or Training Services.

Under this Agreement, You may elect to purchase additional technical support offerings such as Premium Support Services, or other support offerings such as SUSE Consulting or Training Services (each a “Service” or the “Services”). These Services are more fully described at <https://www.suse.com/support/>. In the absence of a separate signed agreement or Statement of Work governing the performance and delivery of these optional Services, You agree the performance and delivery of the Services purchased hereunder will be governed by this Agreement and the terms in this Section 6.

6.2 Statement of Work. The parties may choose to enter into a Statement of Work (“SOW”) that describes the Services and may cover items such as project scope, code, documentation, media and other objects (“Deliverables”). Any such SOW will be governed by this Agreement’s terms.

6.3 Completion Criteria. Services will be deemed complete unless within 10 days after delivery, You give SUSE written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, SUSE will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies; if SUSE is unable to correct the Services within a reasonable period of time, SUSE or You may terminate the relevant SOW and SUSE shall provide a refund of the amount You paid for the Services SUSE did not correct.

6.4 License. Subject to payment of applicable fees for Services and Deliverables, SUSE grants You a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by this Agreement or any SOW). Except as expressly provided otherwise in this Section or any SOW, SUSE (and/or its licensors) owns all right, title and interest, including all intellectual property rights, in any Deliverable developed, delivered and/or used by SUSE in the performance of any Services. Neither this Agreement nor any SOW changes ownership of any pre-existing materials.

6.5 SOW Continuance. If a SOW extends beyond the term of the Agreement, this section 6 and sections

9, 10.2, 10.4, 11, and 12 of this Agreement will continue in effect solely with respect to such SOW.

7. ORDERING AND DELIVERABLES.

7.1 Orders. You must place an order for the appropriate number of new SUSE Product Subscription Offerings within 30 days after installation. You must place an order for the appropriate renewal Subscriptions at least 5 days prior to the expiration date of Your then-current Subscription (“Order Due Date”). Orders submitted after the Order Due Date will incur a late order fee equal to (20%) of the renewal Subscription fee due. The late order fee is in addition to annual Subscription fees, late payment interest, and other obligations that may be due and payable. Expiring Subscriptions are automatically renewed for an additional 12 months at Your then-current Subscription prices unless, at least 90 days prior to the Subscription expiration date, SUSE receives written notification that You do not intend to renew. You agree to pay such renewal charges. A valid order is a purchase order that is either signed by Your authorized representative or generated by Your automated ordering system. If You are unable to issue purchase orders, You must complete and sign an order form pre-approved by SUSE. SUSE’s acceptance of an order does not suggest SUSE’s agreement with the accuracy of the quantities or other information set forth in the order. SUSE reserves the right to invoice You without a purchase order for fees otherwise owing under this Agreement, including for Subscription fees at the beginning of each Annual Period.

7.1.1 MLA Program Discount Qualification. Your MLA discount level is determined by the amount of Your initial order under the MLA Program and Agreement, and is contingent upon meeting all program and Agreement requirements, including maintaining the appropriate average annual spend levels for Your discount level, which may reset based on Your spend levels. Only purchases made under the MLA are applied toward the annual spend threshold requirements. The discount levels are more fully described in the MLA Program Guide (refer to Section 4 for the MLA Program Guide).

7.2 Price and Product Changes. SUSE may revise the Price List at any time to (a) change the list prices for SUSE Products, Subscription Offerings and other services or deliverables, and (b) add or delete SUSE Products, Subscription Offerings or other services or deliverables available for purchase.

7.3 Payment. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice. However, for orders requesting shipment and billing to a country whose currency is the Euro or a currency required by the applicable Price List, the purchase orders must be issued, and the fees paid, in Euros or the required currency. 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.

7.4 Taxes. The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, 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 such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish SUSE all required receipts and documentation substantiating such payment. If SUSE is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse SUSE within 30 days after SUSE notifies You in writing of such remittance. You will provide SUSE with valid tax exemption certificates in advance of any remittance otherwise required to be made by SUSE on Your behalf or for Your account where such certificates are applicable.

7.5 Audit. You acknowledge that the completeness and accuracy of the information You provide to SUSE may affect SUSE's ability to provide Subscription Offering benefits. Any unauthorized use of Subscription Offering will be treated as a material breach of this Agreement. SUSE has the right to verify Your compliance with this Agreement. You agree to: (1) Implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the SUSE Products including materials provided under this Agreement; (2) Keep records sufficient to certify Your compliance with this Agreement, and, upon request of SUSE, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your use, licensing and deployment of the SUSE Product, Subscription

Offerings and Units; and (3) Allow a SUSE representative or an independent auditor ("Auditor") to inspect and audit Your, or Your contractor's, computers and records during Your normal business hours for compliance with the terms of this Agreement. Upon SUSE's and the Auditor's presentation of their signed, written confidentiality statement form to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance and access to records and computers. If an audit reveals that Your Subscription Offering purchases have at any time been insufficient to cover each installation, use of, deployment of, or access to the Software, You will, within 30 days, purchase sufficient Subscription Offerings to cover any shortfall without benefit of any otherwise applicable discount and subject to fees reflecting the duration of the shortfall. If a shortfall of 5% or more is found, You must reimburse SUSE for the costs incurred in the audit.

8. TERM AND TERMINATION.

8.1 Term. This Agreement will begin on the Effective Date and will remain in effect for three consecutive Annual Periods ("Term"), subject to earlier termination as stated below. Qualified Members shall be subject to the same Term as the Prime Customer, but may continue their memberships if, for whatever reason, the Prime Customer's membership terminates earlier. At the end of each Term, this Agreement will renew for an additional Term of three Annual Periods, unless either party gives notice in writing at least 30 days prior to the end of the then-current Term that it does not wish to renew, or unless this Agreement terminated earlier as provided below.

8.2 Termination for Cause. Either party may terminate this Agreement (and Your MLA membership) upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.

8.3 Effect of Termination. Upon termination of this Agreement for any reason, Your right to acquire and receive benefits for the MLA Subscriptions will immediately terminate. However, unless Your membership is terminated by reason of Your violation of SUSE's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected and You may continue use of the

SUSE Product for which You paid Subscription fees prior to termination, including any Upgrades and Updates to which You were entitled under the Subscription Offering.

9. INTELLECTUAL PROPERTY INDEMNIFICATION.

- 9.1** Scope. SUSE will defend any claim brought against You by a third party to the extent it is based on an allegation that a SUSE Product or Service Deliverable infringes such third-party's patent, copyright, or trademark, or misappropriates such third party's trade secrets, under the laws of the country in which You take delivery of the SUSE Product or Deliverable. SUSE will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. You must promptly notify SUSE of the claim, give SUSE control of the defense and related settlement negotiations, and provide SUSE with the reasonable assistance (for which SUSE shall pay Your reasonable out-of-pocket costs) in defending the claim. You shall make best efforts to mitigate any losses and consequences of an infringement to the extent possible. If You desire separate legal representation in any such action, You will be responsible for the costs and fees of Your separate counsel.
- 9.2** Remedies. If a SUSE Product or Service Deliverable is held to infringe and its use is prohibited or if, in SUSE's reasonable opinion, is likely to become the subject of an infringement claim, You will permit SUSE, at SUSE's option and expense, to (a) procure for you the right to continue to use the SUSE Product or Deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Your return of the infringing SUSE Product or Deliverable, refund to You the amount paid for the SUSE Product or Deliverable.
- 9.3** Exceptions. SUSE will have no obligation of defense or indemnity to the extent the infringement claim arises from (a) SUSE's compliance with Your designs, specifications or instructions, (b) use of other than the SUSE Product's current release, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after SUSE notifies You that a previous release may infringe, (c) a modification of the SUSE Product or Deliverable not requested or authorized in writing by SUSE, (d) its use or

combination with non-SUSE software, equipment, or data, other than as specified in the Documentation or otherwise approved by SUSE in writing, (e) the furnishing to You of any information, service, or technical support by a third party, or (f) any SUSE Product for which You are not current on payment of Subscription fees for all installations of the SUSE Product on the date the infringement claim is tendered to SUSE.

- 9.4** Indemnification Limitation. To the extent allowed by applicable law, SUSE's aggregate liability for any infringement claim is limited to the Liability Cap. This limit does not apply to expenses incurred by SUSE in defending the claim.
- 9.5** Exclusive Remedy. This section 9 states the exclusive obligation of SUSE to Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.
- ## **10. LIMITED WARRANTY.**
- 10.1** SUSE Product. SUSE warrants that the SUSE Product (including Upgrades/Updates) will conform substantially to the specifications in the Documentation, provided: (a) the SUSE Product is not modified by anyone other than SUSE, unless authorized by SUSE in writing; (b) You notify SUSE in writing of the nonconformity within 90 days after You first acquire a Subscription of the SUSE Product version; and (c) the SUSE Product is installed in a compatible environment. SUSE's only obligation under this warranty, at its option, is to either cause the SUSE Product to conform substantially with its specifications or to refund to You the amount paid entitling You to the Upgrade upon Your return of all the SUSE Product. In the event of a refund, Your license to use the SUSE Product will automatically expire.
- 10.2** Services. SUSE warrants that any Services purchased under this Agreement will be performed in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of SUSE providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 30 days following completion of the Services in accordance with Section 6.3. Upon receipt of written notice of breach of this warranty, SUSE's obligation is to correct the Services so that they comply with this warranty. If SUSE is unable to correct the Services within a reasonable period of time, Your sole

remedy is to terminate the relevant SOW and obtain a refund of the amount You paid to SUSE for the Services SUSE is unable to correct.

10.3 Non-SUSE Products. SUSE does not warrant non-SUSE products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-SUSE products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

10.4 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, SUSE MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY SUSE PRODUCTS OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUSE DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT. SUSE DOES NOT WARRANT THAT THE SUSE PRODUCTS OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SUSE PRODUCTS.

11. LIABILITY LIMITATIONS.

11.1 Subject to Clause 11.6, the only liability of the Parties and their respective affiliates for breach of contract shall be for Direct Losses. Liability for breach of contract for all other losses, including Indirect and Consequential Losses, is expressly excluded. For the purposes of this Clause 1, the following defined terms have the following meaning:

11.1.1 "Direct Losses" means, in respect of any breach of this Agreement, those losses that the breaching Party knew, or a reasonable person in the breaching Party's position ought reasonably to have known, either at the time of entering into this Agreement to which the breach relates or at the time of the breach, were reasonably probable to result from the breach;

11.1.2 "Indirect and Consequential Losses" means those losses that are not Direct Losses.

11.1.3 "Software Bugs" mean defects, incidents or non-conformities which are errors, flaws or faults in a computer program, software, code or system that causes it to produce an incorrect or unexpected result, or to behave in unintended ways if not fixed; and

11.1.4 "Malicious Code" means viruses, malicious code,

trojan horses, worms, time bombs, self-help code, back door or other software codes or routines whether or not designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware.

11.2 The following shall not be recoverable by either Party, whether for breach of contract, tort (including negligence), misrepresentation (other than fraudulent misrepresentation), for breach of statutory duty or otherwise: loss of profit, loss of revenue, loss of business, loss of anticipated savings, loss of reputation, and loss of goodwill.

11.3 SUSE's liability to Customer in respect of any cause of action that arises under or in connection with this Agreement, but to which Clause 11.4 does not apply, shall be limited to the lesser of EUR 1,000,000 or 100% of the actual amounts paid and payable by the Customer in respect of the Subscription, [Service or Deliverable to which the breach that the claim relates] provided under this Agreement in the twelve (12) month period preceding the date on which that cause of action arose, (the "**Liability Cap**").

11.4 SUSE has no liability to the Customer for any loss or damage arising as a result of a Software Bug or Malicious Code.

11.5 Customer's liability to SUSE in respect of any cause of action that arises under or in connection with this Agreement shall be limited to 100% of the actual amounts paid and payable by the Customer in respect of the Subscription, [Service or Deliverable to which the breach that the claim relates] provided under this Agreement in the twelve (12) month period preceding the date on which that cause of action arose.

11.6 The limitations on liability set out in Clauses 11.3 to 11.4 and the restriction on recovering certain loss or damage in Clauses 11.1 and 11.2 do not apply to:

11.6.1 Customer's obligation to pay any amounts due for the Subscription, [Services or Deliverables];

11.6.2 death or personal injury resulting from negligence;

11.6.3 liability arising from the willful misconduct or fraud of either Party or its affiliates.

11.7 The invalidity, illegality, or unenforceability of a provision of this Clause does not affect or impair the continuation in force of the remainder of this

Clause or this Agreement.

11.8 Each Party shall allocate appropriate resources to its obligations in this Agreement in order to minimise all losses, (including those excluded) that the other Party may suffer as a result of a breach of this Agreement.

12 GENERAL.

12.1 For Customers located in EMEA and Rest of World ("ROW"):

12.1.1 Choice of Law. This Agreement shall be governed by, and interpreted in accordance with English law.

12.1.2 The English courts shall have exclusive jurisdiction to settle any dispute, controversy, or claim (including any non-contractual dispute, controversy, or claim) arising under or in connection with this Agreement.

12.1.3 If either Party initiates any proceedings relating to this Agreement in any forum other than in the courts of England ("**Inconvenient Forum**"), the Party initiating the proceedings shall indemnify the other Party against all costs and expenses incurred in any action in the Inconvenient Forum irrespective of whether the Party initiating the proceedings is successful in the Inconvenient Forum or not.

12.2 For Customers located in the United State of America ("U.S."):

12.2.1 Choice of Law. This Agreement shall be governed by, and interpreted in accordance with, Utah law.

12.2.2 The state and federal courts located in Salt Lake City, Utah shall have exclusive jurisdiction to settle any dispute, controversy, or claim (including any non-contractual dispute, controversy, or claim) arising under or in connection with this Agreement.

12.2.3 If either Party initiates any proceedings relating to this Agreement in any forum other than in the state and federal courts located in Salt Lake City, Utah ("**Inconvenient Forum**"), the Party initiating the proceedings shall indemnify the other Party against all costs and expenses incurred in any action in the Inconvenient Forum irrespective of whether the Party initiating the proceedings is successful in the Inconvenient Forum or not.

12.3 Each party will, at its own expense, comply with any applicable law, statute, administrative order, or regulation.

12.4 Assignment. 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 SUSE 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.

12.5 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. SUSE retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed while providing any services to You.

12.6 Publicity. You agree that unless You inform SUSE otherwise in writing SUSE may use Your participation in the MLA Program as a commercial reference.

12.7 Entire Agreement. 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.

- 128 Severability/Waiver.** If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.
- 129 Notices.** Notices given under this Agreement must be in writing and sent to the notice addresses as the parties may designate (which may include email address for invoice, program or other similar notices), provided however that all legal notices to SUSE (by way of example breach, indemnity, and termination) shall be sent by express courier, certified or registered mail, charges prepaid, to:

For Customers located in EMEA:

SUSE Software Solutions Ireland Ltd.,
Attention: Contract Admin Team
Corrig Court, Corrig Road,
Sandyford Industrial Estate
Dublin 18, Ireland
or via email at: EMEAcontractadmin@suse.com

For all other Customers:

SUSE LLC
Attention: Contract Admin Team
1800 South Novell Place, Provo, UT 84606
or via email at: contractadmin@suse.com

Customer agrees to receive legal notices at the Customer address and Contract Person (by name or title) designated in this Agreement (as may be updated in writing by Customer).

- 1210 Force Majeure.** Neither party will be liable for delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.
- 1211 Survival.** The provisions of this Agreement which by

their nature extend beyond termination of the Agreement, including sections 3 Licensing, 7.5 Audit, 9 Intellectual Property Indemnification, 10 Limited Warranty, 11 Limitation of Liability, and 12, General, will survive termination of the Agreement.

- 1212 Intellectual Property Rights/Remedies.** Nothing in this Agreement waives or limits extra-contractual rights or remedies available to SUSE to protect its rights in the SUSE Product, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.
- 1213 Export Compliance.** 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 Your failure to obtain any necessary export approvals.