



## ELASTIC

### SOFTWARE SUBSCRIPTION AGREEMENT

This **Elastic SOFTWARE SUBSCRIPTION Agreement**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this “**Agreement**”), is entered into by and between the Elastic entity (“**Elastic**”), and the entity identified as the “Customer” (“**Customer**”) each as set forth on the signature block of the Elastic order form executed by Elastic and Customer (“**Order Form**”), as of the date specified in such Order Form (“**Effective Date**”), provided that, solely in the case of a U.S. Government Customer, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government Customer obtains the Product or Service that is the subject of this Agreement, and, solely in the case of U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order.

#### 1 DEFINITIONS

Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable.

1.1 “**Addendum**” means, an addendum to this Agreement which sets forth additional terms and conditions that are specific to the Product covered by such addendum.

1.2 “**Affiliate**” means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where “control” means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity, or the contractual right to establish policy for, and manage the operations of, the entity.

1.3 “**Documentation**” means the end user documentation published at <https://www.elastic.co/guide/index.html> by Elastic.

1.4 “**Eligible Features and Functions**” means those features and functions of an Elastic Product that are eligible for use with respect to the Subscription Level purchased by Customer. A list of Eligible Features and Functions that correspond to each version of a Product may be found at <https://www.elastic.co/subscriptions>. Elastic may from time to time modify the Eligible Features and Functions of the Subscription Level(s) of an Elastic Product during the Subscription Term, but shall not materially reduce the functionality thereof.

1.5 “**Infringement Claim**” means a claim brought against Customer by an unaffiliated third party alleging that Customer’s use in accordance with this Agreement and each applicable Addendum hereto during the applicable Subscription Term of the Products infringed such party’s patent, copyright or trademark, or made unlawful use of such party’s trade secret.

1.6 “**Order Form**” means an ordering document provided by Elastic pursuant to which Customer, or a Reseller acting on Customer’s behalf, purchases Subscriptions under this Agreement.

1.7 “**Product**” means Software.

1.8 “**Reseller**” means a third party authorized by Elastic to promote and resell Subscriptions.

1.9 “**Software**” means Elastic software that is licensed for use on Customer’s premises or in Customer’s public cloud account under a Subscription, including all updates thereto and new releases thereof, that are made generally available by Elastic to its customers during the applicable Subscription Term.

1.10 “**Subscription**” means Customer’s right, for a fixed period of time, to possess, use and/or access a Product and to receive associated Support Services, in each case, as set forth in the applicable Order Form and subject to the applicable Addendum.

1.11 “**Subscription Level**” means the level of a Subscription purchased by Customer. The level of the Subscription purchased by Customer determines the Eligible Features and Functions that Customer is entitled to use, and the specific Support Services that Customer is entitled to receive, if any, with respect to any Products included in the Subscription.

1.12 “**Subscription Term**” means the period of time for which a Subscription is valid, as further described in Section 8.1 of this Agreement.

1.13 “**Support Services**” means maintenance and support services for an applicable Product, if any, that are included in a Subscription, as more fully described in the applicable Support Services Policy.

1.14 “**Support Services Policy**” means Elastic’s support services policy for a Product, as further described at a URL referenced in an applicable Addendum.

#### 2 AGREEMENT SCOPE

2.1 Product Terms and Conditions. The additional terms and conditions for the applicable Product can be found in the attached Addendum.

2.2 Subscription Orders. Orders for Subscriptions may be placed by Customer through the execution of Order Forms with Elastic. For non-U.S. Government Customers, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order as provided in FAR 12.212(b).

2.3 Subscriptions Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Subscriptions that are governed by this Agreement. Orders for Subscriptions purchased through a Reseller, including multi-year Subscriptions, are not subject to cancellation by Customer unless terminated in accordance with Clause 552.212-4(l) or (m). Where Customer purchases a Subscription through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that references this Agreement and shows Customer as the “ship to” party and Reseller as the “bill to” party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Subscription, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

#### 3 PAYMENT AND TAXES

3.1 Payment. Elastic or its Authorized Reseller as applicable will invoice Customer for the fees due under each Order Form or otherwise under this Agreement, and Customer will pay such fees within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback.

3.2 **Taxes.** Elastic or its Authorized Reseller as applicable shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

#### 4 CONFIDENTIAL INFORMATION

4.1 **Confidential Information.** Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("**Confidential Information**"). Confidential Information includes materials and all communications concerning Elastic's or Customer's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Product and/or Support Services, anything provided by either party to the other in connection with the Product and/or Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

4.2 **Non-use and Non-disclosure.** The parties shall at all times, both during the Term and thereafter keep in trust and confidence all Confidential Information of the other party using commercially reasonable care (but in no event less than the same degree of care that the receiving party uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties other than to Affiliates or as necessary to carry out its duties under this Agreement without the other party's prior written consent, provided that each party shall be allowed to disclose Confidential Information of the other party to the extent that such disclosure is approved in writing by such other party, or necessary to enforce its rights under this Agreement.

4.3 **Non-Applicability.** The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of a party's breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party's possession without restriction as evidenced by appropriate documentation; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

4.4 **Reserved.** publish the terms and conditions of this Agreement without the prior written consent of the other party, except that either party may disclose the terms of this Agreement to potential acquirers, referral partners involved in an applicable transaction, accountants, attorneys and Affiliates pursuant to the terms of a non-disclosure or confidentiality

4.5 **Disclosure Required by Law.** Notwithstanding anything to the contrary herein, each party may disclose the other party's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party's cost and expense, in seeking a protective order, or confidential treatment, or taking other

measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order. Elastic recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

#### 5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 **Limited Support Services Performance Warranty.** Elastic warrants that it will perform the Support Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice, and in accordance with any applicable Support Services Policy. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Support Services at no additional cost to Customer.

5.2 **Limited Product Performance Warranty.** Elastic warrants that during the applicable Subscription Term, the Products, in the form provided by Elastic under the Subscription, will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Products to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the associated Subscription, and Elastic will promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. The warranty set forth in this Section does not apply to any trial use of a Product or any Beta version of a Product, or if the Product or any portion thereof: (a) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; or (b) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

5.3 **Warranty Disclaimer.** EXCEPT AS SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE OR IN AN APPLICABLE ADDENDUM, THE PRODUCTS AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS AND SUPPORT SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT.

5.4 **High-Risk Activities Prohibition.** CUSTOMER SHALL NOT USE THE PRODUCTS AND SUPPORT SERVICES OR ANY MATERIALS PROVIDED UNDER THIS AGREEMENT IN HIGH-RISK ACTIVITIES, WHERE THEIR USE OR FAILURE COULD REASONABLY BE EXPECTED TO LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL OR PROPERTY DAMAGE (SUCH AS THE CREATION OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, AUTONOMOUS VEHICLES, WEAPON SYSTEMS, OR LIFE SUPPORT SYSTEMS).

#### 6 INFRINGEMENT CLAIMS

6.1 **Elastic Obligations.** Elastic will, at its expense, have the right to intervene to defend or settle any Infringement Claim and will indemnify Customer against and pay (i) any settlement of such Infringement Claim consented to by Elastic or (ii) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim. Elastic shall not enter into any settlement agreement with respect to an Infringement Claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Customer or imposes on Customer any obligation other than the obligation to cease using the Products and/or Support Services that are subject to the

Infringement Claim, unless Customer has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

6.2 **Exclusions.** Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) where an Infringement Claim alleges patent infringement, Customer's use of the Product in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update to such Product that would have avoided the Infringement Claim; (iii) a modification of the Product that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Product with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use of the Product other than in accordance with the terms and conditions of this Agreement; or (vi) any third party open source software included in a Product.

6.3 **Certain Remedies.** If a Product is, or in Elastic's reasonable opinion is likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Product; (ii) modify the Product to make it/them non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in Elastic's reasonable judgement, commercially reasonable options, terminate Customer's right to use the Product, and, at Customer's written request, terminate all affected Order Forms and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under such terminated Order Forms.

6.4 **Conditions.** The obligations of Elastic in this Section 6 are conditioned upon Customer (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 6 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) solely in the case of non-U.S. Government Customers, tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. In the case of U.S. Government Customers, Customer shall be represented as provided under 28 U.S.C. § 516. Customer will not, without the prior written consent of Elastic, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 **Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY PRODUCT AND/OR SUPPORT SERVICES.

## 7 LIMITATION OF LIABILITY

7.1 **Excluded Damages.** IN NO EVENT SHALL CUSTOMER OR ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE

EXCLUDED BY LAW.

7.2 **Damages Cap.** EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 4, (II) ELASTIC'S OBLIGATIONS UNDER SECTION 6, (III) AMOUNTS PAYABLE BY CUSTOMER UNDER SECTION 3 OF THIS AGREEMENT AND EACH ORDER FORM, AND (IV) CUSTOMER'S VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT OR ANY ADDENDUM, IN NO EVENT SHALL ELASTIC'S OR CUSTOMER'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE GREATER OF (I) THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC OR TO AN ELASTIC RESELLER UNDER THIS AGREEMENT FOR THE AFFECTED PRODUCTS AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY; OR (II) THE FULL VALUE OF THE ONE-YEAR PERIOD OF SUCH ORDER FORM IN WHICH THE EVENT OCCURRED.

7.3 **Basis of the Bargain.** THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE PRODUCTS AND/OR SUPPORT SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 8 TERM AND TERMINATION

8.1 **Subscription Term.** Unless earlier terminated in accordance with Section 8.3 below, each Subscription will commence and expire in accordance with the first start date and last end date set forth on the applicable Order Form (the entire duration of such Order Form and the term of any renewal thereof, each, a separate "**Subscription Term**"). Each Subscription may be renewed for a new Subscription Term of one (1) year (or for such longer period as may be set forth on a renewal Order Form executed by the parties) by executing a written order in writing. For the avoidance of doubt, the term of this Agreement shall be coterminous with the Subscription Term.

8.2 **Termination. Non-U.S. Government Customers:** **Subscriptions.** Each party may terminate a Subscription, and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to such Subscription and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties with respect thereto will, subject to Section 8.3 below, cease, provided that termination of the Subscription under this subsection (a) will not result in termination of any other Subscription. **U.S. Government Customers:** Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

8.3 **Survival.** Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 3, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

## 9 GENERAL

9.1 **Anti-Corruption.** Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws ("**Anti-Corruption Laws**"). Each party agrees that no one acting on its behalf will give, offer, agree or promise to give, or authorize the giving directly or indirectly, of any money or other thing of value, including travel,

entertainment, or gifts, to anyone as an unlawful inducement or reward for favorable action or forbearance from action or the exercise of unlawful influence (a) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (b) to any political party, official of a political party, or candidate, (c) to an intermediary for payment to any of the foregoing, or (d) to any other person or entity in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or license, or directing business to any person. Improper payments, provisions, bribes, kickbacks, influence payments, or other unlawful provisions to any person are prohibited under this Agreement.

9.2 Assignment. Non-U.S. Government Customers: Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns. U.S. Government Customers To the extent relevant and applicable, any assignment shall be subject to FAR 42.12 Novation and Change-of-Name Agreements, and FAR Clause 52.232-23, Assignment of Claims (JAN 1986).

9.3 Reserved.

9.4 California Consumer Privacy Act (CCPA). Elastic is a "Service Provider" as such term is defined under §1798.140(v) of the CCPA. As such Elastic shall not retain, use or disclose any personal information (as defined in the CCPA) received from Customer during the Term of this Agreement for any purpose other than the specific purpose of providing the Products and/or Support Services specified in this Agreement or for such other business purpose as is specified in this Agreement.

9.5 Customer Identification. Unless Elastic has first obtained Customer's prior written consent, Elastic shall not identify Customer as a user of the Products, on its website, through a press release issued by Elastic and in other promotional materials.

9.6 Export Control. Customer acknowledges that the Products, Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elastic goods, software or technology or disclose any Elastic software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to the Products may in certain circumstances be considered a re-export of such Products, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

9.7 Feedback. Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Products and/or Support Services ("**Feedback**"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account, provided that, in doing so, they may not breach their obligations of confidentiality under Section 4 of this Agreement.

9.8 Force Majeure. Except with respect to payment obligations, in accordance with FAR 52.212-4(f), neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party's reasonable control.

9.9 Future Features and Functions. Customer understands and agrees that any features or functions of Products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion.

Accordingly, Customer agrees that it is purchasing Products based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

9.10 Governing Law, Jurisdiction and Venue.

(a) **Non-U.S. Government Customers in California.** If Customer is located in California (as determined by the Customer address on the applicable Order Form), in accordance with GSA Schedule Contract Clause 552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. **All U.S. Government Customers:** No matter where located, for all U.S. Government Customers this Agreement shall be governed by the Federal law of contracts.

(b) **Non-U.S. Government Customers Outside of California.** If Customer is located anywhere other than California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

(c) **All Customers.** This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond. Notwithstanding the foregoing, the parties acknowledge that with respect to U.S. Government Customers equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations

9.11 Malicious Files Disclaimer. To facilitate Customer's evaluation of certain Elastic security products, Elastic may provide Customer with samples of malicious files or code or similar data. These samples will only be provided to Customer with Customer's permission and with notice regarding the contents of such files. Elastic disclaims any warranty, responsibility or liability associated with such materials, including any damage to Customer's data or devices.

9.12 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

9.13 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notices to Elastic may also be sent to [legal@elastic.co](mailto:legal@elastic.co). Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section

Product Metadata. The Product(s) may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any Customer personal data or any content that Customer processes or stores in connection with Customer's use of the Product. In addition, Customer may disable Product Metadata in the Software at any time. Elastic uses Product Metadata for security, support, product and operations management, and research and development. "**Product Metadata**" is statistical and other information about Customer's configuration and use

of the Product(s), such as type and version, operating systems and environment, cluster statistics (e.g., node type and counts), performance (e.g., uptime and response times and/or endpoint sensor detection events) and feature usage. Customer will not

- (i) access or use the Elastic-hosted infrastructure ("**Elastic-Hosted Infrastructure**") that stores and processes the Product Metadata for the purposes of monitoring its availability or performance or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or
- (ii) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

9.14 Relationship of the Parties. The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

9.15 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

9.16 Entire Agreement; Amendment. This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

## ELASTIC SOFTWARE SUBSCRIPTION ADDENDUM

This **ELASTIC SOFTWARE SUBSCRIPTION ADDENDUM** (this "**Addendum**") sets forth additional terms and conditions related to Customer's purchase of one or more Software Subscriptions from Elastic. Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.

### 1 SOFTWARE LICENSES AND RESTRICTIONS

1.1 License Grants. Subject to the terms and conditions of the Agreement, including complete payment of any and all applicable Subscription fees, Elastic grants to Customer during the applicable Subscription Term, and for the restricted scope of this Addendum:

(i) for a Platinum Software Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Platinum Subscription Level for the number of Billable Nodes and for the specific Project forth on the applicable Order Form.

(ii) for an Enterprise Software Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Enterprise Subscription Level, for the number of Resource Units set forth on the applicable Order Form.

1.2 License Key, Delivery and Acceptance. Promptly following execution of an applicable Order Form, Elastic will deliver to Customer a License Key or ISO file that is required in order for Customer to use the Software in accordance with the rights granted in Section 1.1 of this Addendum. For purposes of the applicable Order Form, the Software will be deemed to have been delivered to Customer upon provision of such License Key or ISO file, and the Software is deemed to be accepted by Customer upon delivery.

1.3 Reservation of Rights; Restrictions. As between Elastic and Customer, Elastic owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 1.1 of this Addendum, no other license to the Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the minimum extent permitted by applicable law, (ii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted herein; (iii) except as expressly permitted in Section 1.1 of this Addendum, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) except for Customer's internal business purposes, or as otherwise may be expressly permitted on an applicable Order Form or in another written agreement signed by the parties, use the Software for providing any time-sharing services, software-as-a-service or "SaaS" offering, service bureau services or as part of an application services provider or other service offering; (v) circumvent the limitations on use of the Software that are imposed or preserved by any License Key, (vi) alter or remove any marks and notices in the Software; or (vii) make available to any third party (other than Contractors) any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Elastic.

1.4 Separately Licensed Components. Some Software components are governed by an open source-type license ("**Component License**") that obliges Elastic to provide the component only under the Component License. All such components, Component Licenses and source code that must be provided, are currently made available with the Software/Documentation and/or at <https://www.elastic.co/third-party-dependencies>. Component Licenses do not impose any additional restrictions or obligations on the use of the Software under this Agreement. Any restrictions in this Agreement conflicting with a Component License do not apply to the affected component.

1.5 Reporting use of Excess Units. Customer agrees to promptly notify Elastic in writing if it uses a Software Subscription in connection with more Billable Nodes and/or Resource Units, as applicable, than the number of Billable Nodes or Resource Units for which Customer has purchased such Subscription ("**Excess Units**"). Customer shall include in such notice the number of Excess Units and the date on which it first used any such Excess Units. Elastic will invoice Customer, or, if applicable, a Reseller, for such Excess Units, adjusted on a pro rata

basis from the date of first use and for the remainder of the applicable Subscription Term.

1.6 Audit Rights. Customer agrees that, unless such right is waived in writing by Elastic, Elastic shall have the right, upon fifteen (15) days' notice to Customer, to audit Customer's use of the Software for compliance with any limitations on Customer's use of the Software that are set forth herein. Customer agrees to provide Elastic with the necessary access to the Software to conduct such an audit either (i) remotely, or (ii) if remote performance is not possible, at Customer's facilities, during normal business hours and no more than one (1) time in any twelve (12) month period. In the event any such audit reveals that Customer has used the Software in excess of the limitations set forth herein, Customer agrees to promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. This Section shall survive for a period of one (1) year from the termination or expiration of the Agreement.

1.7 Government Rights. The Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires the Software and/or the Documentation, the same shall be subject to this Addendum, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any subcontract under which the Software and Documentation are acquired or licensed.

1.8 Post Termination or Expiration. Upon termination or expiration of any applicable Subscription, Customer shall only be entitled to use the features and functions of the Software that Elastic makes available for use without a Subscription.

1.9 Malicious Code. Elastic warrants that at the time the Software is made available for download; it will be free of Malicious Code.

### 2 SUPPORT SERVICES

2.1 Provision of Support Services. During an applicable Subscription Term, Elastic will provide Customer with Support Services in accordance with the Support Services Policy:

(a) in the case of a Platinum Subscriptions, for the covered Project(s), up to the applicable number of Billable Nodes included in the Subscription; and

(b) in the case of an Enterprise Subscription, up to the number of Resource Units included in the Subscription.

Support Services will be delivered to Customer remotely, electronically, through the Internet, and when applicable, depending on the Subscription Level purchased, via telephone. For the avoidance of doubt, Support Services are not delivered in person at Customer's facilities.

2.2 Third Party Contractors. If designated by Customer as support contact(s), Elastic will provide the Support Services to one or more Contractors, solely in connection with such Contractors' provision of

services to Customer, and provided that (i) such Contractors do not offer Software as part of any software-as-a-service, (ii) Customer shall remain responsible to Elastic for the compliance of such Contractors with the terms and conditions of the Agreement and this Addendum, and (iii) such Contractors are contractually bound to obligations that reasonably protect Elastic's intellectual property and Confidential Information. Upon Elastic's written request, Customer shall confirm to Elastic that a Contractor is Customer's designated support contact.

2.3 **Restrictions.** Support Services are provided to Customer solely for Customer's internal use (which includes use by Customer Affiliates, and, subject to Section 2.2 above), and are subject to applicable quantitative limitations on (i) the number of Billable Nodes and/or Resource Units set forth on the applicable Order Form(s), and (ii) the number of support contacts in the Support Services Policy. For the avoidance of doubt, the foregoing internal use restriction is not intended to prohibit Customer from using the Support Services for a Project in which Software is used in connection with or as part of a Customer website or Customer's own software-as-a-service ("**SaaS**") offering, provided that any such SaaS offering must include substantial, additional value-added software application features and functions, in addition to the features and functions of the Software. In addition, Customer shall not:

(a) use the Support Services to supply any consulting, support or training services regarding the Software to any third party other than Customer Affiliates; or

(b) use Support Services (i) other than for support of the Software or (ii) to obtain support under a higher Subscription Level for its use of Software in a Project for which Customer has purchased a lower Subscription Level.

Customer agrees that any knowing failure to comply with the terms of this Section will be deemed a material breach of this Agreement.

### 3 ADDITIONAL DEFINITIONS

3.1 "**Addressable**" with respect to RAM means the quantity of RAM that benefits the execution of the applicable software.

3.2 "**Billable Enterprise Software**" means all Software, except for Software branded under the names Beats, Logstash, Endgame Agent and Elastic Endpoint agent (or any successor or alternative names for such Software).

3.3 "**Billable Nodes**" means, with respect to a Gold or Platinum Software Subscription, a number that is the greater of (i) the number of Nodes running across all Projects covered by the Subscription or (ii) the total GB of RAM Addressable by all Nodes across all Projects covered by the Subscription divided by 64, with any fractional remainder being rounded up to the next whole number. Nodes deployed in a Non-production Environment are not counted as Billable Nodes.

3.4 "**Contractor**" means any third-party contractor performing services on Customer's behalf.

3.5 "**License**" means a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) solely for Customer's internal business operations to (i) install and use, in object code format, the Software, (ii) use, and distribute internally a reasonable number of copies of the Documentation, provided that Customer must include on such copies all marks and notices; (iii) permit Contractors and Customer's Affiliates to use the Software and Documentation as set forth in (i) and (ii) above, provided that such use by Contractors must be solely for Customer's benefit, and Customer shall be responsible for all acts and omissions of such Contractors and Affiliates in connection with their use of the Software that are contrary to the terms and conditions of this Agreement.

3.6 "**License Key**" means an alphanumeric code that enables use of software.

3.7 "**Malicious Code**" means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of Customer's computer programs or computer systems or destroy or damage data. For clarity, Malicious Code shall not include any software bugs or errors handled through Support Services, or any standard features or functions of the Software and/or any License Key that are intended to enforce the temporal and/or other limitations on the scope of the use of the Software to the scope of the License granted to Customer.

3.8 "**Node**" means an instance of the Software product known as "Elasticsearch," running on a server, which is not configured as a dedicated client node, dedicated coordinating node, or dedicated ingest node, as described in the Documentation.

3.9 "**Non-production Environment**" means an environment such as development, staging, or quality assurance, where software is not used for production purposes.

3.10 "**Project**" means a specific Customer use case for the Software, with Nodes being deployed for use in a logical grouping of functionality to support such use case.

3.11 "**Resource Units**" means, with respect to an Enterprise Subscription, a number that is equal to the total GB of RAM Addressable by all Billable Enterprise Software deployed by Customer in connection with the Enterprise Software Subscription, divided by 64, with any fractional remainder being rounded up to the next whole number.

3.12 "**Support Services Policy**" means Elastic's support services policy for Software Subscriptions set forth at [https://www.elastic.co/support\\_policy/english](https://www.elastic.co/support_policy/english), which provides the details of Elastic's Support Services obligations. Elastic reserves the right to reasonably modify the Support Services Policy during a Subscription Term. However, Elastic agrees not to materially diminish the level of Support Services during the Subscription Term. The effective date of each version of the Support Services Policy will be stated therein, and Elastic will retain an archived copy of each version that will be made available to Customer upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.



## ELASTIC

### CLOUD SERVICES SUBSCRIPTION AGREEMENT

This **Elastic Cloud Services Subscription Agreement**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this "**Agreement**"), is entered into by and between the Elastic entity ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**") each as set forth on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**"), provided that, solely in the case of a U.S. Government Customer, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government Customer obtains the Product or Service that is the subject of this Agreement, and, solely in the case of U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order.

#### 1 DEFINITIONS

Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable.

1.1 "**Addendum**" means, an addendum to this Agreement which sets forth additional terms and conditions that are specific to the Product covered by such addendum.

1.2 "**Affiliate**" means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity, or the contractual right to establish policy for, and manage the operations of, the entity.

1.3 "**Cloud Service**" means an Elastic software-as-a-service offering.

1.4 "**Documentation**" means the end user documentation published at <https://www.elastic.co/guide/index.html> by Elastic.

1.5 "**Eligible Features and Functions**" means those features and functions of an Elastic Product that are eligible for use with respect to the Subscription Level purchased by Customer. A list of Eligible Features and Functions that correspond to each version of a Product may be found at [https://www.elastic.co/cloud/as-a-service/cloud\\_services/subscriptions](https://www.elastic.co/cloud/as-a-service/cloud_services/subscriptions). Elastic may from time to time modify the Eligible Features and Functions of the Subscription Level(s) of an Elastic Product during the Subscription Term, but shall not materially reduce the functionality thereof.

1.6 "**Infringement Claim**" means a claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and each applicable Addendum hereto during the applicable Subscription Term of the Products infringed such party's patent, copyright or trademark, or made unlawful use of such party's trade secret.

1.7 "**Order Form**" means an ordering document provided by Elastic pursuant to which Customer, or a Reseller acting on Customer's behalf, purchases Subscriptions under this Agreement.

1.8 "**Product**" means Cloud Service.

1.9 "**Reseller**" means a third party authorized by Elastic to promote and resell Subscriptions.

1.10 "**Subscription**" means Customer's right, for a fixed period of time, to possess, use and/or access a Product and to receive associated Support Services, in each case, as set forth in the applicable Order Form and subject to the applicable Addendum.

1.11 "**Subscription Level**" means the level of a Subscription purchased by Customer. The level of the Subscription purchased by Customer determines the Eligible Features and Functions that Customer is entitled to use, and the specific Support Services that Customer is entitled to receive, if any, with respect to any Products included in the Subscription.

1.12 "**Subscription Term**" means the period of time for which a Subscription is valid, as further described in Section 8.1 of this Agreement.

1.13 "**Support Services**" means maintenance and support services for an applicable Product, if any, that are included in a Subscription, as more fully described in the applicable Support Services Policy.

1.14 "**Support Services Policy**" means Elastic's support services policy for a Product, as further described at a URL referenced in an applicable Addendum.

#### 2 AGREEMENT SCOPE

2.1 Product Terms and Conditions. The additional terms and conditions for the applicable Product can be found in the attached Addendum.

2.2 Subscription Orders. Orders for Subscriptions may be placed by Customer through the execution of Order Forms with Elastic. For non-U.S. Government Customers, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order as provided in FAR 12.212(b).

2.3 Subscriptions Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Subscriptions that are governed by this Agreement. Orders for Subscriptions purchased through a Reseller, including multi-year Subscriptions, are not subject to cancellation by Customer, unless terminated in accordance with Clause 552.212-4(l) or (m). Where Customer purchases a Subscription through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that references this Agreement and shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Subscription, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

#### 3 PAYMENT AND TAXES

3.1 Payment. Elastic or its Authorized Reseller as applicable will invoice Customer for the fees due under each Order Form or otherwise under this Agreement, and Customer will pay such fees within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback..

3.2 Taxes.



Elastic or its Authorized Reseller as applicable shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k)

#### 4 CONFIDENTIAL INFORMATION

4.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("**Confidential Information**"). Confidential Information includes materials and all communications concerning Elastic's or Customer's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Product and/or Support Services, anything provided by either party to the other in connection with the Product and/or Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

4.2 Non-use and Non-disclosure. The parties shall at all times, both during the Term and thereafter keep in trust and confidence all Confidential Information of the other party using commercially reasonable care (but in no event less than the same degree of care that the receiving party uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties other than to Affiliates or as necessary to carry out its duties under this Agreement without the other party's prior written consent, provided that each party shall be allowed to disclose Confidential Information of the other party to the extent that such disclosure is approved in writing by such other party, or necessary to enforce its rights under this Agreement.

4.3 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of a party's breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party's possession without restriction as evidenced by appropriate documentation; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

4.4 Reserved.

4.5 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party may disclose the other party's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party's cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order. Elastic recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as

"confidential" by the vendor.

#### 5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Limited Support Services Performance Warranty. Elastic warrants that it will perform the Support Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice, and in accordance with any applicable Support Services Policy. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Support Services.

5.2 Limited Product Performance Warranty. Elastic warrants that during the applicable Subscription Term, the Products, in the form provided by Elastic under the Subscription, will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Products to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the associated Subscription, and Elastic will promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. The warranty set forth in this Section does not apply to any trial use of a Product or any Beta version of a Product, or if the Product or any portion thereof: (a) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; or (b) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

5.3 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE OR IN AN APPLICABLE ADDENDUM, THE PRODUCTS AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS AND SUPPORT SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

#### 6 INFRINGEMENT CLAIMS

6.1 Elastic Obligations. Elastic will, at its expense, have the right to intervene to defend or settle any Infringement Claim and will indemnify Customer against and pay (i) any settlement of such Infringement Claim consented to by Elastic or (ii) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim. Elastic shall not enter into any settlement agreement with respect to an Infringement

Claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Customer or imposes on Customer any obligation other than the obligation to cease using the Products and/or Support Services that are subject to the Infringement Claim, unless Customer has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

6.2 Exclusions. Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) where an Infringement Claim alleges patent infringement, Customer's use of the Product in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the

availability of such update and that such update addresses an infringement issue, an update to such Product that would have avoided the Infringement Claim; (iii) a modification of the Product that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Product with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use of the Product other than in accordance with the terms and conditions of this Agreement; or (vi) any third party open source software included in a Product.

6.3 **Certain Remedies.** If a Product is, or in Elastic's reasonable opinion is likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Product; (ii) modify the Product to make it/them non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in Elastic's reasonable judgement, commercially reasonable options, terminate Customer's right to use the Product, and, at Customer's written request, terminate all affected Order Forms and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under such terminated Order Forms.

6.4 **Conditions.** The obligations of Elastic in this Section 6 are conditioned upon Customer (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 6 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. In the case of U.S. Government Customers, Customer shall be represented as provided under 28 U.S.C. § 516. Customer will not, without the prior written consent of Elastic, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 **Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY PRODUCT AND/OR SUPPORT SERVICES.

## 7 LIMITATION OF LIABILITY

7.1 **Excluded Damages.** IN NO EVENT SHALL CUSTOMER OR ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

7.2 **Damages Cap.** EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 4, (II) ELASTIC'S OBLIGATIONS UNDER SECTION 6, (III) AMOUNTS PAYABLE BY CUSTOMER UNDER SECTION 3 OF THIS AGREEMENT AND EACH ORDER FORM, AND (IV) CUSTOMER'S VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT OR ANY ADDENDUM, IN NO EVENT SHALL ELASTIC'S OR CUSTOMER'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO

ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED PRODUCTS AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE GREATER OF (I) THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY; OR (II) THE FULL VALUE OF THE ONE-YEAR PERIOD OF SUCH ORDER FORM IN WHICH THE EVENT OCCURRED.

7.3 **Basis of the Bargain.** THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE PRODUCTS, AND/OR SUPPORT SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 8 TERM AND TERMINATION

8.1 **Subscription Term.** The initial Subscription Term for each Subscription will commence and expire in accordance with the start date and end date set forth on the Order Form, unless earlier terminated in accordance with Section 8.2 below. Thereafter, each Subscription may be renewed for additional one (1) year periods (or for such longer period as may be set forth on a renewal Order Form executed by the parties) unless either party gives written notice to the other of its intention not by executing a written order. The initial Subscription Term, plus any subsequent renewal Subscription Term shall be the "**Subscription Term**". For the avoidance of doubt, the term of this Agreement shall be coterminous with the Subscription Term.

8.2 **Termination. Non-U.S. Government Customers:** **Subscriptions.** Each party may terminate a Subscription and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to such Subscription and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties with respect thereto will, subject to Section 8.3 below, cease, provided that termination of the Subscription under this subsection (a) will not result in termination of any other Subscription. U.S. Government Customers: Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

8.3 **Survival.** Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 3, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

## 9 GENERAL

9.1 **Anti-Corruption.** Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws ("**Anti-Corruption Laws**"). Each party agrees that no one acting on its behalf will give, offer, agree or promise to give, or authorize the giving directly or indirectly, of any money or other thing of value, including travel, entertainment, or gifts, to anyone as an unlawful inducement or reward for favorable action or forbearance from action or the exercise of unlawful influence (a) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (b) to any political party, official of a political party, or candidate, (c) to an intermediary for payment to any of the foregoing, or (d) to any other person or entity in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or

license, or directing business to any person. Improper payments, provisions, bribes, kickbacks, influence payments, or other unlawful provisions to any person are prohibited under this Agreement.

9.2 **Assignment. Non-U.S. Government Customers:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a

successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns. U.S. Government CustomersTo the extent relevant and applicable, any assignment shall be subject to FAR 42.12 Novation and Change-of-Name Agreements, and FAR Clause 52.232-23, Assignment of Claims (JAN 1986).

### 9.3 Reserved.

9.4 California Consumer Privacy Act (CCPA). Elastic is a "Service Provider" as such term is defined under §1798.140(v) of the CCPA. As such Elastic shall not retain, use or disclose any personal information (as defined in the CCPA) received from Customer during the Term of this Agreement for any purpose other than the specific purpose of providing the Products and/or Support Services specified in this Agreement or for such other business purpose as is specified in this Agreement.

9.5 Customer Identification. Unless Elastic has first obtained Customer's prior written consent, Elastic shall not identify Customer as a user of the Products, on its website, through a press release issued by Elastic and in other promotional materials.

9.6 Export Control. Customer acknowledges that the Products, Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elastic goods, software or technology or disclose any Elastic software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to the Products may in certain circumstances be considered a re-export of such Products, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

9.7 Feedback. Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Products and/or Support Services ("**Feedback**"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account. provided that, in doing so, they may not breach their obligations of confidentiality under Section 4 of this Agreement.

9.8 Force Majeure. Except with respect to payment obligations, in accordance with GSA Schedule Contract clause 52.212-4(f), neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party's reasonable control.

9.9 Future Features and Functions. Customer understands and agrees that any features or functions of Products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing Products based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

### 9.10 Governing Law, Jurisdiction and Venue.

#### (a) **Non-U.S. Government Customers in California.**

If Customer is located in California (as determined by the Customer address on the applicable Order Form), in accordance with GSA Schedule Contract Clause 52.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. **All U.S. Government Customers:** No matter where located, for all U.S. Government Customers this

Agreement shall be governed by the Federal law of contracts.

(b) **Non-U.S. Government Customers Outside of California.** If Customer is located anywhere other than California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

(c) **All Customers.** This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond. Notwithstanding the foregoing, the parties acknowledge that with respect to U.S. Government Customers equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

9.11 Malicious Files Disclaimer. To facilitate Customer's evaluation of certain Elastic security products, Elastic may provide Customer with samples of malicious files or code or similar data. These samples will only be provided to Customer with Customer's permission and with notice regarding the contents of such files. Elastic disclaims any warranty, responsibility or liability associated with such materials, including any damage to Customer's data or devices.

9.12 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

9.13 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notices to Elastic may also be sent to [legal@elastic.co](mailto:legal@elastic.co). Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section.

9.14 Product Metadata. The Product(s) may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any Customer personal data or any content that Customer processes or stores in connection with Customer's use of the Product. Elastic uses Product Metadata for security, support, product and operations management, and research and development. Elastic does not share Product Metadata with third parties. "**Product Metadata**" is statistical and other information about Customer's configuration and use of the Product(s), such as type and version, operating systems and environment, cluster statistics (e.g., node type and counts), performance (e.g., uptime and response times and/or endpoint sensor detection events) and feature usage.

9.15 Relationship of the Parties. The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

9.16 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force

and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

9.17 Entire Agreement; Amendment. This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

## ELASTIC CLOUD SERVICE SUBSCRIPTION ADDENDUM

This **ELASTIC CLOUD SERVICE SUBSCRIPTION ADDENDUM** (this “**Addendum**”) sets forth additional terms and conditions related to Customer’s purchase of one or more Cloud Service Subscriptions from Elastic. Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.

### 1 CUSTOMER ACCOUNT

1.1 **Registration.** In order to use a Cloud Service, Customer must first register for one or more account(s) (each an “**Account**”). Each Account may be used in connection with one or more Subscriptions. Customer may not register multiple Accounts to simulate or act as a single Account, or otherwise access the applicable Cloud Service in a manner intended to avoid incurring fees. Communications (including notices, which shall be deemed delivered when sent) from Elastic to Customer regarding a Cloud Service will be sent in the Cloud user interface or to the email address registered with the Account applicable to such Cloud Service.

1.2 **Subscription Levels.** For Annual Subscriptions, Customer’s Subscription Level shall be as set forth on the applicable Order Form. Customer may upgrade the Subscription Level of an existing Annual Subscription through execution of a new Order Form. For Consumption Subscriptions and Monthly Subscriptions, the Subscription Level selected by Customer in the Cloud Service at any given time shall be the Subscription Level Customer has purchased for purposes of the Agreement. If the Cloud Service permits such functionality, Customer may change the Subscription Level of a Consumption Subscription or Monthly Subscription by selecting a different Subscription Level in the Cloud Service.

1.3 **Customer Security Obligations.** Customer is responsible for maintaining the security of the login credentials and the correct configuration of access control lists for Customer’s Accounts. Customer is fully responsible for all activities that occur under its Accounts. Customer agrees to immediately notify Elastic of any unauthorized use of its Accounts, use of an Account in violation of this Agreement or any other breaches of security related to its Account(s), of which Customer becomes aware.

1.4 **Annual Subscription Terms.** Customer will be provided a Monthly Allotment for use in each month of the applicable Annual Period. Unused portions of Monthly Allotments in a given month do not carry over to any subsequent month.

1.5 **Consumption Subscription Terms.** Customer will be provided with the applicable Credit Allotment for use in each Consumption Period. Each Credit Allotment will be reduced over the course of the applicable Consumption Period as Customer uses Resources. Unused portions of Credit Allotments in a given Consumption Period do not carry over to any subsequent Consumption Period. Resources used during an applicable Subscription Term will be metered at the on-demand rates at the time of use.

1.6 **Monthly Subscriptions.** Monthly Subscriptions described in Sections 1.6.1 and 1.6.2 below shall be governed by the Agreement and this Addendum.

1.6.1 **Expiration of Annual and Consumption Subscriptions.** After expiry of its Annual Subscription or Consumption Subscription, Customer’s continued use of a Cloud Service without another applicable Subscription will be treated as a Monthly Subscription, for which fees will be invoiced monthly in arrears.

1.6.2 **Self-Service Monthly Subscriptions.** Monthly Subscriptions purchased during the Term through Elastic’s website or Elastic’s product listing on a cloud service provider marketplace will continue to be paid for monthly in arrears with the payment method used at the time of first purchase.

1.6.3 **Monthly Subscriptions Generally.** Customer’s use of the Cloud Service under a Monthly Subscription continues until all its deployments and/or Account are deleted. Resources used each month will be charged at the on-demand rate at the time of use. Notwithstanding anything to the contrary in the Agreement or this Addendum, (1) an Order Form is not required for a Monthly Subscription, and (2) the Subscription Term for a Monthly Subscription shall commence on the date of first use under Section 1.6.1 or first purchase

under Section 1.6.2, as applicable, and continue until terminated by either party at any time. Customer may terminate a Monthly Subscription by deleting the applicable deployment(s) and/or Account in the Cloud Service user interface. Termination of a Monthly Subscription under this Section will not relieve Customer of any payment obligation accrued prior to termination.

1.7 **Cloud Marketplace Billing.** Notwithstanding anything to the contrary in this Addendum or the Agreement, where Customer has purchased a Cloud Service through a cloud service provider marketplace, Customer agrees to pay the fees specified on the applicable Cloud Service pricing page(s), including any notes included on such page(s) or in any pricing tables included with the offer accepted by Customer in the cloud service provider marketplace, in accordance with the GSA Schedule Pricelist. Customer agrees that all fees shall be paid through billing of Customer’s account with such cloud service provider and that any refund to which Customer may be entitled under the Agreement or this Addendum may be provided in the form of a credit back to Customer’s account with such cloud service provider.

### 2 PROVISION OF ELASTIC CLOUD AND SUPPORT SERVICES

2.1 **Provision of Elastic Cloud.** During the Subscription Term, and subject to the terms and conditions of this Agreement, Elastic will provide to Customer, and Customer is hereby granted the right to use a Cloud Service (including the Software Agent, if applicable) at the Subscription Level purchased by Customer. Customer Affiliates and Contractors (as defined below) are also permitted to use a Cloud Service at such Subscription Level during the Subscription Term, provided that such use by Affiliates and Contractors must be solely for the benefit of Customer, and Customer shall be responsible for all acts and omissions of such Affiliates and Contractors in connection with their use of the Cloud Service that are contrary to the terms and conditions of this Agreement. The Subscription Level purchased by Customer for a Cloud Service determines the specific Support Services that Customer is entitled to receive, and the Eligible Features and Functions of such Cloud Service that Customer is entitled to use.

2.2 **Provision of Support Services.** During the applicable Subscription Term for a Cloud Service, Elastic will provide Customer with Support Services in accordance with the applicable Support Services Policy and the Subscription Level purchased by Customer. Support Services will only be delivered remotely, electronically, through the Internet, and when applicable, depending on the particular Subscription Level purchased, via telephone.

2.3 **Third Party Contractors.** If designated by Customer as support contact(s), Elastic will provide the Support Services to Customer’s third party IT contractors (“**Contractors**”), solely in connection with such Contractors’ provision of services to Customer, and provided that (i) such Contractors do not offer any software-as-a-service that competes with any Cloud Service, (ii) Customer shall remain responsible to Elastic for the compliance of such Contractors with the terms and conditions of this Agreement, and (iii) such Contractors are contractually bound to obligations that reasonably protect Elastic’s intellectual property and Confidential Information. Upon Elastic’s written request, Customer shall confirm to Elastic that a Contractor is one of Customer’s designated support contacts.

2.4 **No Other License; No Assignment of Rights.** This Agreement grants Customer a limited right to use the applicable Cloud Service. Nothing in this Agreement shall be understood to transfer from Elastic to Customer any intellectual property rights, and all right, title and interest in and to any Cloud Service and the associated Support Services will remain (as between the parties) solely with Elastic or its third party suppliers. “Elastic” logos, and all other trademarks, service marks, graphics and logos used in connection with any Cloud Service and the Support Services are trademarks or registered trademarks of Elastic or Elastic’s third party suppliers. Other trademarks, service marks, graphics and logos used in connection with any Cloud Service

may be the trademarks of other third parties. Elastic grants to Customer no right or license to reproduce, or otherwise use any Elastic or third-party trademarks under this Agreement.

### 3 RESTRICTIONS ON USE OF CLOUD SERVICES AND SUPPORT SERVICES

3.1 Restrictions on Use of Elastic Cloud. Customer shall use each Cloud Service in compliance with all applicable laws, including export control and data privacy laws. Customer shall not: (i) execute or attempt to execute any computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs ("**Malware**") in any Cloud Service or use any Cloud Service to transmit Malware; (ii) use any Cloud Service to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; (iii) access or use any Cloud Service to compete against Elastic; (iv) access or use any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (v) except as expressly permitted herein, make access to any Cloud Service through its account available to any third party; (vi) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, any Cloud Service; (vii) interfere with or disrupt the integrity, security or performance of any Cloud Service or third-party data contained therein; (viii) attempt to gain unauthorized access to any Cloud Service or any associated systems or networks; (ix) modify, make derivative works of, disassemble, decompile or reverse engineer any Cloud Service or any component thereof; (x) use the Cloud Service to process any protected health information as defined by the Health Insurance Portability and Accountability Act of 1996; (xi) use the Cloud Service to store or process any classified information (i.e., information given a security classification by a government body and protected against unauthorized disclosure under applicable law) or data subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State; or (xii) use any Cloud Service in furtherance of the violation of the rights of others.

3.2 Restrictions on Use of Support Services. Support Services are provided to Customer solely for Customer's internal use (which includes use by Customer Affiliates, and, subject to Section 2.3, Contractors), and are subject to the quantitative limitations set forth on the applicable Order Form, and applicable limitations on the number of support contacts set forth in the Support Services Policy. In addition, Customer agrees to not:

(a) use the Support Services to supply any consulting, support or training services regarding any Cloud Service to any third party other than Customer Affiliates; or

(b) use Support Services for one Subscription to obtain support for another Subscription with a lower Subscription Level, or to obtain support for any use by Customer of Elastic software that is offered as a service by any third party.

Customer agrees that any knowing failure to comply with the terms of this Section will be deemed a material breach of this Agreement. If Customer breaches this Section, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, temporarily suspend the provision of Support Services to Customer if Customer fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

3.3 Suspension. If (i) Customer or Reseller (as applicable, and only if Customer is not a U.S. Government agency) has not timely paid all fees due under the Agreement or this Addendum, or an applicable Order Form, or (ii) Elastic believes, in its sole discretion, that Customer has violated or attempted to violate Sections 3.1 or 3.2 of this Addendum, or that Customer's use of a Cloud Service presents a material security risk, Elastic may temporarily suspend access to such Cloud Service until the violation has been corrected. Elastic will use reasonable efforts to provide Customer with advance written notice prior to implementing such suspension and will work with Customer to resolve the underlying issue.

3.4 Technical Controls. If Customer's use of a Cloud Service materially degrades the performance of such Cloud Service for other customers, rate limiting controls may result in the temporary reduction or a pause in the responsiveness of a Cloud Service. Furthermore, Customer shall contact Elastic if Customer desires to assess performance by benchmarking for more than five minutes.

### 4 CUSTOMER CONTENT; DATA PROCESSING

4.1 Definition of Content. In connection with Customer's use of a Cloud Service, Customer and/or its end users may enable the ingestion of information, content and data to the Cloud Service or may retrieve such information, content and data (collectively, "**Content**") from, such Cloud Service.

4.2 Elastic Security. Elastic will implement reasonable and appropriate security measures for the Cloud Service designed to protect Content against unauthorized access, modification, destruction or disclosure in accordance with the Elastic Security Standards. Elastic may modify the Elastic Security Standards from time to time, but will continue to provide at least the same level of security as is described in the Elastic Security Standards.

4.3 Customer Responsibility for Content. Customer is fully responsible for the content, accuracy and completeness of such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content including, without limitation, whether the Content consists of, including but not limited to, data, text, graphics, audio, video, or computer software. Customer is solely responsible for backing up or otherwise making duplicates of Content. Customer represents and warrants to Elastic that: (i) Customer owns or has the necessary licenses to provide the Content to Elastic, and the provision of the Content to, and use of the Content by, Elastic as contemplated herein will not infringe the intellectual property rights, including but not limited to copyright, patent, trademark or trade secret rights, of any third party; and (ii) the Content does not contain any executable Malware. Customer is solely responsible for verifying that use by its end users of a Cloud Service complies with any requirements under applicable law or regulation governing access to or use of the Content.

4.4 Data Processing. To the extent Customer communicates any Content relating to an identified or identifiable individual ("**Personal Data**") to Elastic, or Elastic obtains any Personal Data from Customer, Elastic agrees that it (and/or its contractors) will not knowingly collect, access, use, store, disclose, transfer or otherwise process (collectively, "**Process**" or "**Processing**") any such Personal Data except (i) for the purposes of this Agreement, including without limitation, to implement and deliver a Cloud Service and its features and associated services, provide customer support, and help Customer prevent or address service or technical problems; (ii) as expressly permitted by Customer in this Agreement or otherwise; or (iii) as compelled by law. Without limiting the foregoing, where applicable, the Elastic DPA shall govern such Processing. Customer shall make such disclosures, obtain such consents, provide such choices, implement such safeguards in compliance with, and otherwise comply with, any applicable law, rule or regulation regarding the Processing of Personal Data of any individual whose Personal Data Processed is by Customer (including, without limitation, by disclosing the Personal Data to Elastic) in connection with Customer's use of or access to a Cloud Service and its features and associated services.

4.5 License to Elastic; Deletion of Content. By submitting Content to Elastic, Customer hereby grants Elastic a sublicensable, worldwide, royalty-free, and non-exclusive right to reproduce, modify, adapt and publish the Content solely for the purpose of enabling Elastic to provide Customer with the applicable Cloud Service and Support Services. Once Customer's Subscription expires or terminates and Customer discontinues use of the applicable Cloud Service, Elastic will delete all Customer Content from the applicable Cloud Service, using commercially reasonable efforts to do so within forty-five (45) days of such discontinuance, other than copies of Content (i) required to be retained by applicable law or (ii) stored in Elastic's backups and disaster recovery systems, which in each case shall be deleted in the ordinary course in accordance with Elastic's data retention policies.

4.6 **Data Retrieval.** Customer is solely responsible for deleting or retrieving Content from a Cloud Service prior to termination of the applicable Subscription and/or Customer's Account for any reason.

4.7 **Payment Information.** If payment by credit card is permitted and Customer selects this method, it will provide Elastic with valid credit card information. Customer authorizes Elastic (and any credit card processors acting on its behalf) to share related billing and payment information with companies who work on Elastic's behalf, such as payment processors and/or credit agencies, but solely for the purposes of checking credit, effecting payment to Elastic and servicing Customer's Account. Elastic shall not be liable for any use or disclosure of such information by such third parties.

4.8 **Third Party Content.** Furthermore, while Elastic reserves the right, it has no obligation to monitor all of the content, data or information uploaded on any Cloud Service by third parties ("**Third Party Content**"), and is not responsible for any such content, data or information. Elastic does not represent or imply that such Third-Party Content is accurate, useful or non-harmful. Customer must take all precautions necessary to protect itself, and its computer systems from viruses, worms, Trojan horses, and other harmful or destructive materials. Elastic disclaims any responsibility for any harm resulting from any Third-Party Content.

## 5 INDEMNIFICATION

5.1 Sections 5.1 through 5.4 do not apply to (i) U.S. Government customers or (ii) customers that are agencies or instrumentalities of local or state governments in the U.S. and prohibited by law from agreeing to the indemnities listed in these sections.

5.2 **Obligations of Customer.** Except with respect to a matter addressed under Section 6.1 (Elastic Obligations; Infringement Claims) of the Agreement, Customer will, at its expense (i) defend, or at its option settle, but subject to Elastic's prior written consent, not to be unreasonably withheld, a claim brought by an unaffiliated third party against Elastic, its contractors, suppliers, licensors, and or respective directors, officers, employees and agents, arising out of or related to Customer's use of any Cloud Service, and (ii) indemnify Elastic against and pay (1) any settlement of such claim or (2) any damages finally awarded to such third party by a court of competent jurisdiction as the result of such claim.

5.3 **Conditions.** The obligations of Customer in this Section 5 are conditioned upon Elastic (i) notifying Customer promptly in writing of any threatened or pending claim for which Customer has an obligation under this Section, provided that failure to provide such notice will only relieve Customer of its obligations under this Section 5 to the extent its ability to defend or settle an applicable claim is materially prejudiced by such failure to provide notice, (ii) giving Customer, at Customer's expense, reasonable assistance and information requested by Customer in connection with the defense and/or settlement of the claim and (iii) tendering to Customer sole control over the defense and settlement of the claim. Elastic's counsel will have the right to participate in the defense of the claim, at Elastic's own expense. Elastic will not, without the prior written consent of Customer, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim.

5.4 **Excluded Damages.** Notwithstanding anything to the contrary in the Agreement, including Section 7.2 (Damages Cap) thereof, no limitation of liability shall apply to Customer's obligations under this Section 5

## 6 ADDITIONAL DEFINITIONS

6.1 "**Annual Period**" means, with respect to an Annual Subscription, an applicable 12-month period (or portion thereof as set forth in the Order Form) in the Subscription Term during which Customer's Annual Allotment will be made available to Customer in Monthly Allotments.

6.2 "**Annual Subscription**" means a Cloud Service Subscription where Customer has prepaid fees for Resources ("**Annual Allotment**") that will be made available to Customer in Monthly Allotments during the applicable Annual Period(s).

6.3 "**Consumption Period**" means, with respect to a Consumption Subscription, an applicable 12-month period (or portion thereof as set forth in the Order Form) in the Subscription Term during which Customer's Credit Allotment may be used.

6.4 "**Consumption Subscription**" means a Cloud Service Subscription where Customer has committed to purchase the specified quantity of consumption credits ("**Credit Allotment**") for each Consumption Period, as set forth on the applicable Order Form.

6.5 "**Elastic DPA**" means Elastic's GDPR and CCPA data processing addendum set forth at <https://www.elastic.co/pdf/elastic-customer-dpa-v081521.0.pdf>.

6.6 "**Elastic Security Standards**" mean Elastic's security standards for the processing of Content as set forth in the Elastic DPA.

6.7 "**Monthly Allotment**" means the Annual Allotment divided by the number of months in the applicable Annual Period.

6.8 "**Monthly Subscription**" means a Subscription that includes the right for Customer to use a Cloud Service on a month-to-month basis.

6.9 "**Resources**" means the components of a Cloud Service for which fees or credits are metered, accrued or consumed with use.

6.10 "**Software Agent**" means the object code version of an Elastic-produced software agent that Customer may install on a Customer endpoint to facilitate the ingestion of Content into a Cloud Service. For purposes of the Agreement and the applicable Subscription, the Software Agent shall be deemed part of the applicable Cloud Service. Certain libraries, components, utilities and other software (collectively, "**Components**") provided with, or as part of, the Software Agent are licensed under their own separate terms, not under this Agreement. The Components and their applicable terms (which do not restrict the rights granted under this Agreement) are currently identified at <https://www.elastic.co/third-party-dependencies>, or otherwise provided with the Software Agent or the Documentation.

6.11 "**Support Services Policy**" means Elastic's support services policy for the applicable Subscription Level for a Cloud Service located at [https://www.elastic.co/legal/support\\_policy/cloud\\_services](https://www.elastic.co/legal/support_policy/cloud_services). Elastic reserves the right to reasonably modify the Support Services Policy during the Subscription Term. However, Elastic agrees not to materially diminish the level of Support Services during the Subscription Term. The effective date of each version of the Support Services Policy will be stated therein, and Elastic will retain an archived copy of each version that will be made available to Customer upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.



## ELASTIC SERVICES AGREEMENT

This **Elastic Services Agreement**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this "**Agreement**"), is entered into by and between the Elastic entity ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**") each as set forth on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**"), provided that, solely in the case of a U.S. Government Customer, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government Customer obtains the Product or Service that is the subject of this Agreement, and, solely in the case of U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order.

### 1 DEFINITIONS

Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable.

1.1 "**Addendum**" means, an addendum to this Agreement which sets forth additional terms and conditions that are specific to the Services covered by such addendum.

1.2 "**Affiliate**" means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity, or the contractual right to establish policy for, and manage the operations of, the entity.

1.3 "**Consulting Services**" means consulting services provided to Customer by or on behalf of Elastic.

1.4 "**Infringement Claim**" means a claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and each applicable Addendum hereto during the applicable Subscription Term of the Services infringed such party's patent, copyright or trademark, or made unlawful use of such party's trade secret.

1.5 "**Order Form**" means an ordering document provided by Elastic pursuant to which Customer, or a Reseller acting on Customer's behalf, purchases Services under this Agreement.

1.6 "**Reseller**" means a third party authorized by Elastic to promote and resell Services.

1.7 "**Services**" means Consulting Services and/or Training Services.

1.8 "**Training Services**" means Elastic's training services regarding the use of one or more products provided to Customer by or on behalf of Elastic.

### 2 AGREEMENT SCOPE

2.1 Services Terms and Conditions. The additional terms and conditions for the applicable Services can be found in the attached Addendum.

2.2 Services Orders. Orders for Services may be placed by Customer through the execution of Order Forms with Elastic. For non-U.S. Government Customers, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order as provided in FAR 12.212(b).

2.3 Services Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Services that are governed by this Agreement. Orders for Services purchased through a Reseller are not subject to cancellation by Customer unless terminated in accordance with Clause 552.212-4(l) or (m). Where Customer purchases Services through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of Services that references this Agreement and shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Services, as well as any other terms or conditions that apply

between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Services under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases Services through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

### 3 PAYMENT AND TAXES

3.1 Payment. Elastic or its Authorized Reseller as applicable will invoice Customer for the fees due under each Order Form or otherwise under this Agreement, and Customer will pay such fees within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback. Except as otherwise expressly provided in this Agreement, any and all payments made by Customer pursuant to this Agreement or any Order Form are non-refundable, and all commitments to make any payments hereunder or under any Order Form are non-cancellable.

3.2 Taxes.

### 4 CONFIDENTIAL INFORMATION

4.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("**Confidential Information**"). Confidential Information includes materials and all communications concerning Elastic's or Customer's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Services, anything provided by either party to the other in connection with the Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.



Non-use and Non-disclosure. The parties shall at all times, both during the Term and thereafter keep in trust and confidence all Confidential Information of the other party using commercially reasonable care (but in no event less than the same degree of care that the receiving party uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties other than to Affiliates or as necessary to carry out its duties under this Agreement without the other party's prior written consent, provided that each party shall be allowed to disclose Confidential Information of the other party to the extent that such disclosure is approved in writing by such other party, or necessary to enforce its rights under this Agreement.

4.2 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of a party's breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party's possession without restriction as evidenced by appropriate documentation; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

4.3 Reserved.

4.4 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party may disclose the other party's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party's cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order. Elastic recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

## 5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Limited Services Performance Warranty. Elastic warrants that it will perform the Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Services at no additional cost to Customer.

5.2 Reserved.

5.3 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 ABOVE OR IN AN APPLICABLE ADDENDUM, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT THE SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, AUTONOMOUS VEHICLES, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

## 6 INFRINGEMENT CLAIMS

6.1 Elastic Obligations. Elastic will, at its expense, have the right to intervene to defend or settle any Infringement Claim and will indemnify Customer against and pay (i) any settlement of such Infringement Claim consented to by Elastic or (ii) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim. Elastic shall not enter into any settlement agreement with respect to an Infringement Claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Customer or imposes on Customer any obligation other than the obligation to cease using the Services that are subject to the Infringement Claim, unless Customer has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

6.2 Exclusions. Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) where an Infringement Claim alleges patent infringement, Customer's use of the Services in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update to such Services that would have avoided the Infringement Claim; (iii) a modification of the Services that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Services with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use of the Services other than in accordance with the terms and conditions of this Agreement; or (vi) any third party open source software included in a product.

6.3 Certain Remedies. If the Services are, or in Elastic's reasonable opinion are likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Services; (ii) modify the Services to make it/them non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in Elastic's reasonable judgement, commercially reasonable options, terminate Customer's right to use the Services, and, at Customer's written request, terminate all affected Order Forms and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under such terminated Order Forms.

6.4 Conditions. The obligations of Elastic in this Section 6 are conditioned upon Customer (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 6 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. In the case of U.S. Government Customers, Customer shall be represented as provided under 28 U.S.C. § 516. Customer will not, without the prior written consent of Elastic, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY SERVICES

## 7 LIMITATION OF LIABILITY

7.1 Excluded Damages. IN NO EVENT SHALL CUSTOMER OR ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

7.2 Damages Cap. EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 4, (II) ELASTIC'S OBLIGATIONS UNDER SECTION 6, (III) AMOUNTS PAYABLE BY CUSTOMER UNDER SECTION 3 OF THIS AGREEMENT AND EACH ORDER FORM, AND (IV) CUSTOMER'S VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT OR ANY ADDENDUM, IN NO EVENT SHALL ELASTIC'S OR CUSTOMER'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT FOR THE GREATER OF (I) THE AFFECTED SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY; OR (II) THE FULL VALUE OF THE ONE-YEAR PERIOD OF SUCH ORDER FORM IN WHICH THE EVENT OCCURRED..

7.3 Basis of the Bargain. THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 8 TERM AND TERMINATION

8.1 Term. Unless earlier terminated in accordance with this Section 8, this Agreement will remain in effect until both parties' obligations are fully discharged.

8.2 Termination. *Non-U.S. Government Customers: Services.* Each party may terminate a Services, and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to such Services and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties with respect thereto will, subject to Section 8.3 below, cease, provided that termination of the Services under this subsection (a) will not result in termination of any other Services. *U.S. Government Customers:* Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

8.3 Survival. Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 3, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

## 9 GENERAL

9.1 Anti-Corruption. Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws ("**Anti-Corruption Laws**"). Each party agrees that no one acting on its behalf

will give, offer, agree or promise to give, or authorize the giving directly or indirectly, of any money or other thing of value, including travel, entertainment, or gifts, to anyone as an unlawful inducement or reward for favorable action or forbearance from action or the exercise of unlawful influence (a) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (b) to any political party, official of a political party, or candidate, (c) to an intermediary for payment to any of the foregoing, or (d) to any other person or entity in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or license, or directing business to any person. Improper payments, provisions, bribes, kickbacks, influence payments, or other unlawful provisions to any person are prohibited under this Agreement.

9.2 Assignment. *Non-U.S. Government Customers:* Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns. *U.S. Government Customers:* To the extent relevant and applicable, any assignment shall be subject to FAR 42.12 Novation and Change-of-Name Agreements, and FAR Clause 52.232-23, Assignment of Claims (JAN 1986).

9.3 Reserved.

9.4 California Consumer Privacy Act (CCPA). Elastic is a "Service Provider" as such term is defined under §1798.140(v) of the CCPA. As such Elastic shall not retain, use or disclose any personal information (as defined in the CCPA) received from Customer during the Term of this Agreement for any purpose other than the specific purpose of providing the Services specified in this Agreement or for such other business purpose as is specified in this Agreement.

9.5 Customer Identification. Unless Elastic has first obtained Customer's prior written consent, Elastic shall not identify Customer as a user of the Services, on its website, through a press release issued by Elastic and in other promotional materials.

9.6 Export Control. Customer acknowledges that the Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elastic goods, software or technology or disclose any Elastic software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to the Products may in certain circumstances be considered a re-export of such Products, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

9.7 Feedback. Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Services ("**Feedback**"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account, provided that, in doing so, they may not breach their obligations of confidentiality under Section 4 of this Agreement.

9.8 Force Majeure. Except with respect to payment obligations, in accordance with GSA Schedule Contract clause 52.212-4(f), neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party's reasonable control.

9.9 Future Features and Functions. Customer understands and agrees that any features or functions of products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer

agrees that it is purchasing products based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

9.10 Governing Law, Jurisdiction and Venue.

(a) **Non-U.S. Government Customers in California.**

If Customer is located in California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. **All U.S. Government Customers:** No matter where located, for all U.S. Government Customers this Agreement shall be governed by the Federal law of contracts.

(b) **Non-U.S. Government Customers Outside of California.**

If Customer is located anywhere other than California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

(c) **All Customers.** This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond. Notwithstanding the foregoing, the parties acknowledge that with respect to U.S. Government Customers equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

9.11 Malicious Files Disclaimer. To facilitate Customer's evaluation of certain Elastic security products, Elastic may provide Customer with samples of malicious files or code or similar data. These samples will only be provided to Customer with Customer's permission and with notice regarding the contents of such files. Elastic disclaims any warranty, responsibility or liability associated with such materials, including any damage to Customer's data or devices.

9.12 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

9.13 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notices to Elastic may also be sent to [legal@elastic.co](mailto:legal@elastic.co). Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section.

9.14 Reserved.

9.15 Relationship of the Parties. The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

9.16 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

9.17 Entire Agreement; Amendment. This Agreement, together with any Order Forms executed by the parties each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), and (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of Services, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

## ELASTIC SERVICES ADDENDUM

This **ELASTIC SERVICES ADDENDUM** (this "**Addendum**") sets forth additional terms and conditions related to Customer's purchase of Consulting Services and/or Training Services (including Private Training Services, Online Training Subscriptions and/or Public Training, each of which is defined below). Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.

### 1 CONSULTING AND TRAINING SERVICES

#### 1.1 Service Orders.

(a) Customer may order Services by entering into an Order Form in accordance with the Agreement, each of which will become part of and be subject to this Agreement. Each Order Form will set forth the Services being purchased and the applicable Fees.

(b) Order Forms are not subject to cancellation. Customer agrees that it must consume the Services within the Services Period. Upon the expiration of the Services Period, Elastic will not be obligated to provide such Services, or provide a refund of any Fees paid under such Order Form.

(c) Elastic shall be responsible for any costs and expenses (including travel, equipment, meals and incidentals, or other related out of pocket expenses) incurred by Elastic and incidental to the performance of its obligations under this Addendum unless said Fees are set forth in an applicable Order Form or otherwise agreed to in writing by the parties.

(d) Services are non-transferable (except, with respect to Entitlements, as provided under Section 2.4 of this Addendum) and only for Customer's internal use, and Customer may not use the Services to supply any consulting, support or training services to any third party.

(e) Commercial Items. All Services are Commercial Items as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101.

#### 1.2 Scheduling and Rescheduling.

(a) Scheduling. Consulting Services, Private Training, and Public Training may be scheduled at the time of purchase, or at a later date, through contacting the Elastic Services group, provided that (i) Private Training Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than two (2) consecutive Days within the same work week, (ii) Consulting Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than four (4) consecutive Consulting Days within the same work week (i.e., Monday to Friday, excluding holidays), and (iii) Private Training or Consulting Services to be provided remotely must be scheduled for a period equal to or greater than one (1) Day.

(b) Rescheduling. Rescheduling of Consulting Services, Private Training, and Public Training must be done in writing. Services may not be rescheduled less than fourteen (14) days prior to the scheduled commencement of Services ("**Rescheduling Deadline**"). If Customer reschedules Services after the Rescheduling Deadline, Elastic shall be entitled to treat the Services as having been delivered and Customer will not be entitled to credit for such Services. Elastic may cancel or reschedule Public Training at its discretion. In the event of such cancellation or rescheduling, Customer will receive a credit that may be applied to future Public Training Services.

(c) Additional Resources. If Customer and Elastic have agreed pursuant to an applicable Order Form that Elastic shall procure facilities, equipment, or other expenses in connection with Services delivery, Customer shall reimburse Elastic for any lost deposits or other expenses incurred by Elastic as a result of any rescheduling or cancellation of Services.

(d) Certification Exam Attempts. If Customer's purchase includes Certification Exam Attempts, Certification Exam Attempts must be completed by the end of the Services Period.

(e) Ask-the-Instructor Sessions. From time to time, Elastic may offer Ask-the-Instructor Sessions for eligible Participants. Customer understands that any information provided through such Ask-the-

Instructor Sessions is purely advisory in nature and is not intended as a type of support service or substitute for support services.

(f) Online Course Access. Participants generally will have at least fifteen (15) days from the date they first access an on-demand Online Course to complete it, though modules or hands-on labs within individual on-demand Online Courses may be subject to additional time restrictions on availability and access, as set forth in the user guide that is e-mailed to each Participant. For Online Training Subscriptions, Participant may only access a given Online Course once during the Services Period, unless renewed.

(g) Personnel. Elastic reserves the right, at its discretion, to assign personnel, and to use and assign personnel from Elastic Affiliates, to perform Services. Notwithstanding any provision to the contrary in the Agreement, Elastic reserves the right to use subcontractors to perform Services on Elastic's behalf.

1.3 Customer Policies. When Consultants are performing Services at a Customer location, Elastic shall procure that the Consultants conduct themselves in accordance with the standard health, safety and security policies of Customer applicable to its staff and/or visitors generally, and which are provided to Elastic in writing in advance. Customer agrees to provide written notice to Elastic of any applicable non-standard policies (for example, the requirement of security clearances, background checks or execution of any additional agreements) in advance of entering into an Order Form. For the avoidance of doubt, the parties agree that if Customer or any Customer Affiliate requires any Consultant entering Customer's premises to sign any non-disclosure agreement, agreement addressing proprietary rights, or other, similar document as a condition of being permitted to enter Customer's premises for the purpose of performing Services (any such document or agreement, an "**Individual NDA**"), that such Individual NDA will be deemed void, ab initio, and that the provisions of this Agreement exclusively govern Consultant's activities while on Customer's premises, and that Customer will look solely to Elastic to satisfy its obligations hereunder, and not to any Consultant.

1.4 Elastic Participant Cloud Account. To obtain access to Materials and participate in Training Services, each Participant shall be required to register for a Participant Account. Each participant shall be responsible for complying with the terms of use applicable to their respective Participant Account and for maintaining the security of the log-in credential for their Participant Account. Customer and/or the Participant shall immediately notify Elastic of any unauthorized use of a Participant Account, or any other breaches of security of which Customer or Participant becomes aware.

### 2 PARTICIPANT AND CUSTOMER OBLIGATIONS

2.1 General. Customer shall ensure that all Participants and other persons booked to receive Services: (i) are appropriately qualified to participate; (ii) for scheduled Services, arrive on time and in any event not later than twenty minutes after scheduled start time; (iii) do not conduct themselves in an anti-social manner that could reasonably be considered contrary to Customer's applicable employment rules and policies; and (iv) do not share access to the Services or the Materials (defined in Section 4.2 below) with any third party for any reason. Consultants shall have the right in their reasonable discretion to exclude from a training session any person in breach of this Section 2.1.

#### 2.2 Consulting Services.

(a) Access, Information, Materials and Cooperation. For Consulting Services, Customer agrees to provide the Consultant with such cooperation, materials, information, access and support reasonably required to allow Elastic to successfully provide the Services, and as may be set forth in the Services Description. Customer understands and agrees that Elastic's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information,

access and support. To the extent that Customer makes available secure access to Customer's systems, Customer shall ensure such access complies with any data privacy laws applicable to Customer and Customer's security policies.

(b) Workplace Standards and Hours. Customer agrees to ensure the Consultants performing Consulting Services at a Customer location are provided reasonable working conditions and not required to work unreasonable hours. Without limiting the generality of the foregoing, Customer shall provide a safe and adequate work space and environment, with reasonable lighting and access to appropriate resources and facilities, and Customer acknowledges and agrees that Elastic will not: permit (i) a Consultant to work more than five (5) consecutive days without a day off; (ii) a Consultant to work more than five (5) consecutive days without the opportunity to travel to their location of residence; (iii) a Consultant to work more than ten (10) hours in any one day; or (iv) a Consultant to work between the hours of 12:00 am and 6:00 am, local time. In addition, Customer acknowledges and agrees that Elastic requires that Consultants are granted at least one (1) hour for a meal for every five (5) hours worked, and one (1) fifteen (15) minute break every four (4) hours worked.

(c) Out of Scope Services and Items. Elastic shall not be responsible for any services or items that are not expressly included in the Services Description, which shall be the responsibility of Customer.

2.3 Private Training Services. Customer will supply facilities and equipment (including one fully operational workstation per student with access to the public Internet, refreshments, and stationary) for on-site Private Training, unless otherwise stated on the Services Order Form. Customer shall not change the venue for a course to another venue more than five miles away without giving Elastic fourteen (14) days prior written notice, nor without Elastic's prior written consent (not to be unreasonably withheld or delayed), failing either of which Elastic shall be entitled to treat the Private Training Services as having been cancelled by Customer.

2.4 Online Training Subscriptions. If the Participant designated in an Online Training Subscription is an employee of Customer and his or her employment terminates, or the Participant otherwise undergoes a change of roles and responsibilities, Customer may, with written consent of Elastic, designate another individual as Participant for the remainder of the term of the Online Training Subscription. Customer shall be responsible for its designated Participant's compliance with the Agreement and this Addendum and for any acts or omissions of Participant in violation of the Agreement and/or this Addendum.

2.5 Training Services Laboratory Set Up. In connection with accessing Training Service, Customer or Participants may be required to set up a laboratory environment. Elastic will provide Customer or Participants with links and instructions for obtaining the required components to install and set up the laboratory environment, but it is Customer's and/or Participant's (as applicable) responsibility to properly install and configure such components.

### 3 MONITOR RIGHTS

3.1 Elastic shall have the right to verify Participant's right to access or use Training Services and monitor Participant's progress and access to and use of the Training Services for compliance with any applicable limitations on Customer's and/or Participant's use thereof. In the event any such monitoring reveals that Customer or Participant has used the Training Services in excess of the limitations set forth in this Agreement, Customer shall promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. Elastic may also request no more than once per calendar year that Customer perform an appropriate self-audit to validate and then certify in writing that its Participants have not shared their Participant Account credential with others. Without prejudice to Elastic's other rights, Elastic may in its sole discretion disable any Participant Account credentials revealed in such self-audit to have been shared.

### 4 OWNERSHIP OF WORK PRODUCT AND OTHER MATERIALS

4.1 Work Product. In the course of performing Services, Elastic may create software or other works of authorship (collectively "**Work Product**"). Subject to Customer's ownership interest in, and Elastic's obligations with respect to, Customer's Confidential Information (which will not under any circumstances be deemed to constitute Work Product), Elastic shall own all right title and interest in and to all Work Product, including all intellectual property rights therein and thereto. If any Work Product is delivered to Customer pursuant to or in connection with the performance of Consulting Services ("**Work Product Deliverable**"), Elastic hereby grants to Customer a royalty-free, perpetual, worldwide license, without the right to grant or authorize sublicenses, to use such Work Product Deliverable solely for Customer's own internal business purposes, provided that where such Work Product Deliverable is a derivative work of Elastic branded Software ("**Software**"), Customer is hereby granted a license to such Work Product Deliverable on the terms, and for the same period of time as, Customer's license to the Software from which such Work Product Deliverable was derived ("**Original Software**"). Customer may allow its third party service providers to exercise the foregoing rights on Customer's behalf. Customer may not distribute or otherwise transfer such Work Product Deliverable to any third party, unless Customer is permitted to do so under the license applicable to the Original Software. Nothing in this Agreement shall be deemed to prohibit Elastic from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing Services.

4.2 Other Materials. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any other materials, including, without limitation, training course materials such as online lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programming assignments, code samples, practice exams, and other educational materials, provided by Elastic to Customer in connection with the provision to Customer of Services (collectively, "**Materials**"), other than the right to access, download, internally use and display the Material as necessary to utilize the Services that Customer has purchased. Customer shall be entitled to keep and use all Materials provided by Elastic to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Elastic. In particular and without limitation, Materials may not be copied electronically or otherwise (except for purposes of internal distribution within Customer's organization and for archival purposes), modified including translated, re-distributed, disclosed to third parties (other than Customer Affiliates and Contractors providing services to Customer that do not compete with the Services), lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Elastic trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Elastic trademarks without Elastic's express written authorization.

### 5 RESERVED

### 6 ADDITIONAL DEFINITIONS

Capitalized terms used herein have the meaning set forth in the Agreement or ascribed below, or where such terms are first used, as applicable.

6.1 "**Ask-the-Instructor Session**" means a virtual session offered by Elastic to eligible Participants for the purpose of facilitating live discussions on relevant topics and answering Participants' questions.

6.2 "**Certification Exam Attempt**" means participant's right, subject to the certification program terms at <https://www.elastic.co/legal/certification-program-agreement>, to attempt an Elastic certification exam.

6.3 "**Consultant**" means a member of Elastic's Consulting Services or Training Services staff, as applicable.

- 6.4 **"Consulting Services Package"** means a specific package of Consulting Services that may be purchased by Customer, as described in the Services Description.
- 6.5 **"Day"** means eight (8) billable hours of consulting, training and/or report preparation during a calendar day occurring within a work week, except in jurisdictions where a work day is legally defined as fewer than (8) hours, in which case a Day is equal to the legally defined work day.
- 6.6 **"Entitlements"** means the resources associated with the Training Subscription Level purchased by Customer as set forth at <https://www.elastic.co/training/subscriptions>.
- 6.7 **"Fees"** means the fees to be paid by Customer to Elastic for Service Packages and/or Training Services.
- 6.8 **"Online Course"** means an on-demand online training course provided by Elastic to Participant via the Participant Account, including any hands-on lab and associated reference Materials that may be offered as part of such course. Online Courses may be included as part of Consulting Services Packages, Online Training Subscriptions, Private Training, or Public Training.
- 6.9 **"Online Training Subscription"** means the right for a Participant to access or use, for the Services Period, the Entitlements with respect to the applicable Training Subscription Level set forth in the applicable Order Form.
- 6.10 **"Participant Account"** means an individual user account at <https://cloud.elastic.co/registration>.
- 6.11 **"Private Training"** means Elastic's private training services regarding the use of one or more Products, provided to Customer privately on-site or remotely by or on behalf of Elastic.
- 6.12 **"Public Training"** means Elastic's public training services regarding the use of one or more Elastic Products available for general enrollment provided to Customer live, in-person at public training facilities or remotely live or on-demand.
- 6.13 **"Services Description"** means the document located at [https://www.elastic.co/services\\_policy](https://www.elastic.co/services_policy) that describes the specific details of the scope of each Consulting Services Package available for purchase by Customer from Elastic.
- 6.14 **"Training Subscription Level"** means the level of an Online Training Subscription purchased by Customer, as indicated on an applicable Order Form.
- 6.15 **"Services Period"** means the period commencing and expiring on the respective start and end dates set forth on the Order Form for the applicable Service.