



ELASTIC

CLOUD SERVICES SUBSCRIPTION AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 18 MARCH 2020

This **Elastic Cloud Services Subscription Agreement**, including all attachments, addenda, schedules and exhibits, and documents at referenced URLs (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 Commercial Software 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 Subscriptions.

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 "**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.

1.6 "**Product**" means Cloud Service.

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

1.8 "**Subscription**" means Customer's right, for a fixed period of time, to possess, use and/or access, an applicable Product, and if applicable, to receive associated Support Services.

1.9 "**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. Links to specific descriptions of the Subscription Levels for each Product are included in the applicable Addendum.

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

1.11 "**Support Services**" means maintenance and support services for applicable Product, as more fully described in the applicable Support Services Policy.

1.12 "**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.

(a) **Initial Orders**. Orders for Subscriptions may be placed by Customer through the execution of Order Forms with Elastic, setting forth the (i) Subscription Level, (ii) quantitative and other limitations applied to a Subscription, (iii) Subscription Term, and (iv) total price for such Subscription. 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).

(b) **Additions and Upgrades to Subscriptions**. Customer may add to Subscriptions, and/or upgrade the Subscription Level for an existing Subscription, by executing one or more additional Order Forms setting forth the details of such addition and/or upgrade, and referencing the Order Form under which the Subscription was initially purchased. Upon execution of such an Order Form by the parties, a new Subscription and Subscription Term may be initiated, that includes the addition and/or upgrade, and Customer will be provided with a credit for the unused portion of the existing Subscription.

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. 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 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. Customer agrees to pay Elastic the fees stated on each Order Form 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. If Customer does not pay the invoices when due, Elastic may charge interest at the lesser of one percent (1%) per month on the unpaid balance or the highest percentage allowed under applicable law. 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. All fees stated on an Order Form are exclusive of any applicable sales, use, value added and excise taxes levied upon the

delivery or use of the taxable components, if any, of the Subscription purchased by Customer under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its Affiliates. Unless Customer provides Elastic a valid state sales/use/excise tax exemption certificate or Direct Pay Permit, and provided that Elastic separately states any such taxes in the applicable invoice, Customer will pay and be solely responsible for all Taxes. If Customer is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of Support Services or the Commercial Software under this Agreement, Customer shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced.

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 Software, anything provided by either party to the other in connection with the Commercial Software 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 Terms of this Agreement. Except as required by law or governmental regulation, neither party shall disclose, advertise, or 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 parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement. If Customer is using a third party provider to host a Product, then such provider may also receive, subject to a confidentiality obligation, information related to the terms of this Agreement or Customer's usage of the applicable Product.

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.

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 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 5.2 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 been altered, except by or on behalf of Elastic; (b) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; or (c) 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 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 AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE PRODUCTS AND SUPPORT SERVICES. IN ADDITION, 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 Obligation. Elastic will, at its expense: (i) defend, or at its option settle, any claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement

and Addendum, during the Subscription Term, of the Product infringed such party's patent registered as of the Effective Date, or any copyright or trademark of such party enforceable in the jurisdiction of Customer's use of the Product, or made unlawful use of such party's trade secret (each, an **"Infringement Claim"**) and (ii) indemnify Customer against and pay (1) any settlement of such Infringement Claim consented to by Elastic or (2) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim.

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) 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 of the Commercial Software 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; (vi) where Products are incorporated into, or constitute a component of, a larger system or solution, including but not limited to a software-as-a-service, damages attributable to the value of the use of any non-Elastic product or service or (vii) any open source software included in a Product.

6.3 Certain Remedies. If a Product 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 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 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.

7.2 Damages Cap. EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 4, AND WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 6.1(i), IN NO EVENT SHALL ELASTIC'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT IN CONNECTION WITH SUCH ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

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 AND/OR GOODS 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 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, the Subscription shall automatically renew 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 to renew the Subscription at least thirty (30) days prior to the expiration of the then-current Subscription Term. 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: Each party may terminate this Agreement and the 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, 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 will, subject to Section 8.3 below, cease. **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 9.2 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 **Attorneys' Fees.** If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, "prevailing party" includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Notwithstanding the foregoing, for U.S. Government Customers, there shall be no entitlement to attorneys' fees, expert witness fees, costs of suit and expenses, except to the extent, if any, permitted by Federal statute and regulations.

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 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 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, 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 services or 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 and

services 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 non-U.S. Government Customers equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

9.11 **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. 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 9.11.

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 **Product Usage Data.** Elastic may collect and use Product Usage Data (defined below) for security, support, product and operations management, and research and development. "**Product Usage Data**" is information other than Customer content that may be automatically collected and reported by the Product. Product Usage Data shall be processed in accordance with Elastic's Product Privacy Statement at <https://www.elastic.co/legal/product-privacy-statement>. Product Usage Data will not be shared with third parties in a manner attributable to an individual end user or Customer.

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 Threat Data. If a Customer has purchased a Subscription that includes endpoint security, Elastic may collect and use Threat Data (defined below) for threat analysis and mitigation, customer support, product management and improvement, and research and development. "**Threat Data**" is data derived from, or communicated to, the Product that is related to malicious or potentially malicious code, attacks or activity. Threat Data will not be shared with third parties in a manner attributable to an individual or End User.

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) this Agreement, and (iii) 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: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) 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 SUBSCRIPTION ADDENDUM

This **ELASTIC CLOUD SUBSCRIPTION ADDENDUM** (this “**Addendum**”) sets forth additional terms and conditions related to Customer’s purchase of one or more Cloud 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 and Subscription Levels. 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, provided that all Subscriptions for the same Cloud Service within an individual Account must be at the same Subscription Level. 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 from Elastic to Customer regarding a Cloud Service will be sent to the email address registered with the Account applicable to such Cloud Service.

1.2 Customer Security Obligations. Customer is responsible for maintaining the security of the login credentials, security-keys 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.

1.3 Additional Resources (Annual Subscriptions Only). Where the functionality is available, Customer may add Resources to an existing Annual Subscription via the applicable Cloud Service user interface on a month-to-month basis or, in a given month, may use Resources in excess of the Resources allotted to the Annual Subscription. Temporary increases in Resources are priced at the then-current list price. Elastic will invoice Customer or Reseller (if applicable) for the additional Resources and Customer will pay such Fees monthly, in arrears. In addition, Customer may add Resources to an existing Annual Subscription for the remainder of the applicable Subscription Term by executing one or more additional Order Forms setting forth the details of such addition and referencing the Order Form under which the Annual Subscription was initially purchased. Upon execution of such an Order Form by the parties, the additional Resources will be deemed added to the applicable Subscription for the remainder of the applicable Subscription Term. Resources added to an existing Annual Subscription are provided at the price stated on the Order Form under which the applicable Subscription was purchased.

1.4 Consumption of Resources (Pre-Paid Subscriptions only). Pre-Paid Committed Spend shall be drawn-down (*i.e.*, spent) over the course of the applicable 12-month period as Resources are used by Customer. Fees for the Resources used during draw-down of the Pre-Committed Spend shall be as set forth on the applicable Order Form. Following full draw-down of the Pre-Paid Committed Spend in a 12-month period, Customer will be charged for Fees for use of Resources at the applicable list price, as set forth on the Order Form for Resources used during the remainder of that 12-month period. Elastic will invoice Customer or Reseller (if applicable) Fees for the applicable Fees for the additional Resources and Customer will pay such Fees monthly in arrears. If the draw-down for the applicable 12-month period (other than the last) of a multi-year Pre-Paid Subscription does not equal or exceed the Pre-Paid Committed Spend for that 12-month period, the shortfall will be carried-forward, *i.e.*, applied the draw-down, for the first two months of the next 12-month term. For the avoidance of doubt (i) any shortfall not applied during the first two months of the 12-month period will expire and (ii) all Pre-Paid Committed Spends expire at the end of the Pre-Paid Subscription.

1.5 Upgrading Subscription Levels. Customer may upgrade the Subscription Level of existing Subscriptions through execution of a new Order Form, provided that where Customer upgrades the Subscription Level of an existing Subscription, all other Subscriptions for the same Cloud Service in the same Account, if any, will automatically be upgraded to the same Subscription Level. Fees applicable to upgraded Subscription Levels will be invoiced in accordance with Section 3 of the Agreement.

1.6 Subscriptions for Additional Cloud Services. Customer may purchase a Subscription for additional Cloud Services through execution of an Order Form in accordance Section 2.2 of the Agreement. Such Subscription(s) will be governed by the terms of the Agreement and this Addendum.

1.7 Expiration of Subscriptions (all except Elasticsearch Service Private Subscriptions). In the event Customer continues to use a Cloud Service after the expiration of the Subscription Term and Customer does not execute an Order Form for a new Annual or Pre-Paid Subscription Term, such use will become month-to-month at the standard subscription level and will remain governed by this Agreement. The applicable Fees for the Resources used each month shall be as set forth on Elastic’s then-current price list. Elastic will invoice Customer or Reseller (if applicable) for the applicable Fees and Customer will pay such Fees monthly, in arrears.

1.8 Expiration of Elasticsearch Service Private Subscriptions. In the event Customer continues to use Elasticsearch Service Private after the expiration of the Subscription Term and Customer does not execute an Order Form for a new Subscription Term, the applicable Subscription will become month-to-month at the subscription level in effect as of the expiration of the Subscription Term and will remain governed by this Agreement. The applicable Fees for the Resources used each month shall be as set forth on Elastic’s then-current price list; provided that the minimum monthly Fees during the period of such continued use shall be the greater of (i) one twelfth of the total amount of Fees paid or payable for Customer’s use of the Elasticsearch Service Private Subscription for the 12-month period immediately prior to the expiration of the Subscription Term and (ii) the Fees paid or payable for the Resources drawn down in the last month of the Subscription Term. Elastic will invoice Customer or Reseller (if applicable) for the applicable Fees and Customer will pay such Fees monthly, in arrears.

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 at the Subscription Level set forth on the applicable Order Form. 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, in each case, as more fully described at 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 a Cloud Service during the Subscription Term, but shall not materially reduce the functionality thereof.

2.2 Endpoint Security Software Component License. If Customer purchases a Subscription that includes access to endpoint security features, then, subject to the terms and conditions of the Agreement and this Addendum, including complete payment of any and all applicable Subscription fees, Elastic grants to Customer a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) during the applicable Subscription Term to (i) install and use, in object code format, the downloadable object-code component required to be installed on each endpoint that is managed by the endpoint security offering (“**Software Component**”), solely for Customer’s internal business operations in connection with use of such offering; and (ii) permit Contractors (as defined below) and Customer’s Affiliates to use the Software Component as set forth in (i)

above, provided that such use by Contractors and Affiliates 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 Component that are contrary to the terms and conditions of the Agreement and this Addendum. For purposes of the Agreement and the applicable Subscription, the Software Component shall be deemed part of the applicable Cloud Service. Upon termination of an applicable Subscription for any reason, Customer must cease use of and un-install all Software Components installed on endpoints pursuant to the foregoing license grant.

2.3 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.

2.4 Third Party Contractors. At Customer's written request to Elastic's support organization (e-mail sufficient if receipt confirmed or acknowledged), 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.

2.5 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 2.4, 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 3.2 will be deemed a material breach of this Agreement. If Customer breaches this Section 3.2, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, 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 Elastic believes, in its sole discretion, that Customer has violated or attempted to violate Sections 3.1 or 3.2 of this Agreement, or that Customer's use of a Cloud Service presents a material security risk, Elastic may 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 Overuse. 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 PRIVACY POLICY AND CUSTOMER CONTENT

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; (ii) the Content does not contain any executable Malware; and (iii) Customer has, in the case of Content that includes computer code, accurately categorized and/or described the type, nature, uses and effects of the Content, whether requested to do so by

Elastic or otherwise. 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. 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.** 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. If Customer wishes to delete Content from Customer's Account, Elastic will use reasonable efforts to remove it, but Customer acknowledges that backups, caching or references to the Content may not be made immediately unavailable.

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. Notwithstanding the foregoing, Elastic may delete Content in accordance with Elastic's Digital Millennium Copyright Act policy.

4.7 **Payment Information.** Customer acknowledges and agrees that any credit card and related billing and payment information provided to Elastic may be shared by Elastic 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 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 **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 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 including, without limitation use in violation of the terms of this Addendum, 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.

5.2 **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.

5.3 **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 Subscription"** means a Cloud Service Subscription where Customer has purchased the right to use Resources on a per-month basis during the applicable 12 month period (or portion thereof as set forth in the Order Form) of the Subscription.

6.2 **"Elastic Security Standards"** mean Elastic's then-current security standards for the processing of Content as set forth at <https://www.elastic.co/pdf/elastic-cloud-services-information-security-addendum-es-global.pdf>.

6.3 **"Pre-Paid Committed Spend"** means, for the applicable 12-month period, the pre-paid Fees for Resources to be used by Customer under the Pre-Paid Cloud Service Subscription during such 12-month period, as set forth in the applicable Order Form.

6.4 **"Pre-Paid Subscription"** means a Cloud Service Subscription where Customer has pre-paid Fees for Resources to be used on a "draw-down" basis by Customer during the applicable 12-month period (or portion thereof as set forth in the Order Form) of the Subscription term.

6.5 **"Resources"** means the applicable metric by which a Cloud Service is billed as set forth on an Order Form. For Pre-Paid Subscriptions only: (i) where the price list attached to an Order Form does not include a billable metric for storage and data transfers and/or network traffic, the applicable Fees for such metric shall be as set forth on Elastic's then-current price list; and (ii) where the price list attached to an Order Form does not include the price for memory use for a particular region in which Customer has deployed the Cloud Service, the applicable Fees shall be as set forth on Elastic's then-current price list for that region.

6.6 **"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. 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.