



## ELASTIC CLOUD SERVICE SUBSCRIPTION AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: FEBRUARY 28, 2025

This Elastic Cloud Service Subscription Agreement (“**Subscription Agreement**”) is entered into between Elastic and Customer and governs Customer’s access and use of a Cloud Service, regardless of how Customer purchased such Cloud Service, whether directly from Elastic or via a Reseller or Marketplace. The “**Effective Date**” of the Subscription Agreement is the: (a) the date of the last signature on an Order Form between Customer and Elastic; (b) the date upon which Customer accepts a private offer via the applicable Marketplace; or (c) the date of the last signature on an Order Form executed by Elastic and a Reseller on behalf of Customer.

### 1. DEFINITIONS.

“**Annual Period**” means, with respect to an Annual Subscription, an applicable period of no more than 12 months within a Subscription Term, during which Customer’s Annual Allotment shall be made available to Customer in Monthly Allotments, as set forth in the applicable Order Form.

“**Annual Subscription**” means a Cloud Service Subscription where Customer has prepaid fees for Resources (“**Annual Allotment**”) that shall be made available to Customer in Monthly Allotments during the applicable Annual Period, as set forth in the applicable Order Form.

“**Affiliate**” means an organization that controls, is controlled by, or which is under common control with, a party, where “**control**” means direct or indirect ownership of at least 50% of the voting interests of the organization.

“**Agreement**” means collectively, this Subscription Agreement, any document incorporated by reference (including, if applicable the Financial Services Addendum) and any applicable Order Form.

“**Cloud Service**” means an Elastic software-as-a-service offering, that is generally made available by Elastic to its customers.

“**Consumption Period**” means, with respect to a Consumption Subscription, an applicable period of no more than 12 months within a Subscription Term, during which Customer’s Credit Allotment may be used, as set forth in the applicable Order Form.

“**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 in the applicable Order Form.

“**Content**” means any information and/or data ingested into a Cloud Service by Customer at Customer’s discretion.

“**Customer**” means the Customer entity set forth in: (a) an Order Form between Customer and Elastic; (b) the private offer submitted by Elastic via the applicable Marketplace; or (c) an Order Form executed by Elastic and a Reseller on behalf of Customer.

“**Customer Information**” means (as applicable) Content or Customer data provided by Customer to Elastic in connection with the delivery of Support Services.

“**Documentation**” means Cloud Service documentation located at [www.elastic.co/guide/index.html](http://www.elastic.co/guide/index.html).

“**Elastic**” means the Elastic entity set forth in: (a) an Order Form between Customer and Elastic; (b) the private offer submitted by Elastic via the applicable Marketplace; or (c) an Order Form executed by Elastic and a Reseller on behalf of Customer.

“**Elastic DPA**” means Elastic’s data processing addendum located at <https://www.elastic.co/pdf/v100623-0-elastic-customer-dpa.pdf>.

“**Elastic Security Standards**” means Elastic’s information security standards set forth in the Elastic Information Security Addendum located at <https://www.elastic.co/pdf/elastic-information-security-addendum-consolidated-v030121-3.pdf>.

“**Elastic Trademarks**” means all trademarks, trademark applications, registered trademarks, service marks, trade names, logos, designs, brands, taglines and other symbols or marks intended to indicate Elastic as the source of a Cloud Service.

“**Eligible Features and Functions**” means the features and functions of a Cloud Service that are eligible for access and use by Customer based on the Subscription Level purchased by Customer, as further described at [https://www.elastic.co/cloud/as-a-service/cloud\\_services/subscriptions](https://www.elastic.co/cloud/as-a-service/cloud_services/subscriptions).

“**Financial Services Addendum**” means Elastic’s Financial Services Addendum located at <https://www.elastic.co/agreements/global/fsa>, which sets out additional terms and conditions applicable solely to financial services Customers that are regulated by Applicable Law (as defined in the Financial Services Addendum).

“**Infringement Claim**” means a claim brought against Customer by an unaffiliated third party alleging that Customer’s use of a Cloud Service in accordance with the Agreement during the applicable Subscription Term infringed such unaffiliated third party’s intellectual property.

“**Marketplace**” means a cloud service provider marketplace as further described in Section 2 below.

“**Monthly Allotment**” means the Annual Allotment divided by the number of months in the applicable Annual Period.

“**Monthly Subscription**” means a Cloud Service Subscription that grants the right for Customer to use a Cloud Service on a month-to-month basis.

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

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

“**Resources**” means the components (including, memory, storage, data transfers, storage snapshots and/or such other components) of a Cloud Service for which fees or credits are metered, accrued or consumed with use.

“**Subscription**” means Customer’s right to use and/or access a Cloud Service during the applicable Subscription Term and, if applicable to the Subscription Level purchased by Customer, to receive associated Support Services, in each case, as set forth in the applicable Order Form.



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

**"Subscription Term"** means the entire duration of a Subscription, commencing on the first start date and ending on the last end date as set forth on the applicable Order Form.

**"Support Services"** means Elastic's maintenance and support services, if any, that are included in a Subscription, as more fully described in the applicable Support Services Policy.

**"Support Services Policy"** means Elastic's support services policy for a Cloud Service located at [https://www.elastic.co/legal/support\\_policy/cloud\\_services](https://www.elastic.co/legal/support_policy/cloud_services).

## 2. ORDERS / RESELLERS / MARKETPLACE.

**2.1 ORDERS.** Orders for Subscriptions may be placed by Customer through: (a) the execution of an Order Form between Elastic and Customer; or (b) via a Reseller or Marketplace as described below.

**2.2 PURCHASES VIA A RESELLER.** Customer may purchase Subscriptions via a Reseller. Reseller and Customer shall 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 exclusively between Reseller and Customer. Customer acknowledges and agrees that Elastic shall 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 and/or services furnished to Customer by any Reseller. Elastic agrees that, subject to receiving payment for the applicable Subscriptions purchased by Customer via a Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of the Agreement, for providing the applicable Subscriptions. Orders for Subscriptions purchased via a Reseller, including multi-year Subscriptions, are not subject to cancellation by Customer.

**2.3 PURCHASES VIA A CLOUD MARKETPLACE.** Customer may purchase Subscriptions via a Marketplace, provided that such Subscriptions are made available through such Marketplace by Elastic at its sole discretion. Where Customer has purchased Subscriptions via a Marketplace, Customer agrees to pay the fees specified on the applicable Subscriptions 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 Marketplace. Customer agrees that all fees shall be paid through billing of Customer's account with such Marketplace provider and that any refund to which Customer may be entitled under the Agreement may be provided in the form of a credit back to Customer's account with such Marketplace provider. Elastic agrees that, subject to receiving payment for the applicable Subscriptions purchased by Customer via a Marketplace, it shall be responsible to Customer, pursuant to the terms and conditions of the Agreement, for providing the applicable Subscriptions. Subscriptions purchased via a Marketplace, including multi-year Subscriptions, are not subject to cancellation by Customer.

## 3. AFFILIATES / CONTRACTORS.

During the applicable Subscription Term, Customer's Affiliates and/or third party contractors performing services on Customer's behalf ("**Customer Contractors**") may access and use the Subscription, and employees of such Affiliates and/or Customer Contractors may be named as designated contacts for the purposes of Support Services, subject to the following: (a) Customer's Affiliates and/or Customer Contractors may access and use the Subscription solely at the applicable Subscription Level purchased by Customer, provided that any such access and use by Customer Contractors shall be solely for the benefit of Customer and/or its Affiliates; and (b) Customer shall procure that Customer's Affiliates and Customer Contractors comply with the terms of the Agreement. Customer shall be responsible for any failure by Customer's Affiliates and/or Customer Contractors to comply with the terms of the Agreement.

## 4. REGISTRATION / CLOUD SERVICE / SOFTWARE AGENT / SUBSCRIPTION LEVEL.

**4.1 REGISTRATION.** In order to use a Cloud Service, Customer shall first register for an Organizational ID via the Cloud Service user interface (each an "**Account**"). Each Subscription requires its own unique Account. Customer shall not register multiple Accounts relating to a single Subscription. Customer is responsible for all activities that occur under its Account, including maintaining the security of the login credentials and the correct configuration of access control lists for its Account. Customer shall promptly notify Elastic of any known or suspected unauthorized use and/or access of its Accounts.

**4.2 CLOUD SERVICE.** Subject to the terms and conditions of the Agreement, including payment of all applicable fees, Customer is granted the right to access and use a Cloud Service including to access and use the Eligible Features and Functions at the Subscription Level purchased by Customer. Elastic may from time to time update the Eligible Features and Functions, provided that such updates shall not materially or adversely reduce the level of performance, functionality, or availability of a Cloud Service during a Subscription Term. The Subscription Level purchased by Customer for a Cloud Service determines the specific Support Services that Customer is entitled to receive, if any and the Eligible Features and Functions of such Cloud Service that Customer is entitled to access and use.

**4.3 SOFTWARE AGENT.** To facilitate the ingestion of Content into a Cloud Service, Customer may install on a Customer endpoint the object code version of an Elastic-produced software agent ("**Software Agent**"). The Software Agent shall be deemed part of the applicable Cloud Service. Certain Software Agent components are governed by an open source-type license ("**Component License**") that obligates Elastic to provide the component only under such Component License. All such components, Component Licenses and source code that must be provided, are currently made available with the Software Agent/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 Agent under the Agreement. Any restrictions in the Agreement conflicting with a Component License do not apply to the affected component.

**4.4 SUBSCRIPTION LEVEL SELECTION.** For an Annual Subscription, 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, Customer shall select the Subscription Level in a Cloud Service via the Cloud Service user interface. The Subscription Level selected by Customer shall be the Subscription Level Customer has purchased for purposes of the Agreement. If a Cloud Service user interface permits, Customer may change the Subscription Level of a Consumption Subscription or Monthly Subscription, by selecting a different Subscription Level.

## 5. MONTHLY SUBSCRIPTIONS.

Monthly Subscriptions, including Monthly Subscriptions purchased via Elastic's website or Elastic's product listing on a Marketplace shall be subject to the terms of the Agreement and shall be paid for monthly in arrears with the payment method used at the time of first purchase. Customer's use of a Cloud Service under a Monthly Subscription continues until all its deployments and/or Accounts are deleted. Resources used each month shall be charged at the on-demand rates set forth at <https://cloud.elastic.co/deployment-pricing-table> at the time of use. The Subscription Term for a Monthly Subscription shall commence on the date of first use or first purchase, 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 via the Cloud Service user interface. Termination of a Monthly Subscription shall not relieve Customer of any payment obligation accrued prior to termination.

## 6. ANNUAL SUBSCRIPTIONS.

For an Annual Subscription, Customer shall be provided a Monthly Allotment for use in each month of the applicable Annual Period. Unused portions of Monthly Allotments in a given month shall not carry over to any subsequent month. Following the full drawdown of the Monthly Allotment and for the rest of a given month, Customer may use additional Resources ("Additional Resources") on demand as further described at [https://www.elastic.co/agreements/reseller/customer\\_terms/](https://www.elastic.co/agreements/reseller/customer_terms/). Unless Customer renews its Annual Subscription, Customer's continued use of a Cloud Service following the expiration of the applicable Subscription Term of Customer's Annual Subscription shall be treated as a Monthly Subscription.

## 7. CONSUMPTION SUBSCRIPTIONS.

**7.1 CONSUMPTION SUBSCRIPTION.** For a Consumption Subscription, Customer shall be provided with a Credit Allotment for use in each applicable Consumption Period, as set forth in the applicable Order Form. Each Credit Allotment shall reduce over the course of the applicable Consumption Period as Customer uses Resources. Resources used during an applicable Consumption Period shall be metered at the then on-demand rates set forth at <https://cloud.elastic.co/deployment-pricing-table> at the time of use. Unused portions of Credit Allotments at the expiration of each applicable Consumption Period shall not carry over to any subsequent Consumption Period. Unless Customer renews its Consumption Subscription, Customer's continued use of a Cloud Service following the expiration of the applicable Subscription Term of Customer's Consumption Subscription shall be treated as a Monthly Subscription.

**7.2 ADDITIONAL RESOURCES.** During a Consumption Period, Customer may only access and use a Cloud Service and receive Support Services (if any) if it: (a) has a positive Credit Allotment; or (b) decides to use Additional Resources on a month-to-month basis subsequent to the full consumption of Credit Allotment, as further described in the applicable Order Form.

## 8. CONTENT.

Customer may ingest and retrieve Content to and from a Cloud Service. Customer is solely responsible for: (a) the content, accuracy and completeness of Content, the means by which Customer acquired such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content; (b) obtaining all necessary rights to use Content in connection with a Cloud Service; (c) backing up or otherwise making duplicates of Content; (d) ensuring 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; and (e) deleting or retrieving Content from a Cloud Service upon expiration or the termination of a Subscription. By submitting Content to Elastic, Customer grants Elastic a non-exclusive, royalty free, worldwide license to use such Content and perform all acts with respect to such Content solely for the purpose of enabling Elastic to provide Customer with a Cloud Service and Support Services. Once Customer's Subscription expires or is terminated and Customer discontinues use of the applicable Cloud Service, Elastic shall delete all Content from the applicable Cloud Service, using commercially reasonable efforts to do so within 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.

## 9. SUPPORT SERVICES.

**9.1 PROVISION OF SUPPORT SERVICES.** During the applicable Subscription Term, Elastic shall provide Customer with Support Services, if any, that are included in a Subscription, as more fully described in the applicable Support Services Policy. Elastic may from time to time update the applicable Support Services Policy, provided that any such updates shall not materially or adversely reduce the level of Support Services during the Subscription Term. Support Services shall only be delivered remotely, electronically, through the Internet, and when applicable, depending on the particular Subscription Level purchased, via telephone.

**9.2 RESTRICTIONS ON USE OF SUPPORT SERVICES.** Support Services are provided to Customer solely for Customer's internal use, and are subject to any applicable quantitative limitations set forth in the Agreement, the applicable Order Form and/or the Support Services Policy. Customer agrees not to use Support Services: (a) to supply any consulting, support and/or training services to any third party; (b) for one Subscription to obtain Support Services for another Subscription with a lower Subscription Level; or (c) to obtain Support Services for any use by Customer of an Elastic product/service that is offered as a service by any third party.

## 10. PAYMENT & TAXES.

This Section 10 shall not apply where Customer has purchased Subscriptions via a Reseller and/or Marketplace.

**10.1 PAYMENT.** Elastic shall invoice Customer for the fees due under each Order Form or otherwise under the Agreement, and Customer shall pay such fees within 30 days after receipt of an applicable invoice. All invoices shall be paid in the currency set forth in the applicable Order Form. Payments shall be made without the right of set-off or chargeback. Except as otherwise expressly set forth in the Agreement, any and all payments made by Customer pursuant to the Agreement or any Order Form are non-refundable, and all commitments to make any payments under the Agreement or under any Order Form are non-cancellable.



**10.2 TAXES.** All fees stated in 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 any Cloud Service and/or Support Services purchased by Customer under the Agreement (collectively, “**Taxes**”). 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 shall 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 any Cloud Service and/or Support Services, Customer shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced.

## 11. OWNERSHIP.

**11.1 OWNERSHIP.** Elastic and/or its licensors own all intellectual property rights, titles and interests in and to any Cloud Service and/or Support Services (including any derivative works of such Cloud Service and/or Support Services). Except as expressly set forth in the Agreement, no other license and/or right to use any Cloud Service and/or Support Services is granted to Customer either by implication, estoppel or otherwise. Customer agrees that it shall not make any claim in the rights or ownership of any Cloud Service and/or Support Services.

**11.2 TRADEMARKS.** Elastic and/or its licensors are the owners of all Elastic Trademarks used in connection with any Cloud Service and/or Support Services. All rights are expressly reserved by Elastic. Other trademarks, service marks, graphics and logos used in connection with any Cloud Service and/or Support Services may be trademarks of other third parties. Elastic grants to Customer no right or license to reproduce, or otherwise use any Elastic Trademarks or third-party trademarks under the Agreement.

**11.3 RESTRICTIONS.** Customer shall not (and shall not permit any other party to): (a) reverse engineer, decompile, decrypt, or disassemble a Cloud Service or apply any other process or procedure to derive the source code of a Cloud Service (except to the extent permitted by applicable law for interoperability purposes); (b) prepare derivative works from, alter, modify, download, duplicate, reproduce, copy or use a Cloud Service, in any manner except as expressly permitted in the Agreement; (c) sell, resell, license, sublicense, distribute, rent, lease or otherwise transfer or provide access to a Cloud Service to any third party; (d) circumvent the limitations on use of a Cloud Service that are imposed or preserved by Elastic; (e) alter or remove any marks (including Elastic Trademarks) and notices in a Cloud Service; (f) use a Cloud Service 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; (g) attempt to gain unauthorized access, interfere with and/or disrupt the integrity, security or performance of a Cloud Service or any associated systems or networks; or (h) access or use, or permit any third party to access or use, a Cloud Service for any benchmarking, competitive or comparative purposes and/or for purposes of designing and/or developing any competitive products and/or services.

**11.4 ACCEPTABLE USE.** Customer shall not (and shall not permit any other party to) use and/or access a Cloud Service and/or Support Services: (a) in violation of any applicable laws; (b) in a manner that poses a risk to the availability, functionality and/or security of a Cloud Service and/or Support Services; (c) to store, execute and/or distribute any form of malware (including viruses, trojan horses, worms, time bombs, spyware, and adware); (d) to store and/or distribute infringing or otherwise illegal, unlawful, obscene and/or immoral information, and/or any information which violates the privacy, human rights and/or intellectual property rights of any third party; or (e) to store and process: (i) any protected health information (as defined by the Health Insurance Portability and Accountability Act 1996); or (ii) any classified information that is given a national security classification such as “Secret,” “Top Secret,” or similar, by a government body and/or any data that is subject to export controls under the International Traffic in Arms maintained by the US Government.

**11.5 INDEMNITY.** Customer shall, at its expense defend or settle any claim brought by an unaffiliated third party against Elastic arising out of or related to Customer’s use of a Cloud Service in violation of this Section 11 (“**Third Party Claim**”) and shall indemnify Elastic against and pay: (a) any settlement of such Third Party Claim consented to by Elastic (not to be unreasonably withheld); or (b) any damages finally awarded to such third party by a court of competent jurisdiction as a result of such Third Party Claim. The obligations of Customer in this Section 11.5 are conditioned upon Elastic: (i) notifying Customer promptly in writing of any threatened or pending Third Party Claim, provided that failure to provide such notice shall only relieve Customer of its obligations under this Section 11.5 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 Third Party Claim; and (iii) tendering to Customer sole control over the defense and settlement of the Third Party Claim. Elastic’s counsel shall have the right to participate in the defense of the Third Party Claim, at Elastic’s own expense. Elastic shall 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 Third Party Claim.

## 12. CONFIDENTIAL INFORMATION.

**12.1 CONFIDENTIAL INFORMATION.** “**Confidential Information**” means all non-public information disclosed by a party (“**Discloser**”) to the other party (“**Recipient**”), whether orally or in writing, that is designated as “confidential” at the time of disclosure or that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Discloser; (b) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (c) is received from a third party without breach of any obligation owed to the Discloser; or (d) was independently developed by the Recipient without use of or reference to the Confidential Information.

**12.2 NON-USE AND NON-DISCLOSURE.** The Recipient shall keep in trust and confidence all Confidential Information of the Discloser using commercially reasonable care (but in no event less than the same degree of care that the Recipient uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under the Agreement or to discuss business opportunities, nor shall the Recipient disclose any such Confidential Information to third parties other than to Affiliates, agents, professional advisors and/or subcontractors who have a bona fide need to access such Confidential Information for purposes consistent with the Agreement and who are subject to confidentiality obligations no less stringent than those set forth in the Agreement. The Recipient may disclose the Discloser’s Confidential Information as required by law or court order provided: (a) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure, if legally permissible; and (b) discloses only as much of the Confidential Information as is required.

**12.3 EQUITABLE RELIEF.** A breach or threatened breach of this Section 12 may cause irreparable harm for which damages at law may not provide adequate relief. Accordingly, the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.



### 13. PERSONAL DATA / INFORMATION SECURITY.

**13.1 PERSONAL DATA PROCESSING.** To the extent Elastic processes any Customer Personal Data (as defined in the Elastic DPA) in the course of providing a Cloud Service and/or Support Services such processing shall be governed by the Elastic DPA.

**13.2 INFORMATION SECURITY.** Elastic shall implement reasonable and appropriate security measures to protect Customer Information against unauthorized access, modification, destruction or disclosure in accordance with the Elastic Security Standards. Elastic may update the Elastic Security Standards from time to time, provided that such updates are equivalent or enhance security and do not materially diminish the level of protection afforded to Customer Information by the Elastic Security Standards.

### 14. WARRANTIES.

**14.1 SUPPORT SERVICES WARRANTY.** Elastic warrants that it shall perform the Support Services, 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 Support Services at no additional cost to Customer.

**14.2 CLOUD SERVICE PERFORMANCE WARRANTY.** Elastic warrants that during the applicable Subscription Term, a Cloud Service, in the form provided by Elastic under the Subscription, shall 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: (a) correct any failure(s) of a Cloud Service to perform in all material respects in accordance with the Documentation; or (b) if Elastic is unable to provide such a correction within 30 days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the applicable Subscription, and Elastic shall promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. The warranty set forth in this Section 14.2 does not apply if a Cloud Service: (i) has not been used, installed, operated, repaired, or maintained in accordance with the Agreement and/or the Documentation; or (ii) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation.

**14.3** The warranties set forth in this Section 14 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.

**14.4 WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO A CLOUD SERVICE, SUPPORT SERVICES AND/OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THE AGREEMENT. ELASTIC IS NOT RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE USE OF A CLOUD SERVICE AND/OR SUPPORT SERVICES, OR FOR CONCLUSIONS DRAWN FROM SUCH USE.

**14.5 HIGH-RISK ACTIVITIES PROHIBITION.** A CLOUD SERVICE, SUPPORT SERVICES AND/OR ANY MATERIALS PROVIDED UNDER THE AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, MEDICAL OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF SUCH A CLOUD SERVICE, SUPPORT SERVICES AND/OR MATERIALS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, CUSTOMER'S USE OF A CLOUD SERVICE, SUPPORT SERVICES AND/OR ANY MATERIALS PROVIDED UNDER THE AGREEMENT IN HIGH RISK ACTIVITIES SHALL BE AT CUSTOMER'S SOLE RISK AND ELASTIC SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO SUCH USE BY CUSTOMER.

### 15. INFRINGEMENT CLAIMS.

**15.1 ELASTIC OBLIGATIONS.** Elastic shall, at its expense, defend or settle any Infringement Claim and shall indemnify Customer against and pay: (a) any settlement of such Infringement Claim consented to by Elastic; or (b) 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 a Cloud Service that is 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.

**15.2 EXCLUSIONS.** Elastic shall have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (a) the failure of Customer to use any update, within 30 days of Customer's receipt of notice from Elastic regarding the availability of such update, if use of such update would have avoided the Infringement Claim; (b) a modification of a Cloud Service that is not performed by or on behalf of Elastic; (c) the combination, operation, or use of a Cloud Service 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, operation, or use; or (d) use of a Cloud Service other than in accordance with the terms and conditions of the Agreement.

**15.3 REMEDIES.** If a Cloud Service is, 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: (a) obtain the right for Customer to continue to use a Cloud Service; (b) modify a Cloud Service to make it non-infringing, but substantially functionally equivalent; or (c) in the event that neither (a) or (b) are, in Elastic's reasonable judgment, commercially reasonable options, terminate Customer's right to use the Cloud Service, and, at Customer's written request, terminate the Agreement and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under the Agreement.

**15.4 CONDITIONS.** The obligations of Elastic in this Section 15 are conditioned upon Customer: (a) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice shall only relieve Elastic of its obligations under this Section 15 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice; (b) 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 (c) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel shall have the right to participate in the defense of the Infringement Claim, at Customer's own expense. Customer shall 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.



**15.5 EXCLUSIVE REMEDY.** THIS SECTION 15 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY INFRINGEMENT CLAIM.

## 16. LIMITATION OF LIABILITY.

**16.1 EXCLUDED DAMAGES.** IN NO EVENT SHALL EITHER PARTY, 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 THE 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.

**16.2 DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; AND (B) AMOUNTS PAYABLE BY CUSTOMER UNDER THE AGREEMENT OR THE APPLICABLE ORDER FORM; IN NO EVENT SHALL EITHER PARTY'S, OR THEIR RESPECTIVE AFFILIATES', AGGREGATE AND CUMULATIVE LIABILITY UNDER THE APPLICABLE ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THE AGREEMENT FOR THE AFFECTED CLOUD SERVICE AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

**16.3 DOUBLE DAMAGES.** CUSTOMER SHALL NOT BE ENTITLED TO RECOVER ANY SUM IN RESPECT OF ANY CLAIM OR DAMAGES UNDER THE AGREEMENT TO THE EXTENT DOING SO WOULD INVOLVE RECOVERY MORE THAN ONCE IN RESPECT OF THE SAME LOSS.

## 17. TERM AND TERMINATION, SUSPENSION.

**17.1 SUBSCRIPTION TERM.** Unless earlier terminated as set forth below, a Subscription shall continue in full force and effect during the applicable Subscription Term. Either party may terminate a Subscription, upon giving notice in writing to the breaching party if the breaching party commits a material breach of the Agreement with respect to such Subscription, and such material breach remains uncorrected for 30 days following receipt by the breaching party of such written notice. Upon the termination or expiration of a Subscription, the rights and obligations of the parties with respect to such Subscription shall cease.

**17.2 SUSPENSION.** In the event that: (a) Elastic has not been paid all applicable fees for a Subscription; or (b) Elastic reasonably believes that Customer has violated or attempted to violate any of the use restrictions or acceptable use obligations set forth in the Agreement or that Customer's use of a Cloud Service and/or Support Services presents a material security risk; Elastic may suspend access to a Cloud Service and/or Support Services until the issue has been corrected. Elastic shall use reasonable efforts to provide Customer with advance written notice prior to implementing such suspension and shall work with Customer in good faith to correct the issue.

**17.3 SURVIVAL.** Upon the termination or expiration of a Subscription, any provision of the Agreement which is intended to survive expiration or termination shall survive, including, without limitation, provisions relating to confidentiality, personal data processing, restrictions on use of intellectual property, indemnity, exclusions and limitations on liability and disclaimers of warranties, governing law, and Customer's payment obligations.

## 18. GENERAL.

**18.1 COMPLIANCE WITH LAWS/EXPORT CONTROL.** Each party shall retain responsibility for compliance with all applicable laws as applicable to its respective business, including, but not limited to, anti-corruption, and employment laws. Customer acknowledges that a Cloud Service, Support Services and other related technologies (collectively "**Controlled Technologies**") are subject to all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations (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 and the EU (collectively "**Export Laws**"). Customer shall not import, re-import, export, or re-export, otherwise transfer or disclose any Controlled Technologies to any entity or person contrary to such Export Laws. Customer acknowledges that remote access to the Controlled Technologies may in certain circumstances be considered a re-export of such Controlled Technologies. Accordingly, Customer may not be granted access to such Controlled Technologies pursuant to such applicable Export Laws.

**18.2 ASSIGNMENT.** Neither party may assign the Agreement, without the prior written consent of the other party. Either party may assign the Agreement to: (a) an Affiliate; or (b) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets; provided always that the applicable assignee is able to satisfy the obligations of the assigning party under the Agreement.

**18.3 PUBLICITY.** Customer agrees that Elastic may: (a) use Customer's name, trademarks and logos in Elastic promotional materials, such as earning statements, press releases, websites, case studies, videos and presentations, solely for the purpose of identifying Customer as a user of a Cloud Service and/or Support Services; and (b) include Customer as a reference in requests for quotations, requests for proposals and other similar documents.

**18.4 FEEDBACK.** Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about a Cloud Service and/or Support Services ("**Feedback**"). Elastic and its Affiliates shall be entitled to use such Feedback, for any purpose.

**18.5 FORCE MAJEURE.** Save for payment obligations, each party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, due to unforeseen circumstances or to causes beyond such party's reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, pandemics, epidemics, electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockades, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**18.6 FUTURE FEATURES AND FUNCTIONS.** Customer understands and agrees that any features or functions of a Cloud Service and/or Support Services 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 a Cloud Service and/or Support Services remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing a Cloud Service and/or Support Services based solely upon features and functions that are currently available as at the time of purchase by Customer, and not in expectation of any upgrade, or any future feature or function.

**18.7 GOVERNING LAW.** Subject to Attachment 1 (Country Specific Terms), the Agreement shall be exclusively governed by and construed in accordance with the laws set forth below based on the location of Customer's place of business set forth in: (a) an Order Form between Customer and Elastic; (b) the private offer submitted by Elastic via the applicable Marketplace; or (c) an Order Form executed by Elastic and a Reseller on behalf of Customer; without regard to any conflict of laws principles. Any legal proceeding related to the Agreement must be brought exclusively in the governing courts set forth below. The 1980 UN Convention on Contracts for the International Sale of Goods and The Uniform Computer Information Transactions Act (UCITA) do not apply to the Agreement.

Customer Location	Governing Laws	Governing Courts
Australia & New Zealand	New South Wales	New South Wales
Canada	Province of Ontario & the Federal laws of Canada	Province of Ontario
Japan	Japan	Tokyo District Courts
United Kingdom	England	English Courts
France	France	Paris Courts
Germany	Germany	Munich Courts
Singapore	Singapore	Singapore Courts
USA	State of California	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.
Rest of the World	Netherlands	Amsterdam, The Netherlands

**18.8 MALICIOUS FILES DISCLAIMER.** To facilitate Customer's evaluation of certain Elastic security Products, Elastic makes available certain samples of malicious files or code or similar data ("**Malicious Files**") via <https://github.com/elastic/detection-rules/tree/main/rta>. Use of Malicious Files is voluntary and at Customer's sole risk. Elastic disclaims any warranty, responsibility or liability associated with Customer's use of such Malicious Files.

**18.9 NON-WAIVER.** Any failure to enforce any provision of the Agreement shall not constitute a waiver. A waiver of any breach or default shall not constitute a waiver of any other right for subsequent or other breach or default. Any waiver to be effective must be in writing signed by the waiving party.

**18.10 NOTICES.** Notices to Elastic shall be sent via email to [legal@elastic.co](mailto:legal@elastic.co). Such notices shall be effective when sent and successfully delivered. Elastic may provide any notice to Customer under the Agreement (including communications regarding a Cloud Service and/or Support Services) electronically, including via email (to the email address associated with Customer's account), through an Elastic web based portal, or through a web site that Elastic identifies. Such notices shall be deemed delivered when sent or posted.

**18.11 PRODUCT USAGE DATA.** A Cloud Service may provide Elastic with certain statistical and other information about Customer's configuration and use of such Cloud Service ("**Product Usage Data**"). Elastic processes such Product Usage Data in accordance with the Product Privacy Statement located at <https://www.elastic.co/legal/product-privacy-statement>.

**18.12 SEVERABILITY / RIGHTS OF THIRD PARTIES / RELATIONSHIP OF THE PARTIES.** If any provision of the Agreement is found by a court of competent jurisdiction or other competent authority to be illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of the Agreement shall remain in full force and effect. No person other than a party to the Agreement shall be entitled to enforce any term of it except as expressly provided in the Agreement. The relationship of the parties shall be that of independent contractors, and nothing in the Agreement shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties.

**18.13 ENTIRE AGREEMENT.** The Agreement is the complete and exclusive agreement between the parties with respect to its subject matter and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communications between the parties, whether oral or written, regarding such subject matter. Customer acknowledges that, in entering the Agreement, it has not relied on any statement, warranty, representation or other promise of any nature not contained in the Agreement. The Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned by Elastic. In the event of any inconsistency or conflict between the terms of an Order Form, Attachment 1 (Country-Specific Provisions), any document incorporated by reference or this Subscription Agreement, such inconsistency or conflict shall be resolved in that order.

## Attachment 1

### Country Specific Term

This **Attachment 1** (Country Specific Terms) sets out certain local law changes to the Subscription Agreement to the extent applicable to a Cloud Service based on the "Governing Law" as set forth in Section 18.7 of the Subscription Agreement.

#### LAWS OF ENGLAND

(a) Section 16 of the Subscription Agreement is amended by including the following new Section 16.4:

**"16.4 NOTHING IN THE AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW."**

(b) Section 18.12 of the Subscription Agreement is replaced with the following new Section 18.12:

**"18.12 SEVERABILITY / RIGHTS OF THIRD PARTIES / RELATIONSHIP OF THE PARTIES.** If any provision of the Agreement is found by a court of competent jurisdiction or other competent authority to be illegal or unenforceable, it shall be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of the Agreement shall remain in full force and effect. No person other than a party to the Agreement shall be entitled to enforce any term of it except as expressly provided in the Agreement. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded. The relationship of the parties shall be that of independent contractors, and nothing in the Agreement shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties."

#### LAWS OF FRANCE

(a) A new Section 2.4 is added to the Subscription Agreement as follows:

**"2.4 Customer has had the opportunity to assess whether Elastic's off-the-shelf Cloud Service and/or Support Services meet its business needs including, by review, of the Documentation, Support Services Policy and other services descriptions that have been made available by Elastic. Elastic acknowledges that, in pre-contract discussions, if any, it was obliged to inform the Customer about the capabilities of its off-the-shelf Cloud Service and/or Support Services relative to the Customer's expressed needs. Subject to Customer communicating to Elastic accurate and up to date information about its needs, Elastic shall: (a) inform, advise and warn the Customer in relation to Customer's use of a Cloud Service relative to those needs; and (b) suggest Elastic solutions that may be better suited to those needs where it is reasonably appropriate to do so, (for example, volumes, IT architecture configurations and time constraints)."**

(b) Section 16 of the Subscription Agreement is replaced with the following new Section 16:

**"16.1 EXCLUDED LIABILITY.** PURSUANT TO SECTIONS 1188 AND 1231-3 OF THE FRENCH CIVIL CODE, THE PARTIES AGREE THAT, EXCEPT FOR A PARTY'S GROSS NEGLIGENCE ("**FAUTE LOURDE**") OR WILFUL MISCONDUCT ("**DOL**"), IN NO EVENT SHALL EITHER PARTY, 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 INDIRECT DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE RE-PERFORM THE AGREEMENT.

**16.2 DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) EITHER PARTY'S GROSS NEGLIGENCE ("**FAUTE LOURDE**") OR WILFUL MISCONDUCT ("**DOL**"); (B) EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; AND (C) AMOUNTS PAYABLE BY CUSTOMER UNDER THE AGREEMENT OR ANY ORDER FORM; IN NO EVENT SHALL EITHER PARTY'S, OR THEIR RESPECTIVE AFFILIATES', AGGREGATE AND CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THE AGREEMENT FOR THE AFFECTED CLOUD SERVICE AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

**16.3 DOUBLE DAMAGES.** CUSTOMER SHALL NOT BE ENTITLED TO RECOVER ANY SUM IN RESPECT OF ANY CLAIM OR DAMAGES UNDER THE AGREEMENT TO THE EXTENT DOING SO WOULD INVOLVE RECOVERY MORE THAN ONCE IN RESPECT OF THE SAME LOSS."

#### LAWS OF GERMANY

(a) Section 14.1, 14.2 and 14.4 of the Subscription Agreement is replaced with the following new Sections 14.1, 14.2 and 14.4:

**"14.1 SUPPORT SERVICES WARRANTY.** Elastic warrants that it shall perform the Support Services, in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty and to the extent not prohibited by applicable law, 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.

**14.2 CLOUD SERVICE PERFORMANCE WARRANTY.** Elastic warrants that during the applicable Subscription Term, a Cloud Service, in the form provided by Elastic under the Subscription, shall perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty and to the extent not prohibited by applicable law, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to: (a) correct any failure(s) of a Cloud Service to perform in all material respects in accordance with the Documentation; or (b) if Elastic is unable to provide such a correction within 30 days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the applicable Subscription, and Elastic shall promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. The warranty set forth in this Section 14.2 does not apply if a Cloud Service: (i) has not been used, installed, operated, repaired, or maintained in accordance with the Agreement and/or the Documentation; or (ii) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation."



14.4 **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, ELASTIC MAKES NO ADDITIONAL WARRANTIES OR GUARANTEES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO A CLOUD SERVICE, SUPPORT SERVICES AND/OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THE AGREEMENT. ELASTIC IS NOT RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE USE OF A CLOUD SERVICE AND/OR SUPPORT SERVICES, OR FOR CONCLUSIONS DRAWN FROM SUCH USE.

(b) Section 16 of the Subscription Agreement is replaced with the following new Section 16:

*"Elastic is liable for damages regardless of the legal cause (e.g. damages resulting from a breach of contract or quasi contract neglect of duty, tort) as follows:*

16.1 Elastic's liability shall not be limited for: (a) damages caused by wilful intent; (b) death, personal injury or damage to health; (c) any damages in accordance with the German Product Liability Act in the event of product liability; (d) in case of gross negligence of Elastic's legal representatives and executives; or (e) in any other cases where it cannot be limited under applicable German law.

16.2 In case of gross negligence of vicarious agents ("**Erfüllungsgehilfen**") Elastic shall be liable for damages caused by the breach of its cardinal duty ("**Kardinalpflichten**") according to the statutory provisions. Cardinal duties are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the parties may rely. In case no cardinal duty is breached, Elastic's liability is limited to the occurring damages typical and foreseeable at the time of the conclusion of the Agreement.

16.3 Elastic's total liability for slight negligence under the applicable Order Form resulting in a breach of a cardinal duty shall be limited to the occurring damages typical and foreseeable at the time of the conclusion of the Agreement and in no event shall exceed the amount paid or payable by Customer to Elastic under the Agreement for the affected Cloud Service and/or Support Services delivered and/or made available to Customer under such Order Form for the 12 month period immediately prior to the first event giving rise to liability. 16.4 Insofar as Elastic's liability is limited or excluded, this also applies to the liability of the employees or agents of Elastic. For the avoidance of doubt, this Section 16 also applies to Elastic's liability pursuant to the Elastic DPA. Save as set forth in this Section, Elastic's liability is excluded.

16.5 Without prejudice to Section 15 above and to the extent not prohibited by law, in all other cases, Elastic's liability is excluded, in particular, the no-fault liability ("**verschuldensunabhängige Haftung**") in the German Civil Code (BGB) according to § 536a para. 1 of the German Civil Code for defects that exist at the time of conclusion of the Agreement or of the applicable Order Form and § 536 German Civil Code. For the avoidance of doubt, this Section 16 does not imply a change in the burden of proof to the detriment of the Customer.

16.6 Elastic may invoke contributory negligence ("**Mitverschulden**") on Customer's part. Customer is especially obliged to perform routine backups and employ virus protection according to the current state of the art. Routine backups must occur at adequate intervals, but at least once a day, so that data can be restored with reasonable effort. In the case of a loss of data culpably caused by Elastic, Elastic's liability is limited to the expenses that are incurred if routine backups are properly made and virus protection properly employed.

16.7 Customer shall not be entitled to recover any sum in respect of any claim or damages under the Agreement to the extent doing so would involve recovery more than once in respect of the same loss."

#### LAWS OF THE NETHERLANDS

(a) Section 16 of the Subscription Agreement is replaced with the following new Section 16:

"16.1 **EXCLUDED DAMAGES.** IN NO EVENT SHALL EITHER PARTY, 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 THE 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, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELOOSHEID) OR WILFUL MISCONDUCT (OPZET) OF CUSTOMER OR ELASTIC.

16.2 **DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; AND (B) AMOUNTS PAYABLE BY CUSTOMER UNDER THE AGREEMENT OR ANY ORDER FORM; IN NO EVENT SHALL EITHER PARTY'S, OR THEIR RESPECTIVE AFFILIATES', AGGREGATE AND CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THE AGREEMENT FOR THE AFFECTED CLOUD SERVICE AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

16.3 **DOUBLE DAMAGES.** CUSTOMER SHALL NOT BE ENTITLED TO RECOVER ANY SUM IN RESPECT OF ANY CLAIM OR DAMAGES UNDER THE AGREEMENT TO THE EXTENT DOING SO WOULD INVOLVE RECOVERY MORE THAN ONCE IN RESPECT OF THE SAME LOSS."

#### LAWS OF NEW SOUTH WALES

(a) Section 14.4 of the Subscription Agreement is amended by adding the following at the beginning of Section 14.4:

"NOTHING IN THE AGREEMENT IS INTENDED TO LIMIT CUSTOMER'S NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH)."

(b) Section 14 of the Subscription Agreement is amended by including the following new Section 14.6:

"14.6 Despite anything in the Agreement, Elastic's goods come with guarantees that cannot be excluded under the Australian Consumer Law (as set out in the Competition and Consumer Act 2010 (Cth) ("ACCA")) if Customer is deemed a 'Consumer' under ACCA. Then Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Furthermore, Customer shall also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

(c) Section 16 of the Subscription Agreement is amended by including the following new Sections 16.4 and 16.5:

**“16.4 OTHER EXCLUSIONS.** NOTHING IN THE AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

**16.5 AUSTRALIAN CONSUMER LAW.** IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO ANY GOOD OR SERVICE SUPPLIED BY ELASTIC IN CONNECTION WITH THE AGREEMENT, AND ELASTIC'S LIABILITY FOR FAILING TO COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 16.1 AND 16.2 DO NOT APPLY TO THAT LIABILITY. INSTEAD, ELASTIC'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF ELASTIC), IN THE CASE OF A SUPPLY OF GOODS, ELASTIC REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY OF SERVICES, ELASTIC SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.”