



## ELASTIC

### CLOUD SERVICES SUBSCRIPTION AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 08 MARCH 2021

This **Elastic Cloud Services Subscription Agreement**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this "**Agreement**"), is entered into by and between the Elastic entity ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**") each as set forth on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**").

#### 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 2 AGREEMENT SCOPE

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

2.2 Subscription Orders. Orders for Subscriptions may be placed by Customer through the execution of Order Forms with Elastic. Each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement.

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 references this Agreement and shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Subscription, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

#### 3 PAYMENT AND TAXES

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

3.2 Taxes. 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 Products, anything provided by either party to the other in connection with the Products and/or Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

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

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

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

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

#### 6 INFRINGEMENT CLAIMS

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

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

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

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

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

## 7 LIMITATION OF LIABILITY

7.1 **Excluded Damages.** IN NO EVENT SHALL CUSTOMER OR ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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

PRODUCTS AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD 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 PRODUCTS, AND/OR SUPPORT SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 8 TERM AND TERMINATION

8.1 **Subscription Term.** The initial Subscription Term for each Subscription will commence and expire in accordance with the start date and end date set forth on the Order Form, unless earlier terminated in accordance with Section 8.2 below. Thereafter, each Subscription 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. Subscriptions.** Each party may terminate a Subscription, and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to such Subscription and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties with respect thereto will, subject to Section 8.3 below, cease, provided that termination of the Subscription under this subsection (a) will not result in termination of any other Subscription.

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.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns.

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.

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

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

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

9.7 **Feedback.** Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Products and/or Support Services 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 Products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing Products based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

9.10 **Governing Law, Jurisdiction and Venue.**

(a) **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.

(b) **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.

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

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

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

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

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

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

9.17 **Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior

proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound

by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (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 SERVICE SUBSCRIPTION ADDENDUM

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

### 1 CUSTOMER ACCOUNT

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

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

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

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

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

1.6 Expiration of 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 Consumption Subscription, such use (i) will become month-to-month at the purchased Subscription Level, (ii) may be terminated by either party at any time, and (iii) will remain governed by this Agreement. The applicable prices for the Resources used each month shall be the on-demand rate at the time of use. Elastic will invoice Customer or Reseller (if applicable) for the applicable fees and Customer will pay such fees monthly, in arrears. Customer may terminate a month-to-month Subscription by deleting the applicable deployment(s) and/or Account in the Cloud Service user interface. Termination of a Subscription under this Section will not relieve Customer of any payment obligation accrued prior to termination.

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

in the form of a credit back to Customer’s account with such cloud service provider.

### 2 PROVISION OF ELASTIC CLOUD AND SUPPORT SERVICES

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

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

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

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

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

3.1 Restrictions on Use of Elastic Cloud. Customer shall use each Cloud Service in compliance with all applicable laws, including export control and data privacy laws. Customer shall not: (i) execute or attempt to execute any computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs (“**Malware**”) in any Cloud Service or use any Cloud Service to transmit Malware; (ii) use any Cloud Service to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; (iii) access or use any Cloud Service to compete against Elastic; (iv) access or use any Cloud Service for



purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (v) except as expressly permitted herein, make access to any Cloud Service through its account available to any third party; (vi) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, any Cloud Service; (vii) interfere with or disrupt the integrity, security or performance of any Cloud Service or third-party data contained therein; (viii) attempt to gain unauthorized access to any Cloud Service or any associated systems or networks; (ix) modify, make derivative works of, disassemble, decompile or reverse engineer any Cloud Service or any component thereof; (x) use the Cloud Service to process any protected health information as defined by the Health Insurance Portability and Accountability Act of 1996; (xi) use the Cloud Service to store or process any classified information (i.e., information given a security classification by a government body and protected against unauthorized disclosure under applicable law) or data subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State; or (xii) use any Cloud Service in furtherance of the violation of the rights of others.

**3.2 Restrictions on Use of Support Services.** Support Services are provided to Customer solely for Customer's internal use (which includes use by Customer Affiliates, and, subject to Section 2.4, 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 will be deemed a material breach of this Agreement. If Customer breaches this Section, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to Customer if Customer fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

**3.3 Suspension.** If (i) Customer or Reseller (as applicable) has not timely paid all fees due under the Agreement or this Addendum, or an applicable Order Form, or (ii) Elastic believes, in its sole discretion, that Customer has violated or attempted to violate Sections 3.1 or 3.2 of this 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 Technical Controls.** If Customer's use of a Cloud Service materially degrades the performance of such Cloud Service for other customers, rate limiting controls may result in the temporary reduction or a pause in the responsiveness of a Cloud Service. Furthermore, Customer shall contact Elastic if Customer desires to assess performance by benchmarking for more than five minutes.

## **4 CUSTOMER CONTENT; DATA PROCESSING**

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

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

**4.3 Customer Responsibility for Content.** Customer is fully responsible for the content, accuracy and completeness of such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content including, without limitation, whether the Content consists of, including but not limited to, data, text, graphics, audio, video, or computer software. Customer is solely responsible for backing up or otherwise making duplicates of Content. Customer represents and warrants to Elastic that: (i) Customer owns or has the necessary licenses to provide the Content to Elastic, and the provision of the Content to, and use of the Content by, Elastic as contemplated herein will not infringe the intellectual property rights, including but not limited to copyright, patent, trademark or trade secret rights, of any third party; (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. Without limiting the foregoing, where applicable, the Elastic DPA shall govern such Processing. Customer shall make such disclosures, obtain such consents, provide such choices, implement such safeguards in compliance with, and otherwise comply with, any applicable law, rule or regulation regarding the Processing of Personal Data of any individual whose Personal Data Processed is by Customer (including, without limitation, by disclosing the Personal Data to Elastic) in connection with Customer's use of or access to a Cloud Service and its features and associated services.

**4.5 License to Elastic.** By submitting Content to Elastic, Customer hereby grants Elastic a sublicenseable, 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.

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

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

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

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

6.5 **"Elastic DPA"** means Elastic's GDPR and CCPA data processing addendum set forth at <https://www.elastic.co/pdf/elastic-dpa-integrated-v030121.0.pdf>.

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

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

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

6.9 **"Software Agent"** means the object code version of an Elastic-produced software agent that Customer may install on a Customer endpoint to facilitate the ingestion of Content into a Cloud Service. For purposes of the Agreement and the applicable Subscription, the Software Agent shall be deemed part of the applicable Cloud Service.

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