



## ELASTIC SOFTWARE SUBSCRIPTION AGREEMENT

### NOT FOR EDITING OR NEGOTIATION.

Effective Date: FEBRUARY 28, 2025

This Elastic Software Subscription Agreement (“**Subscription Agreement**”) is entered into between Elastic and Customer and governs Customer's access and use of Software, regardless of how Customer purchased such Software, whether directly from Elastic or via a Reseller or Marketplace. The “**Effective Date**” of this 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.

“**Addressable**” means, with respect to RAM, the quantity of RAM that benefits the execution of the Software.

“**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.

“**Billable Enterprise Software**” means all Software, excluding: (a) for Software deployed on Elastic Cloud for Kubernetes, any Software branded under the names Beats and Elastic Agent; and (b) for Software not deployed on Elastic Cloud for Kubernetes, any Software branded under the names Beats, Elastic Agent, Logstash, Endgame Agent and Elastic Endpoint agent.

“**Billable Nodes**” means, with respect to a Platinum Subscription, a number that is the greater of: (a) the number of Nodes running across a Project covered by the Subscription; or (b) the total GB of RAM Addressable by all Nodes across a Project covered by the Subscription, divided by 64, with any fractional remainder being rounded up to the next whole number. Nodes deployed in a Non-production Environment are not counted as Billable Nodes.

“**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 Customer data provided by Customer to Elastic in connection with the delivery of Support Services.

“**Documentation**” means Software documentation located at [www.elastic.co/guide/index.html](https://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 Software.

“**Eligible Features and Functions**” means the features and functions of Software 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/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 Software in accordance with the Agreement during the applicable Subscription Term infringed such unaffiliated third party's intellectual property.

“**License**” means a limited, non-exclusive, non-transferable, fully paid up license, solely for Customer's internal business operations to: (a) install and use, in object code format, the Software; and (b) use, and distribute internally a reasonable number of copies of the Documentation, provided that Customer must include on such copies all marks and notices.

“**License Key**” means an alphanumeric code that enables use of Software.

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

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

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

“**Non-production Environment**” means an environment such as development, staging, or quality assurance, where Software is not used for production purposes.

“**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.



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

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

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

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

**"Subscription"** means Customer's right to use and/or access Software 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 Software 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 Software located at [https://www.elastic.co/support\\_policy/english](https://www.elastic.co/support_policy/english).

## 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. LICENSE GRANT / COMPONENT LICENSE / LICENSE KEY / MALICIOUS CODE.

**4.1 LICENSE GRANT.** Subject to the terms and conditions of the Agreement, including payment of all applicable Subscription fees, Elastic grants to Customer during the applicable Subscription Term a License to the Eligible Features and Functions subject to the following: (a) for a Platinum Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Platinum Subscription Level for the number of Billable Nodes and for the specific Project set forth in the applicable Order Form; (b) for an Enterprise Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Enterprise Subscription Level, for the number of Resource Units set forth in the applicable Order Form; and (c) for Cross-Cluster Search and Cross-Cluster Replication, all connected clusters need to be on the same Subscription Level. 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 the Software during a Subscription Term.

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



**4.3 LICENSE KEY.** Following execution of an Order Form, Elastic shall deliver to Customer a License Key in order for Customer to access and use the Software in accordance with the rights granted in Section 4.1 above. Software shall be deemed to have been delivered to Customer upon provision of such License Key, and the Software is deemed to be accepted by Customer upon delivery.

**4.4 MALICIOUS CODE.** Elastic warrants that at the time the Software is made available for download, it shall be free of Malicious Code.

## 5. EXCESS USE / VERIFICATION.

**5.1 EXCESS USE.** Customer shall promptly notify Elastic in writing if it uses a Software Subscription in connection with more Billable Nodes and/or Resource Units, than the number of Billable Nodes and/or Resource Units applicable to Customer's purchased Subscription ("**Excess Units**"). Customer shall include in such notice the number of Excess Units and the date on which it first used such Excess Units. Elastic shall, or, if applicable, a Reseller shall, invoice Customer for such Excess Units, adjusted on a pro rata basis from the date of first use and for the remainder of the applicable Subscription Term.

**5.2 VERIFICATION.** Elastic may, upon 30 days' notice to Customer, verify Customer's use of the Software for compliance with any limitations on Customer's use of the Software. Customer shall provide Elastic with the necessary access to the Software either: (a) remotely; or (b) if remote performance is not possible, at Customer's facilities, during normal business hours and no more than 1 time in any 12 month period. In the event any such verification reveals that Customer has used the Software in excess of such limitations, Elastic shall, or, if applicable, a Reseller shall, invoice Customer an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. This Section shall survive for a period of 1 year from the expiration or termination of the Agreement.

## 6. SUPPORT SERVICES.

**6.1 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.

**6.2 SUPPORT SERVICES.** Support Services are subject to the following quantitative limitations: (a) in the case of a Platinum Subscription, for the covered Project(s), up to the applicable number of Billable Nodes included in the Subscription; (b) in the case of an Enterprise Subscription, up to the number of Resource Units included in the Subscription; and (c) the number of designated support contacts as set forth in the Support Services Policy.

**6.2 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.

## 7. PAYMENT & TAXES.

This Section 7 shall not apply where Customer has purchased Subscriptions via a Reseller and/or Marketplace.

**7.1 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.

**7.2 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 Software 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 Software 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.

## 8. OWNERSHIP.

**8.1 OWNERSHIP.** Elastic and/or its licensors own all intellectual property rights, titles and interests in and to Software and/or Support Services (including any derivative works of such Software and/or Support Services). Except as expressly set forth in the Agreement, no other license and/or right to use any Software 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 Software and/or Support Services.

**8.2 TRADEMARKS.** Elastic and/or its licensors are the owners of all Elastic Trademarks used in connection with any Software and/or Support Services. All rights are expressly reserved by Elastic. Other trademarks, service marks, graphics and logos used in connection with any Software 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.

**8.3 RESTRICTIONS.** Customer shall not (and shall not permit any other party to): (a) reverse engineer, decompile, decrypt, or disassemble a Software or apply any other process or procedure to derive the source code of Software (except to the extent permitted by applicable law for interoperability purposes); (b) prepare derivative works from, alter, modify, download, duplicate, reproduce, copy or use Software, 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 Software to any third party; (d) circumvent the limitations on use of Software that are imposed or preserved by Elastic; (e) alter or remove any marks (including Elastic Trademarks) and notices in Software; (f) use Software for providing any time-sharing services, software-as-a-service or "SaaS" offering, service bureau services or as part of an application services provider or other service offering; (g) attempt to gain unauthorized access, interfere with and/or disrupt the



integrity, security or performance of Software or any associated systems or networks; or (h) access or use, or permit any third party to access or use, Software for any benchmarking, competitive or comparative purposes and/or for purposes of designing and/or developing any competitive products and/or services.

**8.4 ACCEPTABLE USE.** Customer shall not (and shall not permit any other party to) use and/or access the Software: (a) in violation of any applicable laws; (b) in a manner that poses a risk to the availability, functionality and/or security of the Software; (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.

## 9. CONFIDENTIAL INFORMATION.

**9.1 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.

**9.2 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.

**9.3 EQUITABLE RELIEF.** A breach or threatened breach of this Section 9 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.

## 10. PERSONAL DATA / INFORMATION SECURITY.

**10.1 PERSONAL DATA PROCESSING.** To the extent Elastic processes any Customer Personal Data (as defined in the Elastic DPA) in the course of providing Support Services such processing shall be governed by the Elastic DPA.

**10.2 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.

## 11. WARRANTIES.

**11.1 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.

**11.2 SOFTWARE WARRANTY.** Elastic warrants that during the applicable Subscription Term, the Software, 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 Software 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 11.2 does not apply if Software: (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.

**11.3** The warranties set forth in this Section 11 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.

**11.4 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 SOFTWARE, 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 SOFTWARE AND/OR SUPPORT SERVICES, OR FOR CONCLUSIONS DRAWN FROM SUCH USE.

**11.5 HIGH-RISK ACTIVITIES PROHIBITION.** SOFTWARE, 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 SOFTWARE, 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 SOFTWARE, 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.

## 12. INFRINGEMENT CLAIMS.

**12.1 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 the Software 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.

**12.2 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 Software that is not performed by or on behalf of Elastic; (c) the combination, operation, or use of Software 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 Software other than in accordance with the terms and conditions of the Agreement.

**12.3 REMEDIES.** If the Software 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 the Software; (b) modify the Software 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 Software, 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.

**12.4 CONDITIONS.** The obligations of Elastic in this Section 12 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 12 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.

**12.5 EXCLUSIVE REMEDY.** THIS SECTION 12 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY INFRINGEMENT CLAIM.

## 13. LIMITATION OF LIABILITY.

**13.1 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.

**13.2 DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) ELASTIC'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; (B) CUSTOMER'S VIOLATION OF THE USE RESTRICTIONS OR ACCEPTABLE USE OBLIGATIONS SET FORTH IN THE AGREEMENT; AND (C) 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 SOFTWARE 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.

**13.3 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.

## 14. TERM AND TERMINATION, SUSPENSION.

**14.1 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.

**14.2 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 Software and/or Support Services presents a material security risk; Elastic may suspend access to the Software 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.

**14.3 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.

## 15. GENERAL.

**15.1 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 the Software and 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.

**15.2 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.

**15.3 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 Software and/or Support Services; and (b) include Customer as a reference in requests for quotations, requests for proposals and other similar documents.

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

**15.5 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.

**15.6 FUTURE FEATURES AND FUNCTIONS.** Customer understands and agrees that any features or functions of Software 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 Software and/or Support Services remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing Software 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.

**15.7 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

**15.8 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.

**15.9 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.



**15.10 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 the Software 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.

**15.11 PRODUCT USAGE DATA.** Software may provide Elastic with certain statistical and other information about Customer's configuration and use of such Software ("**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>. For clarity, Customer may disable Product Metadata in the Software at any time.

**15.12 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.

**15.13 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 Software based on the "Governing Law" as set forth in Section 15.7 of the Subscription Agreement.

**LAWS OF ENGLAND**

(a) Section 13 of the Subscription Agreement is amended by including the following new Section 13.4:

**"13.4 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 15.12 of the Subscription Agreement is replaced with the following new Section 15.12:

**"15.12 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 Software 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 Software 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 Software 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 13 of the Subscription Agreement is replaced with the following new Section 13:

**"13.1 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 THIS AGREEMENT.

**13.2 DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) EITHER PARTY'S GROSS NEGLIGENCE ("**FAUTE LOURDE**") OR WILFUL MISCONDUCT ("**DOL**"); (B) ELASTIC'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; (C) CUSTOMER'S VIOLATION OF THE USE RESTRICTIONS OR ACCEPTABLE USE OBLIGATIONS SET FORTH IN THE AGREEMENT; AND (D) 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 SOFTWARE 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.

**13.3 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 11.1, 11.2 and 11.4 of the Subscription Agreement is replaced with the following new Sections 11.1, 11.2 and 11.4:

**"11.1 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.

**11.2 SOFTWARE WARRANTY.** Elastic warrants that during the applicable Subscription Term, the Software, 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 the Software 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 11.2 does not apply if the Software: (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."

**11.4 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 SOFTWARE, 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 SOFTWARE AND/OR SUPPORT SERVICES, OR FOR CONCLUSIONS DRAWN FROM SUCH USE.

(b) Section 13 of the Subscription Agreement is replaced with the following new Section 13:

*"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:*

*13.1 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.*

*13.2 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.*

*13.3 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 Software 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. Save as set forth in this Section, Elastic's liability is excluded.*

*13.4 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 13 also applies to Elastic's liability pursuant to the Elastic DPA.*

*13.5 Without prejudice to Section 12 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 13 does not imply a change in the burden of proof to the detriment of the Customer.*

*13.6 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.*

*13.7 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 13 of the Subscription Agreement is replaced with the following new Section 13:

**13.1 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.

**13.2 DAMAGES CAP.** EXCEPT WITH RESPECT TO: (A) ELASTIC'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; (B) CUSTOMER'S VIOLATION OF THE USE RESTRICTIONS OR ACCEPTABLE USE OBLIGATIONS SET FORTH IN 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 SOFTWARE 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.

**13.3 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 11.4 of the Subscription Agreement is amended by adding the following at the beginning of Section 11.4:

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

(b) Section 11 of the Subscription Agreement is amended by including the following new Section 11.6:

**"11.6 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 13 of the Subscription Agreement is amended by including the following new Sections 13.4 and 13.5:

**“13.4 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.

**13.5 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 13.1 AND 13.2 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.”