



## ELASTIC

### SOFTWARE SUBSCRIPTION AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 1 DECEMBER 2021

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

#### 1 DEFINITIONS

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

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

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

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

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

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

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

1.7 "**Product**" means Software.

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

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

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

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

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

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

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

#### 2 AGREEMENT SCOPE

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

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

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

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

4.4 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 at no additional cost to Customer.

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

5.3 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE OR IN AN APPLICABLE ADDENDUM, THE PRODUCTS AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS AND SUPPORT SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. 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, AUTONOMOUS VEHICLES, 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.** Unless earlier terminated in accordance with Section 8.3 below, each Subscription will commence and expire in accordance with the first start date and last end date set forth on the applicable Order Form (the entire duration of such Order Form and the term of any renewal thereof, each, a separate "**Subscription Term**"). Each Subscription shall automatically renew for a new Subscription Term of one (1) year (or for such longer period as may be set forth on a renewal Order Form executed by the parties) 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. 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 ("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. In addition, Customer may disable Product Metadata in the Software at any time. Elastic uses Product Metadata for security, support, product and operations management, and research and development. 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. Customer will not (i) access or use the Elastic-hosted infrastructure ("Elastic-Hosted Infrastructure") that stores and processes the Product Metadata for the purposes of monitoring its availability or performance or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or (ii) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

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

deemed to result in either party having an employer-employee relationship with the personnel of the other party.

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

9.17 **Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase

orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

## ELASTIC SOFTWARE SUBSCRIPTION ADDENDUM

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

### 1 SOFTWARE LICENSES AND RESTRICTIONS

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

(i) in the case of a Gold or Platinum Software Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Subscription Level that Customer has purchased, for the number of Billable Nodes and for the specific Project for which Customer has purchased such Subscription. The Subscription Level, the number of Billable Nodes and specific Project for which Customer has purchased such Subscription, are set forth on the applicable Order Form.

(ii) in the case of an Enterprise Software Subscription, a License to the Eligible Features and Functions of the Software that are applicable to an Enterprise Subscription, for the number of Resource Units for which Customer has purchased such Enterprise Software Subscription. The number of Resource Units for which Customer has purchased an Enterprise Subscription is set forth on the applicable Order Form.

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

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

1.4 Separately Licensed Components. Certain libraries, components, utilities and other software (collectively, "Components") provided with, or as part of, the Software are licensed under their own separate terms, not under this Agreement. The Components and their applicable terms (which do not restrict the rights granted under this Agreement) are currently identified at <https://www.elastic.co/third-party-dependencies>, or otherwise provided with the Software or the Documentation.

1.5 Reporting use of Excess Billable Nodes and/or Excess Resource Units. Customer agrees to promptly notify Elastic in writing if it uses a Gold or Platinum Software Subscription in connection with more Billable Nodes than the number of Billable Nodes for which Customer has purchased such Subscription ("**Excess Billable Nodes**") and/or if it uses an Enterprise Software Subscription in connection with more

Resource Units than the number of Resource Units for which Customer has purchased such Subscription ("**Excess Resource Units**"). Customer shall include in such notice the number of Excess Billable Nodes and/or Excess Resource Units and the date on which it first used any such Excess Billable Nodes and/or Excess Resource Units. Elastic will invoice Customer, or, if applicable, a Reseller, for such Excess Billable Nodes and/or Excess Resource Units, adjusted on a pro rata basis from the date of first use and for the remainder of the applicable Subscription Term.

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

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

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

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

### 2 SUPPORT SERVICES

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

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

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

Support Services will be delivered to Customer remotely, electronically, through the Internet, and when applicable, depending on the



Subscription Level purchased, via telephone. For the avoidance of doubt, Support Services are not delivered in person at Customer's facilities.

**2.2 Third Party Contractors.** If designated by Customer as support contact(s), Elastic will provide the Support Services to one or more Contractors, solely in connection with such Contractors' provision of services to Customer, and provided that (i) such Contractors do not offer Software as part of any software-as-a-service, (ii) Customer shall remain responsible to Elastic for the compliance of such Contractors with the terms and conditions of the Agreement and this Addendum, and (iii) such Contractors are contractually bound to obligations that reasonably protect Elastic's intellectual property and Confidential Information. Upon Elastic's written request, Customer shall confirm to Elastic that a Contractor is Customer's designated support contact.

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

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

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

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

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

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

**3.3 "Billable Nodes"** means, with respect to a Gold or Platinum Software Subscription, a number that is the greater of (i) the number of Nodes running across all Projects covered by the Subscription or (ii) the total GB of RAM Addressable by all Nodes across all Projects covered by the Subscription divided by 64, with any fractional remainder being

rounded up to the next whole number. Nodes deployed in a Non-production Environment are not counted as Billable Nodes.

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

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

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

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

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

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

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

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

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