



## ELASTIC SERVICES AGREEMENT

### NOT FOR EDITING OR NEGOTIATION.

Effective Date: 1 NOVEMBER 2021

This **Elastic Services 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 Services 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 "**Consulting Services**" means consulting services provided to Customer by or on behalf of Elastic.

1.4 "**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 Services infringed such party's patent, copyright or trademark, or made unlawful use of such party's trade secret.

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

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

1.7 "**Services**" means Consulting Services and/or Training Services.

1.8 "**Training Services**" means Elastic's training services regarding the use of one or more products provided to Customer by or on behalf of Elastic.

### 2 AGREEMENT SCOPE

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

2.2 Services Orders. Orders for Services 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 Services Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Services that are governed by this Agreement. Orders for Services purchased through a Reseller are not subject to cancellation by Customer. Where Customer purchases Services through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of Services 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 Services, 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 Services 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 Services 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 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 Services, anything provided by either party to the other in connection with the 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.

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 Services Performance Warranty.** Elastic warrants that it will perform the Services, as applicable, 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 Services at no additional cost to Customer.

5.2 **Reserved.**

5.3 **Warranty Disclaimer.** EXCEPT AS SET FORTH IN SECTIONS 5.1 ABOVE OR IN AN APPLICABLE ADDENDUM, THE 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 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 SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT THE 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 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 Services 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 Services that would have avoided the Infringement Claim; (iii) a modification of the Services that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Services 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 Services 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 the Services are, or in Elastic's reasonable opinion are likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Services; (ii) modify the Services 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 Services, 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 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 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 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 Term.** Unless earlier terminated in accordance with this Section 8, this Agreement will remain in effect until both parties' obligations are fully discharged.

**8.2 Termination. Services.** Each party may terminate a Services, 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 Services 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 Services under this subsection (a) will not result in termination of any other Services.

**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 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 Services, on its website, through a press release issued by Elastic and in other promotional materials.

**9.6 Export Control.** Customer acknowledges that the 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 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 **Reserved.**

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 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), and (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement. 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 Services, 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 SERVICES ADDENDUM

This **ELASTIC SERVICES ADDENDUM** (this "**Addendum**") sets forth additional terms and conditions related to Customer's purchase of Consulting Services and/or Training Services (including Private Training Services, Online Training Subscriptions and/or Public Training, each of which is defined below). Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.

### 1 CONSULTING AND TRAINING SERVICES

#### 1.1 Service Orders.

(a) Customer may order Services by entering into an Order Form in accordance with the Agreement, each of which will become part of and be subject to this Agreement. Each Order Form will set forth the Services being purchased and the applicable Fees.

(b) Order Forms are not subject to cancellation. Customer agrees that it must consume the Services within the Services Period. Upon the expiration of the Services Period, Elastic will not be obligated to provide such Services, or provide a refund of any Fees paid under such Order Form.

(c) Elastic shall be responsible for any costs and expenses (including travel, equipment, meals and incidentals, or other related out of pocket expenses) incurred by Elastic and incidental to the performance of its obligations under this Addendum unless said Fees are set forth in an applicable Order Form or otherwise agreed to in writing by the parties.

(d) Services are non-transferable (except, with respect to Entitlements, as provided under Section 2.4 of this Addendum) and only for Customer's internal use, and Customer may not use the Services to supply any consulting, support or training services to any third party.

(e) Commercial Items. All Services are Commercial Items as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101.

#### 1.2 Scheduling and Rescheduling.

(a) Scheduling. Consulting Services, Private Training, and Public Training may be scheduled at the time of purchase, or at a later date, through contacting the Elastic Services group, provided that (i) Private Training Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than two (2) consecutive Days within the same work week, (ii) Consulting Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than four (4) consecutive Consulting Days within the same work week (i.e., Monday to Friday, excluding holidays), and (iii) Private Training or Consulting Services to be provided remotely must be scheduled for a period equal to or greater than one (1) Day.

(b) Rescheduling. Rescheduling of Consulting Services, Private Training, and Public Training must be done in writing. Services may not be rescheduled less than fourteen (14) days prior to the scheduled commencement of Services ("**Rescheduling Deadline**"). If Customer reschedules Services after the Rescheduling Deadline, Elastic shall be entitled to treat the Services as having been delivered and Customer will not be entitled to credit for such Services. Elastic may cancel or reschedule Public Training at its discretion. In the event of such cancellation or rescheduling, Customer will receive a credit that may be applied to future Public Training Services.

(c) Additional Resources. If Customer and Elastic have agreed pursuant to an applicable Order Form that Elastic shall procure facilities, equipment, or other expenses in connection with Services delivery, Customer shall reimburse Elastic for any lost deposits or other expenses incurred by Elastic as a result of any rescheduling or cancellation of Services.

(d) Certification Exam Attempts. If Customer's purchase includes Certification Exam Attempts, Certification Exam Attempts must be completed by the end of the Services Period.

(e) Ask-the-Instructor Sessions. From time to time, Elastic may offer Ask-the-Instructor Sessions for eligible Participants. Customer understands that any information provided through such Ask-the-

Instructor Sessions is purely advisory in nature and is not intended as a type of support service or substitute for support services.

(f) Online Course Access. Participants generally will have at least fifteen (15) days from the date they first access an on-demand Online Course to complete it, though modules or hands-on labs within individual on-demand Online Courses may be subject to additional time restrictions on availability and access, as set forth in the user guide that is e-mailed to each Participant. For Online Training Subscriptions, Participant may only access a given Online Course once during the Services Period, unless renewed.

(g) Personnel. Elastic reserves the right, at its discretion, to assign personnel, and to use and assign personnel from Elastic Affiliates, to perform Services. Notwithstanding any provision to the contrary in the Agreement, Elastic reserves the right to use subcontractors to perform Services on Elastic's behalf.

1.3 Customer Policies. When Consultants are performing Services at a Customer location, Elastic shall procure that the Consultants conduct themselves in accordance with the standard health, safety and security policies of Customer applicable to its staff and/or visitors generally, and which are provided to Elastic in writing in advance. Customer agrees to provide written notice to Elastic of any applicable non-standard policies (for example, the requirement of security clearances, background checks or execution of any additional agreements) in advance of entering into an Order Form. For the avoidance of doubt, the parties agree that if Customer or any Customer Affiliate requires any Consultant entering Customer's premises to sign any non-disclosure agreement, agreement addressing proprietary rights, or other, similar document as a condition of being permitted to enter Customer's premises for the purpose of performing Services (any such document or agreement, an "**Individual NDA**"), that such Individual NDA will be deemed void, ab initio, and that the provisions of this Agreement exclusively govern Consultant's activities while on Customer's premises, and that Customer will look solely to Elastic to satisfy its obligations hereunder, and not to any Consultant.

1.4 Elastic Participant Cloud Account. To obtain access to Materials and participate in Training Services, each Participant shall be required to register for a Participant Account. Each participant shall be responsible for complying with the terms of use applicable to their respective Participant Account and for maintaining the security of the log-in credential for their Participant Account. Customer and/or the Participant shall immediately notify Elastic of any unauthorized use of a Participant Account, or any other breaches of security of which Customer or Participant becomes aware.

## 2 PARTICIPANT AND CUSTOMER OBLIGATIONS

2.1 General. Customer shall ensure that all Participants and other persons booked to receive Services: (i) are appropriately qualified to participate; (ii) for scheduled Services, arrive on time and in any event not later than twenty minutes after scheduled start time; (iii) do not conduct themselves in an anti-social manner that could reasonably be considered contrary to Customer's applicable employment rules and policies; and (iv) do not share access to the Services or the Materials (defined in Section 4.2 below) with any third party for any reason. Consultants shall have the right in their reasonable discretion to exclude from a training session any person in breach of this Section 2.1.

#### 2.2 Consulting Services.

(a) Access, Information, Materials and Cooperation. For Consulting Services, Customer agrees to provide the Consultant with such cooperation, materials, information, access and support reasonably required to allow Elastic to successfully provide the Services, and as may be set forth in the Services Description. Customer understands and agrees that Elastic's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information,

access and support. To the extent that Customer makes available secure access to Customer's systems, Customer shall ensure such access complies with any data privacy laws applicable to Customer and Customer's security policies.

(b) Workplace Standards and Hours. Customer agrees to ensure the Consultants performing Consulting Services at a Customer location are provided reasonable working conditions and not required to work unreasonable hours. Without limiting the generality of the foregoing, Customer shall provide a safe and adequate work space and environment, with reasonable lighting and access to appropriate resources and facilities, and Customer acknowledges and agrees that Elastic will not: permit (i) a Consultant to work more than five (5) consecutive days without a day off; (ii) a Consultant to work more than five (5) consecutive days without the opportunity to travel to their location of residence; (iii) a Consultant to work more than ten (10) hours in any one day; or (iv) a Consultant to work between the hours of 12:00 am and 6:00 am, local time. In addition, Customer acknowledges and agrees that Elastic requires that Consultants are granted at least one (1) hour for a meal for every five (5) hours worked, and one (1) fifteen (15) minute break every four (4) hours worked.

(c) Out of Scope Services and Items. Elastic shall not be responsible for any services or items that are not expressly included in the Services Description, which shall be the responsibility of Customer.

2.3 Private Training Services. Customer will supply facilities and equipment (including one fully operational workstation per student with access to the public Internet, refreshments, and stationary) for on-site Private Training, unless otherwise stated on the Services Order Form. Customer shall not change the venue for a course to another venue more than five miles away without giving Elastic fourteen (14) days prior written notice, nor without Elastic's prior written consent (not to be unreasonably withheld or delayed), failing either of which Elastic shall be entitled to treat the Private Training Services as having been cancelled by Customer.

2.4 Online Training Subscriptions. If the Participant designated in an Online Training Subscription is an employee of Customer and his or her employment terminates, or the Participant otherwise undergoes a change of roles and responsibilities, Customer may, with written consent of Elastic, designate another individual as Participant for the remainder of the term of the Online Training Subscription. Customer shall be responsible for its designated Participant's compliance with the Agreement and this Addendum and for any acts or omissions of Participant in violation of the Agreement and/or this Addendum.

2.5 Training Services Laboratory Set Up. In connection with accessing Training Service, Customer or Participants may be required to set up a laboratory environment. Elastic will provide Customer or Participants with links and instructions for obtaining the required components to install and set up the laboratory environment, but it is Customer's and/or Participant's (as applicable) responsibility to properly install and configure such components.

### 3 MONITOR RIGHTS

3.1 Elastic shall have the right to verify Participant's right to access or use Training Services and monitor Participant's progress and access to and use of the Training Services for compliance with any applicable limitations on Customer's and/or Participant's use thereof. In the event any such monitoring reveals that Customer or Participant has used the Training Services in excess of the limitations set forth in this Agreement, Customer shall 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. Elastic may also request no more than once per calendar year that Customer perform an appropriate self-audit to validate and then certify in writing that its Participants have not shared their Participant Account credential with others. Without prejudice to Elastic's other rights, Elastic may in its sole discretion disable any Participant Account credentials revealed in such self-audit to have been shared.

### 4 OWNERSHIP OF WORK PRODUCT AND OTHER MATERIALS

4.1 Work Product. In the course of performing Services, Elastic may create software or other works of authorship (collectively "**Work Product**"). Subject to Customer's ownership interest in, and Elastic's obligations with respect to, Customer's Confidential Information (which will not under any circumstances be deemed to constitute Work Product), Elastic shall own all right title and interest in and to all Work Product, including all intellectual property rights therein and thereto. If any Work Product is delivered to Customer pursuant to or in connection with the performance of Consulting Services ("**Work Product Deliverable**"), Elastic hereby grants to Customer a royalty-free, perpetual, worldwide license, without the right to grant or authorize sublicenses, to use such Work Product Deliverable solely for Customer's own internal business purposes, provided that where such Work Product Deliverable is a derivative work of Elastic branded Software ("**Software**"), Customer is hereby granted a license to such Work Product Deliverable on the terms, and for the same period of time as, Customer's license to the Software from which such Work Product Deliverable was derived ("**Original Software**"). Customer may allow its third party service providers to exercise the foregoing rights on Customer's behalf. Customer may not distribute or otherwise transfer such Work Product Deliverable to any third party, unless Customer is permitted to do so under the license applicable to the Original Software. Nothing in this Agreement shall be deemed to prohibit Elastic from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing Services.

4.2 Other Materials. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any other materials, including, without limitation, training course materials such as online lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programming assignments, code samples, practice exams, and other educational materials, provided by Elastic to Customer in connection with the provision to Customer of Services (collectively, "**Materials**"), other than the right to access, download, internally use and display the Material as necessary to utilize the Services that Customer has purchased. Customer shall be entitled to keep and use all Materials provided by Elastic to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Elastic. In particular and without limitation, Materials may not be copied electronically or otherwise (except for purposes of internal distribution within Customer's organization and for archival purposes), modified including translated, re-distributed, disclosed to third parties (other than Customer Affiliates and Contractors providing services to Customer that do not compete with the Services), lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Elastic trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Elastic trademarks without Elastic's express written authorization.

### 5 INDEMNITY

5.1 Each party ("**Indemnitor**") shall indemnify, defend and hold the other party and its directors, officers, employees, agents and independent contractors ("**Indemnitee**") harmless from and against, any and all suits, actions and proceedings, claims, liabilities, losses, damages, expenses (including attorneys' fees) and costs (collectively, "**Claims**"), made against an Indemnitee by a third party for personal injury or damage to tangible property, to the extent arising solely from any gross negligence or reckless act, or any intentional misconduct of the Indemnitor, or its directors, officers, employees, agents or independent contractors in the performance of this Services Addendum. The indemnification obligations of the parties in this Section are contingent upon: (i) the Indemnitee promptly notifying the Indemnitor in writing of any claim which may give rise to a Claim for indemnification hereunder; (ii) the Indemnitor being allowed to control the defense and settlement of such Claim; and (iii) the Indemnitee cooperating with all reasonable requests of the Indemnitor (at Indemnitor's expense) in defending or settling a Claim. The Indemnitee shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing.



## 6 ADDITIONAL DEFINITIONS

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

6.1 **"Ask-the-Instructor Session"** means a virtual session offered by Elastic to eligible Participants for the purpose of facilitating live discussions on relevant topics and answering Participants' questions.

6.2 **"Certification Exam Attempt"** means participant's right, subject to the certification program terms at <https://www.elastic.co/legal/certification-program-agreement>, to attempt an Elastic certification exam.

6.3 **"Consultant"** means a member of Elastic's Consulting Services or Training Services staff, as applicable.

6.4 **"Consulting Services Package"** means a specific package of Consulting Services that may be purchased by Customer, as described in the Services Description.

6.5 **"Day"** means eight (8) billable hours of consulting, training and/or report preparation during a calendar day occurring within a work week, except in jurisdictions where a work day is legally defined as fewer than (8) hours, in which case a Day is equal to the legally defined work day.

6.6 **"Entitlements"** means the resources associated with the Training Subscription Level purchased by Customer as set forth at <https://www.elastic.co/training/subscriptions>.

6.7 **"Fees"** means the fees to be paid by Customer to Elastic for Service Packages and/or Training Services.

6.8 **"Online Course"** means an on-demand online training course provided by Elastic to Participant via the Participant Account, including

any hands-on lab and associated reference Materials that may be offered as part of such course. Online Courses may be included as part of Consulting Services Packages, Online Training Subscriptions, Private Training, or Public Training.

6.9 **"Online Training Subscription"** means the right for a Participant to access or use, for the Services Period, the Entitlements with respect to the applicable Training Subscription Level set forth in the applicable Order Form.

6.10 **"Participant"** means a single, named individual designated by Customer to participate in Services.

6.11 **"Participant Account"** means an individual user account at <https://cloud.elastic.co/registration>.

6.12 **"Private Training"** means Elastic's private training services regarding the use of one or more Products, provided to Customer privately on-site or remotely by or on behalf of Elastic.

6.13 **"Public Training"** means Elastic's public training services regarding the use of one or more Elastic Products available for general enrollment provided to Customer live, in-person at public training facilities or remotely live or on-demand.

6.14 **"Services Description"** means the document located at [https://www.elastic.co/services\\_policy](https://www.elastic.co/services_policy) that describes the specific details of the scope of each Consulting Services Package available for purchase by Customer from Elastic.

6.15 **"Training Subscription Level"** means the level of an Online Training Subscription purchased by Customer, as indicated on an applicable Order Form.

6.16 **"Services Period"** means the period commencing and expiring on the respective start and end dates set forth on the Order Form for the applicable Service.