ELASTIC MSP LICENSE AND SUPPORT AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 1 NOVEMBER 2021

This **ELASTIC MSP LICENSE AND SUPPORT AGREEMENT**, including all attachments, addenda, schedules and exhibits and documents referenced at URLs ("**Agreement**") is entered into by and between the Elastic entity ("**Elastic**") and the entity identified as "MSP" (the "**MSP**") each as set forth on the signature block of the Elastic order form executed by Elastic and MSP (the "**Order Form**") as of the date specified in such Order Form (the "**Effective Date**").

1   DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings, and other defined terms shall have the meanings set forth where such terms are first used:

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

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   "**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).

1.4   "**Billable Nodes**" means, with respect to a Subscription, a number that is the greater of (i) the number of Nodes covered by such Subscription or (ii) the total GB of RAM Addressable by all Nodes covered by such Subscription divided by 64, with any fractional remainder being rounded up to the next whole number.

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

1.1   "**Elastic-Hosted Infrastructure**" means, where the Eligible Features and Functions include endpoint security, the Elastic-hosted infrastructure or related data, systems, or networks that interface with the endpoint security components of the Software.

1.6   "**Elastic Trademarks**" means Elastic's trademarks, service marks, trade names, and service names.

1.7   "**Eligible Features and Functions**" means those features and functions of the Software that are eligible for use with respect to the Subscription Level purchased by MSP. A list of the Eligible Features and Functions that correspond to each version of the Software and Subscription Levels 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 the Software during the Subscription Term, but shall not materially reduce the functionality thereof.

1.8   "**Fees**" means the Annual MSP Program Fee and fees for Billable Nodes and/or Resource Units, set forth on the applicable Order Form, to be paid by MSP to Elastic.

1.9   "**Infringement Claim**" means a claim brought against MSP by an unaffiliated third party alleging that MSP's use of the Software in accordance with this Agreement and during the applicable Subscription Term infringes such party's patent, copyright, or trademark, or made unlawful use of such party's trade secret.

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

1.11   "**MSP Customer Agreement**" means a legally enforceable agreement between MSP and an MSP Customer that contains terms and conditions that are at least as protective of Elastic as the terms set forth in Exhibit A of this Agreement.

1.12   "**Malicious Code**" means any code that is designed to harm,

or otherwise disrupt in any unauthorized manner, the operation of MSP'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 MSP.

1.13   "**Managed Services Offering**" means a product offering by MSP as expressly set forth on the Order Form that includes the features and functions of the Software, as well as additional software products of MSP that add substantial additional value to the Software, the combined features and functions of which are made available to MSP Customers as a service, which service is managed by MSP on servers owned or controlled by MSP or in MSP's public cloud account or, with Elastic's written consent (e-mail sufficient if receipt confirmed or acknowledged), on servers owned or controlled by MSP Customer, provided that except for the limited right to have the Software installed on such servers, the MSP Customer shall have no license or sublicense to the Software. For the avoidance of doubt, except as set forth in the preceding sentence, such MSP Customers do not receive a license to any Software in connection with their purchase of the right to use the Managed Services Offering, and do not own or control the servers on which the software components of the Managed Services Offering are run.   For the avoidance of doubt, a product offering shall only be deemed a Managed Services Offering if expressly set forth on the Order Form.

1.14   "**MSP Customer**" means an unaffiliated third party client of MSP.

1.15   "**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 Elasticsearch documentation.

1.16   "**Non-Production Purposes**" means use of the Software for any non-production, purposes, including development, demonstration, trial, marketing, testing, and training purposes.

1.17   "**Order Form**" means an ordering document pursuant to which MSP, or a Reseller acting on MSP's behalf, purchases Subscriptions under this Agreement.

1.18   "**Qualifying PO**" means a purchase order issued by MSP for the purpose of purchasing a Subscription, which (i) references the number of an applicable Order Form provided to MSP by Elastic and (ii) clearly states the purchase order is subject to the terms and conditions of this Agreement.

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

1.20   "**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 MSP in connection with the Enterprise Subscription, divided by 64, with any fractional remainder being rounded up to the next whole number.

1.21   "**Software**" means the Elastic software that is licensed for use on MSP's premises or in MSP'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.

1.22   "**Subscription**" means the MSP's right, for a fixed period of

time, to receive Support Services and use the Software in connection with the Managed Services Offering set forth on the Order Form.

1.23 "**Subscription Level**" means, with respect to a Managed Services Offering, the level of Subscription to be purchased for such Managed Services Offering, as identified on Exhibit A. The Subscription Level purchased by MSP determines the specific Support Services that MSP is entitled to receive, and the Eligible Features and Functions of the Software that MSP is entitled to use.

1.24 "**Subscription Term**" means the period of time for which a Subscription is valid, as more fully described in Section 11.1 below.

1.25 "**Support Services**" means maintenance and support services for the Software, as more fully described in the Support Services Policy.

1.26 "**Support Services Policy**" means Elastic's support services policy set forth at 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 MSP upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.

1.27 "**Third Party Open Source Software**" means third party open source libraries, components, utilities and other third party open source software, included with the Software, which may have applicable license terms as identified on a website designated by Elastic (currently, https://www.elastic.co/third-party-dependencies) or otherwise provided with the applicable Software or Documentation.

2   LICENSE GRANTS

2.1   Software License. Subject to the terms and conditions of this Agreement, including the payment of any and all applicable Subscription fees, Elastic hereby grants MSP during the applicable Subscription Term a non-exclusive, non-transferable, royalty-free, fully paid up, limited, right and license, without the right to grant or authorize sublicenses, to: (i) use, in object code format, the Software for Non-Production Purposes; (ii) use, in object code format, the Eligible Features and Functions of the Software that are applicable to the Subscription Level purchased, for the number of Billable Nodes and/or Resource Units for which the applicable Subscription was purchased and for the duration of the applicable Subscription Term, solely as part of a Managed Services Offering made available to MSP Customers that have entered into an MSP Customer Agreement, and (iii) prepare derivative works from the Documentation provided by Elastic to MSP, for the purpose of creating documentation for the Managed Services Offering. The Subscription Level, the number of Billable Nodes and/or Resource Units and the Managed Services Offering for which the applicable Subscription was purchased, are set forth on the applicable Order Form entered into by Elastic and MSP for the purchase of the applicable Subscription. Notwithstanding anything to the contrary herein, use of the Third Party Open Source Software shall be subject to the license terms and conditions applicable to such Third Party Open Source Software, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to MSP hereunder, but may contain additional rights). MSP Affiliates are also permitted to use the Software and Documentation pursuant to the license granted in this Section 2.1, provided that such use is solely as part of a Managed Services Offering made available to MSP Customers, and MSP shall be responsible for all acts and omissions of such Affiliates in connection with their use of the Software that are contrary to the terms and conditions of this Agreement.

2.2   Reservation of Rights and Restrictions. MSP acknowledges that the Software is and shall remain the sole and exclusive property of Elastic. Elastic reserves all rights to the Software not expressly granted herein, and Elastic grants, and MSP receives, no rights in the Software by implication or otherwise, except those rights expressly granted herein. MSP agrees not to: (i) copy or use Software in any manner except as expressly permitted in this Agreement; (ii) except as expressly permitted herein, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer Software to any third party; (iii) except as expressly

permitted herein, use Software for providing time-sharing services, service bureau services or as part of an application services provider or as a service offering; (iv) alter or remove any notices in the Software (including, without limitation, any Third Party Open Source notices included in the Software); or (v) make available to any third party any analysis of the results of operation of Software, including benchmarking results, without the prior, written consent of Elastic. In addition, MSP shall not reverse engineer, decompile, disassemble or otherwise derive source code from Software, except to the extent MSP may be expressly permitted to do so under applicable law, it is essential to do so in order to achieve operability of Software with another software program, and MSP has first requested Elastic to provide the information necessary to achieve such operability with at least ninety (90) days advance written notice and Elastic has not made such information available. MSP acknowledges that any access to Elastic-Hosted Infrastructure is provided solely for the purpose of facilitating updates to the threat detection capabilities of endpoint security. MSP agrees not to access the Elastic-Hosted Infrastructure for any other reason including, without limitation, to (a) monitor the availability or performance of such Elastic-Hosted Infrastructure or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or (b) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

2.3   Limited License to Distribute Endpoint Security Agent. If MSP purchases a Subscription that includes access to endpoint security features and MSP's Managed Services Offering is for endpoint security, then, subject to the terms and conditions of this Agreement, including complete payment of any and all applicable Subscription fees, Elastic grants to MSP a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) during the applicable Subscription Term to (i) distribute to MSP Customers the Software component required to be installed on each MSP Customer endpoint that is managed by the Managed Services Offering ("**Endpoint Security Agent**"), up to the total number of endpoints specified in the applicable Order Form (or none if no quantity is specified); and (ii) grant to each MSP Customer that has entered into an MSP Customer Agreement the right to install and use, in object code format, the Endpoint Security Agent on MSP Customer endpoints, up to the total number of endpoints specified in the applicable Order Form (or none if no quantity is specified) for all MSP Customers, and solely to the extent necessary for the Endpoint Security Agent to be managed by MSP as part of the Managed Services Offering and subject to the applicable MSP Customer Agreement. For the avoidance of doubt, (i) except for the limited right to have the Endpoint Security Agent installed on MSP Customer endpoints and managed by the Managed Services Offering, MSP Customers do not receive a license to any Software in connection with their purchase of the right to use the Managed Services Offering, and (ii) the total number of Endpoint Security Agents distributed to or used on MSP Customer endpoints under the foregoing license shall not exceed the quantity of MSP Customer endpoints set forth in the applicable Order Form.

2.4   Elastic Trademarks. MSP may use the Elastic Trademarks solely to identify the Software, and to promote the availability of the Software as part of the Managed Services Offering. MSP shall ensure that its use of the Elastic Trademarks conforms to Elastic's then-current trademark use policies, as the same may be modified by Elastic from time to time, and which may be found at https://www.elastic.co/legal/trademarks. Except as permitted by the functionality of the unmodified Software, MSP shall not remove, delete or in any manner alter the Elastic Trademarks or other intellectual property rights notices of Elastic or Elastic's suppliers, if any, appearing on the Software as delivered to MSP. MSP shall cooperate fully with Elastic, at Elastic's expense, in the defense and protection of the Elastic Trademarks, and shall promptly advise Elastic if it becomes aware of the use by MSP, its Affiliates, or its or their agents or MSP Customers, of any mark infringing any of the Elastic Trademarks. All advertising, and all promotional and marketing materials where an Elastic Trademark is used shall be of at least the same quality as similar advertising, marketing or promotional materials provided or used by Elastic. Upon Elastic's request MSP's advertising, marketing or promotional materials in which an Elastic Trademark is used shall be submitted to Elastic for its prior written approval, which shall not be unreasonably withheld. All uses of the Elastic Trademarks will inure solely to the benefit of Elastic, and MSP shall obtain no rights with respect to any of the Elastic

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Trademarks, other than the limited rights set forth in this section. MSP irrevocably assigns to Elastic all such right, title and interest, if any, in any of the Elastic Trademarks. At no time during or after the term of this Agreement shall MSP challenge or assist others to challenge the Elastic Trademarks or the registration thereof or attempt to register any trademarks, services marks, trade names or service names confusingly similar to the of Elastic Trademarks. Upon termination of this Agreement, MSP shall immediately cease to use all of the Elastic Trademarks.

2.5   Feedback. MSP, MSP's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Software 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 8 of this Agreement.

3   SUBSCRIPTION ORDERS

3.1   Orders. Orders for Subscriptions may be placed by MSP through (1) the execution of Order Forms with Elastic, setting forth the (i) applicable MSP Customer, (ii) Subscription Level, (iii) Managed Services Offering, (iv) number of Billable Nodes and/or Resource Units for which MSP has purchased a Subscription, (v) Subscription Term, and (vi) total price for such Subscription or (2) issuance by MSP of a Qualifying PO, which will be deemed to constitute, for the purposes of this Agreement, the execution by MSP of the referenced Order Form. Each such executed Order Form is incorporated by reference into, and shall be governed by, the terms and conditions of, this Agreement.

3.2   Subscriptions Purchased Through Resellers. The parties agree that MSP 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 MSP. Where MSP purchases a Subscription through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that shows MSP as the "ship to" party and Reseller as the "bill to" party, and Reseller and MSP will enter into a separate agreement setting forth the fees to be paid by MSP 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 MSP, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. MSP hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to MSP under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to MSP by any Reseller. For the avoidance of doubt, Sections 5.1 and 5.2 below will be of no effect where MSP purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and MSP.

4   SUPPORT SERVICES

4.1   Production Support Services. During an applicable Subscription Term, Elastic will provide MSP with Support Services for the applicable Managed Services Offering in accordance with the Support Services Policy:

4.1.1.   in the case of Gold and Platinum Subscription Levels, for the applicable Managed Services Offering, up to the applicable number of Billable Nodes included in the Subscription; and

4.1.2.   in the case of an Enterprise Subscription Level, for the number of Resource Units included in the Subscription for such Managed Services Offering.

Support Services will be delivered to MSP 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 MSP's or MSP Customer's facilities.

4.2   Development Support. In consideration of the payment by MSP to Elastic of the applicable Annual MSP Program Fee (as set forth on the applicable Order Form), during the term of this Agreement, Elastic will provide Support Services to MSP for MSP's development use of the Software, in accordance with the Support Services Policy.

4.3   Restrictions. Support Services are provided to MSP solely for MSP's internal use in connection with developing and providing the Managed Services Offering (which includes use by MSP Affiliates) and/or for the benefit of MSP Customers that have entered into an MSP Customer Agreement and solely for such MSP Customer's internal use (which includes MSP Customer Affiliates) 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, (ii) the number of support contacts and (iii) incidents, if any, in the Support Services Policy. For the avoidance of doubt, (1) where MSP has purchased a Subscription in connection with a Managed Services Offering at the Subscription Level of Gold or Platinum, Nodes deployed for Non-Production Purposes in connection with such Managed Services Offering are not counted as Billable Nodes and (2) the foregoing internal use restriction is not intended to prohibit MSP from using the Support Services for a Managed Services Offering in which the Managed Services Offering is used in connection with or as part of an MSP Customer website or MSP Customer's own software-as-a-service ("**SaaS**") offering, provided that any such SaaS offering includes substantial, additional value-added software application features and functions, in addition to the features and functions of the Managed Services Offering.   In addition, MSP agrees to not:

4.3.1.   use the Support Services to supply any consulting, support or training services regarding the Software to any third party other than MSP Customers; or

4.3.2.   use Support Services to obtain support (i) for its use of Software for which no Subscription has been purchased or (ii) under a higher Subscription Level for its use of Software for which MSP has purchased a lower Subscription Level.

MSP 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 with this section, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to MSP if MSP fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

5   PAYMENTS, TAXES AND RECORDS

5.1   Subscription Fee Invoices and Payments.

5.1.1.   **Invoices**. Elastic will invoice MSP for Fees set forth in the initial Order Form upon the Effective Date. Subscription fees for any additional Order Forms executed by the parties will be invoiced upon execution of the applicable Order Form.

5.1.2.   **General**. All Fees will be paid in the currency set forth on the Order Form, are non-refundable, and payment will be made without right of set-off or chargeback. MSP will pay all invoices within thirty (30) days of receipt. MSP shall pay all amounts due under this Agreement to Elastic at the address set forth herein or such other location as Elastic designates in writing. Except as otherwise expressly provided in this Agreement, any and all payments made by MSP 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.

5.2   Taxes.   All Fees payable hereunder are exclusive of all applicable sales, use, value-added, and excise taxes, which shall be the responsibility of MSP; provided, however, that MSP shall have no liability for any net income, net worth or franchise taxes assessed on Elastic by the United States or any state thereof. If, as a result of any tax or levy, MSP is required to withhold any amount on any payment to Elastic, then the amount of the payment to Elastic shall be automatically increased to totally offset such tax, so that the amount actually remitted to Elastic, net of all taxes, equals the amount invoiced or otherwise due. MSP will promptly furnish Elastic with the official receipt of payment of these taxes to the appropriate taxing authority. MSP may provide Elastic with a certificate of exemption acceptable to an applicable taxing authority.

5.3   Records and Audits.

5.3.1.   MSP shall maintain complete and accurate accounting records, in accordance with sound accounting practices, to support and document amounts payable to Elastic hereunder. Such records shall be retained for a period of at least two (2) years after the date payments that relate to such records have been paid. MSP shall, upon written

request from Elastic, provide access to such records to an independent auditor chosen by Elastic for the purpose of conducting an audit to confirm amounts paid under this Section 5. If any such audit discloses a shortfall in payment to Elastic, MSP shall promptly pay any such shortfall, and if such shortfall is more than five percent (5%) of the amount paid during the period being audited, MSP agrees to promptly reimburse Elastic for the reasonable cost of the audit.

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

6   MSP OBLIGATIONS

6.1   <u>No Unauthorized Warranties</u>.   MSP shall make no representations or warranties with respect to the Software beyond those contained herein. MSP shall be solely responsible for, and Elastic shall have no legal obligation to honor, any warranties that MSP provides to MSP Customers to the extent that such warranties are broader or greater in scope than those made by Elastic to MSP hereunder. MSP shall defend, indemnify and hold Elastic and its affiliated companies harmless from any and all costs, losses, damages, liabilities and expenses (including reasonable attorney's fees and costs of litigation) resulting from MSP's failure to comply with this section.

6.2   <u>MSP Customer Support By MSP</u>.   MSP will provide direct technical support to MSP Customers. MSP's technical support personnel shall include two (2) persons certified on the Software, in accordance with such reasonable requirements as Elastic may establish from time to time. Certification will be at MSP's expense and at Elastic's published rates.

7   REPRESENTATIONS AND WARRANTIES; DISCLAIMER

7.1   <u>Limited Performance Warranty</u>. Elastic warrants that during the applicable Subscription Term, the Software, in the form provided by Elastic under the applicable 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 MSP's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software 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, then upon request from MSP, MSP may elect to terminate the applicable Order Form and the associated Subscription, and Elastic will promptly refund to MSP any pre-paid, unused fees paid by MSP to Elastic for the applicable Subscription, provided that, upon payment of such refund, all licenses granted in Sections 2.1 and 2.3 and Elastic's obligation to provide Support Services with respect to such Software shall immediately terminate. The warranty set forth in this section does not apply if the applicable Software or any portion thereof: (a) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (b) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (c) 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 within the applicable warranty period specified herein and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

7.2   <u>Malicious Code</u>. Elastic warrants that at the time the Software is made available for download, it will be free of Malicious Code.

7.3   <u>Elastic Support Warranty</u>. Elastic warrants that it will perform the Support Services in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy, shall be for Elastic to re-perform the Support Services.

7.4   <u>Warranty Disclaimer</u>. EXCEPT AS SET FORTH IN THIS SECTION 7, THE SOFTWARE, THE DOCUMENTATION AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTIC AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES OR ANY OTHER MATERIALS OR SERVICES FURNISHED OR PROVIDED TO MSP UNDER THIS AGREEMENT.   TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES AND ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED BY ELASTIC HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING.   FURTHER, ELASTIC DOES NOT WARRANT RESULTS OF USE OR THAT SOFTWARE WILL BE ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED OR THAT THE USE OF ELASTIC SOFTWARE WILL BE UNINTERRUPTED. MSP AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE SOFTWARE. IN ADDITION, MSP UNDERSTANDS AND AGREES THAT THE SOFTWARE, SUPPORT SERVICES, AND ANY MATERIALS FURNISHED OR PROVIDED TO MSP UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

8   CONFIDENTIAL INFORMATION

8.1   <u>Confidential Information</u>. 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 the Software and Documentation, Managed Services Offering, and all materials and communications concerning Elastic's or MSP'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 Software, anything provided by either party to the other in connection with the 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.

8.2   <u>Non-use and Non-disclosure</u>. 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 Affiliates 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 is necessary to enforce its rights under this Agreement.

8.3   <u>Non-Applicability</u>. 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.

8.4   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 investors, potential acquirers, accountants, attorneys and parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement. If MSP is using a third party provider to host the Software, then such provider may also receive, subject to a confidentiality obligation, information related to the terms of this Agreement or MSP's usage of the Software.

8.5   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, 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.

9   INDEMNIFICATION

9.1   Elastic Indemnification.

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

9.1.2.   **Remedies**. If, during the term of this Agreement, the Software or Support 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 MSP to continue to use the applicable Software or Support Services; (ii) modify the applicable Software or Support Services to make it/them non-infringing but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are commercially reasonable options, terminate MSP's right to use the applicable Software and/or Support Services and, at MSP's written request, terminate all affected Order Forms and promptly refund to MSP any unused pre-paid fees paid by MSP to Elastic under such terminated Order Forms.

9.1.3.   **Exclusions**. Elastic will have no obligation to MSP to the extent any Infringement Claim or resulting award is based upon or results from: (i) MSP's use of Software or Support Services in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of MSP to use and/or distribute, within thirty (30) days of MSP's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update of the Software that would have avoided the Infringement Claim; (iii) a modification of the Software that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Software with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use or distribution of the Software other than in accordance with the terms and conditions of this Agreement, or (vi) any Third Party Open Source Software.

9.1.4.   **Limitation**. THE PROVISIONS OF THIS SECTION 9.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC AND THE EXCLUSIVE REMEDY OF MSP, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OR MISAPPROPRIATION OF ANY TRADE SECRET BY THE SOFTWARE, THE SUPPORT SERVICES OR ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED TO MSP HEREUNDER.

9.2   Indemnification by MSP.

9.2.1.   **Intellectual Property Indemnification**. MSP agrees to defend and indemnify Elastic, at MSP's expense, against any legal action brought against Elastic by a third party to the extent that it is based on a claim that a Managed Services Offering in whole or in part, or any software, hardware, materials or technology therein (except for Software), or the combination of the Software with any other software, hardware, materials or technology used by MSP as part of the applicable Managed Services Offering, infringes a patent, copyright or trademark of such third party or makes unlawful use of such party's trade secret, and MSP shall pay any settlement of such claim or final judgment against Elastic in any such action if attributable to any such claim. However, such defense and payments are subject to the conditions that Elastic must: (i) notify MSP promptly in writing of such claim, (ii) permit MSP to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) fully cooperate with MSP, at MSP's expense, in the defense or settlement of such claim.

9.2.2.   **General Indemnifications**. MSP shall defend, indemnify and hold Elastic and its affiliated companies harmless from any and all costs, liabilities, damages and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting from any third party claim that results from or is related to (i) MSP's breach or violation of applicable laws or regulations or (ii) any Managed Services Offering.

9.2.3.   Settlement of Claims. MSP shall not enter into any settlement agreement with respect to claim(s) for which it has an indemnification obligation under this Agreement if such settlement agreement requires any admission of liability or wrongdoing on the part of Elastic or imposes on Elastic any obligation, unless Elastic has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

9.2.4.   Conditions. The obligations of an indemnifying party in this Section 9 are conditioned upon the indemnified party (i) notifying the indemnifying party promptly in writing of any threatened or pending claim for which the indemnifying party has an indemnification obligation, provided that failure to provide such notice will only relieve the indemnifying party of its obligations under this Section 9 to the extent its ability to defend or settle an applicable claim is materially prejudiced by such failure to provide notice; (ii) giving the indemnifying party, at the indemnifying party's expense, reasonable assistance and information requested by the indemnifying party in connection with the defense and/or settlement of the applicable claim and (iii) tendering to the indemnifying party sole control over the defense and settlement of the applicable claim. The indemnified party's counsel will have the right to participate in the defense of the applicable claim, at the indemnified party's own expense; provided, however, that in connection with such participation, the indemnified party will not, without the prior written consent of the indemnifying party, make any prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened applicable claim.

10   LIMITATION OF LIABILITY

10.1   Disclaimer of Certain Damages. IN NO EVENT SHALL MSP 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.

10.2   Damages Cap. EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 8, (II) ELASTIC'S OBLIGATIONS UNDER SECTION 9.1.1, (III) MSP'S

5

INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 6.1 AND 9.2, (IV) AMOUNTS PAYABLE BY MSP UNDER SECTION 5 OF THIS AGREEMENT AND EACH ORDER FORM, AND (V) MSP'S VIOLATIONS OF THE USE AND DISTRIBUTION RESTRICTIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL ELASTIC'S OR MSP'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY MSP TO ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED SOFTWARE AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO MSP UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

10.3   Basis of the Bargain. MSP AGREES THAT THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE A REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

11   TERM AND TERMINATION

11.1   Subscription Term. The initial Subscription Term for each Subscription will commence upon the start date set forth on the applicable Order Form, and expire in accordance with the start date and end date set forth on the applicable Order Form, unless earlier terminated in accordance with Section 11.4.1 below. Thereafter, each Subscription shall automatically renew for additional one (1) year periods (or for such longer period as may be set forth on a renewal Order Form executed by the parties) unless either party gives written notice to the other of its intention not to renew the Subscription at least thirty (30) days prior to the expiration of the then-current Subscription Term. The initial Subscription Term, plus any subsequent renewal Subscription Term shall be the "**Subscription Term**".

11.2   Agreement Term. This Agreement will commence on the Effective Date and, unless earlier terminated in accordance with Section 11.3 or Section 11.4.2 below, continue in force and effect for a period of three (3) years. Thereafter, this Agreement will automatically renew for additional one (1) year periods, unless either party gives written notice to the other party of its intent not to renew this Agreement no later than sixty (60) days prior to expiration of the then-current term. The initial term of this Agreement, plus any subsequent renewal term, shall be the "**Term**" of this Agreement.

11.3   Payment Breach. Except as otherwise provided herein, Elastic may terminate this Agreement prior to its expiration in the event MSP fails to cure any breach for failure to timely pay undisputed amounts owed to Elastic within ten (10) days after written notice from Elastic demanding such payment.

11.4   Termination.

11.4.1.   **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 a Subscription and the associated Order Forms, the rights and obligations of the parties will, subject to Section 11.7 below, cease, provided that termination of a Subscription and associated Order Forms under this subsection will not result in termination of any other Subscription and their respective Order Forms.

11.4.2.   **Agreement**. Either party may terminate this Agreement upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to any active Subscriptions hereunder, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. In addition, either party may terminate this Agreement at any time if (i) a receiver is appointed for the other party or its property, (ii) the other party makes an assignment for the benefit of its creditors, (iii) proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law (and not dismissed within 120 days), (iv) the other party liquidates or dissolves or attempts to do so, or (v) the other party assigns or purports to assign this Agreement in breach of its provisions. For the avoidance of doubt, termination of this Agreement under the foregoing provisions will result in the termination of all Subscriptions and

Order Forms. Either party may also terminate this Agreement for any reason or no reason upon ninety (90) days' prior written notice to the other party, provided that termination of the Agreement pursuant to this sentence will not result in termination of any Subscriptions or their respective Order Forms.

11.5   Obligations on Termination.   Upon termination of this Agreement for any reason: (i) MSP shall immediately cease using or destroy any unused sales literature and other written information and materials supplied by Elastic pursuant to this Agreement or which contain Elastic's Trademarks, and shall provide Elastic with written certification of such cessation or destruction; (ii) MSP shall immediately cease to identify itself as an authorized distributor for Elastic or otherwise affiliated in any manner with Elastic; and (iii) the licenses granted to MSP under Section 2 shall immediately terminate. Notwithstanding any expiration of this Agreement, its terms will continue to apply to, and MSP may continue to exercise the rights granted to it under Section 2 solely with respect to, any Subscription that has not been terminated or for which the Subscription Term has not expired.

11.6   No Liability for Termination. To the greatest extent permitted by applicable law, in the event of termination of this Agreement by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Elastic or MSP. Termination shall not, however, relieve either party of obligations incurred prior to the termination of this Agreement.

11.7   Survival.   All payment obligations under Section 5, plus Sections 2.2, 2.4 (second to last sentence only), 2.5, 5.3, 6.1, 7, 8, 9, 10, 11.5, 11.6 and 12 of this Agreement shall survive any termination or expiration of this Agreement.

12   MISCELLANEOUS

12.1   Affiliates.   The parties agree that their respective Affiliates may also conduct business under this Agreement by entering into Order Forms which, in some cases, may be subject to such additional and/or alternative terms and conditions to those contained in this Agreement as may be mutually agreed in the Order Form or may be set forth in a participation agreement, executed by the applicable parties which incorporates the terms and conditions of this Agreement, as amended by the terms of the participation agreement ("**Participation Agreement**"). Accordingly, where Affiliates of the parties conduct business hereunder, references to MSP shall include any applicable MSP Affiliate, and references to Elastic shall include any applicable Elastic Affiliate. The parties agree that where either of them or one of their Affiliates enters into an Order Form with an Affiliate of the other party, that such Affiliate shall be solely responsible for performing all of its obligations under this Agreement in connection with such Order Form.

12.2   Alert Metadata (Endpoint Security Only). If MSP has deployed endpoint security, the Software may provide Alert Metadata (defined below) to Elastic. Elastic uses Alert Metadata for threat analysis and mitigation, customer support, product management and improvement, and research and development. Information that is identifiable to an individual is removed or de-identified (i.e., anonymized or hashed) before being communicated to Elastic. Elastic does not share Alert Metadata with third parties. "**Alert Metadata**" is data derived from, or communicated to, the Software that is related to malicious or potentially malicious code, attacks or activity.

12.3   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 ("**FCPA**") and the U.K. Bribery Act. Without limiting the foregoing, and in conformity with the FCPA and with Elastic's established corporate policies regarding foreign business practices, none of MSP, Elastic, or their respective employees and agents shall directly or indirectly make any offer, payment, or promise to pay; authorize payment; offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing any act or decision of an official of the United States Government or of any other government (including a decision not to act) or inducing such a person

6

to use his or her influence to affect any such governmental act or decision in order to assist MSP or Elastic in obtaining, retaining or directing any such business.

12.4   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 assignor under this Agreement or (ii) successor in interest in connection with a merger, acquisition or sale of all or substantially 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 successors and assigns.

12.5   Attorney's 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 (excluding any mediation required under 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.

12.6   Export Control. MSP acknowledges that the Software, Support Services, and technology acquired from Elastic are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("**ITAR**") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. MSP 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. MSP acknowledges that remote access to Software may in certain circumstances be considered a re-export of Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations. MSP shall require similar compliance from the MSP Customer and shall be liable for any acts or omissions of MSP Customer in violation of applicable export control laws.

12.7   Force Majeure. Except with respect to payment obligations, neither party will be liable for, or be considered to be in breach of or default under this Agreement as a result of any cause or condition beyond such party's reasonable control.

12.8   Future Features and Functions. MSP understands and agrees that any features or functions of services or products discussed in a roadmap review or otherwise 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 generally available 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, MSP agrees that it is not entering into this Agreement and will be purchasing products and services 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.

12.9   Governing Law. Applicable governing law and jurisdiction will be as set forth in Attachment 1 to this Agreement.

12.10   Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding to the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

12.11   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.

12.12   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 below the signatures on this Agreement. E-mail notices sent to Elastic should be sent to 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.

12.13   MSP Identification. MSP agrees that Elastic may identify MSP as a distributor of the Software on its website, through a press release issued by Elastic, and in other promotional materials.

12.14   Product Metadata. The Software may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any MSP or MSP Customer personal data or any content that MSP processes or stores in the Software in connection with use by MSP of the Software. In addition, MSP 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 MSP's configuration and use of the Software, 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 feature usage.

12.15   Relationship of the Parties. The relationship of Elastic and MSP established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

12.16   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.

12.17   Entire Agreement. 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), along with any valid amendments hereto, constitutes the entire agreement between the parties concerning the subject matter hereof, and 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) Attachment 1 (Country-Specific Provisions), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if MSP issues any purchase orders or similar documents in connection with its purchase of a Subscription, it shall do so only for the purpose of Section 3.1(2) or 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 MSP's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and MSP 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.

Minimum Terms

This Exhibit A to the Agreement sets forth the minimum terms to be included in the MSP Customer Agreement.

Minimum Terms:

1. MSP Customer shall look solely to MSP to satisfy any obligations under the MSP Customer Agreement;
2. MSP Customer shall comply with all laws applicable to its use of the Managed Services Offering, including data privacy laws and U.S. export control and sanctions laws;
3. MSP Customer shall not sell, resell, rent, lease, offer any time-sharing arrangement, service bureau or any service based upon, the Managed Services Offering; and
4. MSP Customer shall not make available to any third party any analysis of the results of operation (including benchmarking results) of the Software, as accessed via the Managed Services Offering.

If the applicable Subscription includes access to endpoint security features and the Managed Services Offering is for endpoint security, then the following additional terms must be included in the MSP Customer Agreement:

5. That the Endpoint Security Agent is licensed, not sold, as a component to be managed by MSP as part of the Managed Services Offering, and is not licensed on a stand-alone basis;
6. That title to the Endpoint Security Agent does not pass to the MSP Customer, and MSP and its licensors own and retain all intellectual property rights in the Endpoint Security Agent except those rights expressly granted by MSP under the MSP Customer Agreement;
7. No direct warranties from Elastic to or for the benefit of the MSP Customer;
8. That each license granted to an MSP Customer shall be a non-exclusive license to install and use, in object code form, the Endpoint Security Agent, solely to the extent necessary for the Endpoint Security Agent to be managed by MSP as part of the Managed Services Offering and for the duration of the applicable Subscription Term;
9. Restrictions on use of the Endpoint Security Agent as set forth under Restrictions set forth below;
10. An export control notice similar to Section 12.6 (Export Control) in this Agreement; and
11. An alert metadata collection notice similar to Section 12.2 (Alert Metadata) in this Agreement.

Restrictions:

MSP Customer agrees not to:

(i)   reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Endpoint Security Agent or any portion thereof, in either case, that has not been licensed in source code form by Elastic, to human-readable form except and only to the extent any such restriction is prohibited by applicable law,
(ii)   deploy or use the Endpoint Security Agent on a stand-alone basis or for any purpose other than as a component to be managed by MSP as part of the Managed Services Offering;
(iii) prepare derivative works from, modify, copy or use the Endpoint Security Agent in any manner except as expressly permitted in the MSP Customer Agreement;
(iv)   transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Endpoint Security Agent in whole or in part to any third party;
(v)   alter or remove any marks and notices in the Endpoint Security Agent; or
(vi)   access or use any Elastic-hosted infrastructure or related data, systems, or networks (collectively, "**Elastic-Hosted infrastructure**") that interface with the Endpoint Security Agent to monitor the availability or performance of such Elastic-Hosted infrastructure or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or
(vii) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

1   AUSTRALIA

1.1   The following is added to the end of Section 5.2 of the Agreement: If for any reason a supply made by Elastic under or in connection with this agreement is a Taxable Supply for GST purposes, then at or before the time the consideration for the supply is payable, MSP must pay Elastic an amount equal to the GST for the supply (in addition to the consideration otherwise payable under this agreement for that supply), and Elastic must give MSP a Tax Invoice for the supply. For the purpose of this Section 5.2, GST means the goods and service tax under the Good and Services Tax Act 1999 (Cth) and capitalised terms have the meaning given in that Act.

1.2   Existing Section 7.4 of the Agreement is moved to Section 7.5 and a new Section 7.4 is added to the Agreement as follows: Australian Consumer Law. Despite anything in this Agreement, Elastic's goods come with guarantees that cannot be excluded under the Australian Consumer Law (as set out in the Competition and Consumer Act 2010 (Cth) ("**ACCA**")) if MSP is deemed a 'Consumer' under ACCA. Then MSP is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Furthermore, MSP will also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1.3   A new sentence is added to the beginning of Section 7.5 of the Agreement as follows: NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT MSP'S NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH).

1.4   Existing Section 10.3 of the Agreement is moved to Section 10.4, and a new Section 10.3 is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

1.5   A new Section 10.5 is added to the Agreement as follows: Australian Consumer Law. IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO ANY GOOD OR SERVICE SUPPLIED BY ELASTIC IN CONNECTION WITH THIS AGREEMENT, AND ELASTIC'S LIABILITY FOR FAILING TO COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 10.1, 10.2 AND 10.3 DO NOT APPLY TO THAT LIABILITY. INSTEAD, ELASTIC'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF ELASTIC), IN THE CASE OF A SUPPLY OF GOODS, ELASTIC REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY OF SERVICES, ELASTIC SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

1.6   Section 12.5 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

1.7   Governing Law; Jurisdiction and Venue. This Agreement will be governed by and construed in accordance with the laws of the New South Wales.   Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 8 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.

2   FRANCE

2.1   Section 2.5 of the Agreement is hereby deleted in its entirety and replaced with the following: Feedback. Subject to its obligations under Section 8 of this Agreement (Confidential Information), Elastic will be irrevocably free to use without restriction of any kind for any purpose, all suggestions, ideas and/or feedback (collectively, "**Feedback**")

provided to Elastic by MSP, or its Affiliates and their respective employees, contractors or other agents, with respect to the Support Services and/or Software. The foregoing grant of rights is made without any duty to account to any of the foregoing persons or entities for the use of such Feedback.

2.2   A new Section 3.3 is hereby added to the Agreement as follows: General. MSP has had the opportunity to assess whether Elastic's off-the-shelf Software and Support Services meet its business needs including by review of the Support Services Policy made available by Elastic. Elastic acknowledges that in pre-contract discussions, if any, it was obliged to inform MSP about the capabilities of its off-the-shelf Software and Support Services relative to MSP's expressed needs. Subject to MSP communicating to Elastic accurate and up to date information, Elastic shall (i) inform, advise and warn MSP in relation to MSP's use of the Software and Support Services relative to those needs; and (ii) suggest Elastic solutions that may be better suited to those needs where it is reasonably appropriate to do so, (for example, volumes, IT architecture configurations and time constraints). Each party shall comply with all laws applicable to its performance of the Agreement and cooperate with the other in good faith in such performance.

2.3   The first sentence of Section 5.1.2 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees will be paid in the currency set forth on the Order Form and are non-refundable.

2.4   The first sentence of Section 5.2 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees payable hereunder are exclusive of all applicable value-added taxes, which shall be the responsibility of MSP; provided, however, that MSP shall have no liability for any net income, net worth or franchise taxes assessed on Elastic by the United States or any state thereof.

2.5   The second sentence of Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following: In the event of a reach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software 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, MSP may elect to terminate the associated Subscription, and Elastic will promptly refund to MSP any pre-paid, unused fees paid by MSP to Elastic for such Subscription, without prejudice to MSP's other rights and remedies under French law subject to the provisions of this Agreement.

2.6   The second sentence of Section 7.3 of the Agreement is hereby deleted in its entirety and replaced with the following: In the event of a breach of the foregoing warranty, (i) Elastic shall have the right to re-perform the Support Services or (ii) if Elastic is unable to re-perform the non-compliant Support Services in accordance with the foregoing warranty, within thirty (30) days of receipt of notice of the applicable non-conformity, MSP may elect to terminate the associated Subscription, and Elastic will promptly refund to MSP any pre-paid, unused fees paid by MSP to Elastic for such Subscription, without prejudice to MSP's other rights and remedies under French law subject to the provisions of this Agreement.

2.7   Section 9.1.3(vi) of the Agreement is hereby deleted in its entirety and replaced with the following: (vi) any Third Party Open Source Software except to the extent that any Infringement Claim results from Elastic's failure to comply with the license agreement(s) applicable to such Third Party Open Source Software.

2.8   The Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with the following: SUBJECT TO SECTION 10.3 BELOW AND PURSUANT TO SECTIONS 1188 AND 1231-3 OF THE FRENCH CIVIL CODE, THE PARTIES AGREE THAT, EXCEPT FOR A PARTY'S GROSS NEGLIGENCE ("FAUTE LORDE") OR WILLFULFUL MISCONDUCT ("DOL"), IN NO EVENT SHALL MSP OR ELASTIC OR ITS LICENSORS, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT

1

OF THE PERFORMANCE OF OR FAILURE RE-PERFORM THIS AGREEMENT.

2.9   Section 10.3 of the Agreement is hereby deleted in its entirety and replaced with the following: Basis of the Bargain. THE ALLOCATIONS OF LIABILITY IN THIS SECTION REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SOFTWARE AND SUPPORT SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS.

2.10   The first sentence of Section 11.4.1 (Subscriptions) of the Agreement is hereby deleted in its entirety and replaced with the following: Each party may terminate the Subscription, ipso jure and without having to file a claim, 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.

2.11   Section 12.5 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

2.12   The word "acknowledges" is replaced with "is informed" in Section 12.6 (Export Control) of the Agreement.

2.13   Section 12.7 of the Agreement is hereby deleted in its entirety and replaced with the following: Force Majeure. 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 event of Force Majeure as defined under Article 1218 of the French Civil Code. MSP expressly agrees that it shall not be relieved from its payment obligations by any act of Force Majeure.

2.14   Governing Law; Jurisdiction and Venue. This Agreement will be governed by the laws of France, without regard to its conflict of laws principles. The parties expressly agree that all suits hereunder will be brought solely before the competent courts located in Paris. 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 above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

3   GERMANY

3.1   The first sentence of Section 5.1.2 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees will be paid in the currency set forth on the Order Form, are non-refundable, and, except for amounts that MSP claims from Elastic that are either undisputed by Elastic or have been awarded to MSP by a competent court, all payments will be made without right of set-off or chargeback.

3.2   The second sentence of Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following: Subject to Section 10 below, In the event of a reach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software 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, MSP may elect to terminate the associated Subscription, and Elastic will promptly refund to MSP any pre-paid, unused fees paid by MSP to Elastic for such Subscription, without prejudice to MSP's other rights and remedies under French law subject to the provisions of this Agreement.

3.3   The fourth sentence of Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following: Additionally, the warranties set forth herein do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

3.4   The last sentence of Section of Section 7.3 (Elastic Support Warranty) is hereby deleted in its entirety.

3.5   Section 7.4 of the Agreement is hereby deleted in its entirety and replaced with the following: Warranty Disclaimer. MSP shall not be entitled to claim or commence proceedings for a breach of the warranties given under Section 7.1, 7.2 and 7.3 above unless: (i) MSP notifies Elastic in writing about the breach within fourteen (14) days of

first becoming aware of such breach: and (ii) any proceedings commenced within twelve (12) months after such breach was first notified by MSP to Elastic in accordance with Section 7.1, 7.2 or 7.3, as applicable (whereas subsection ii of 8.1 is considered to be a limitation period).

3.6   The following is added to the beginning of the second sentence of Section 8.1 of the Agreement: Notwithstanding the provisions of the German Trade Secrets Act (GeschGehG).

3.7   The words "SUBJECT TO SECTION 10 BELOW" are hereby added to the beginning of Section 9.1.4 (Limitation).

3.8   Section 10 of the Agreement is hereby deleted in its entirety and replaced with the following:

11.1   Elastic's liability shall not be limited for: (a) losses caused intentionally or by gross negligence; (b) death, personal injury or damage to health; (c) losses in accordance with the German Product Liability Act in the event of product liability; nor (d) in any other cases where it cannot be limited under applicable German Law.

11.2   Elastic shall be liable for losses caused by the breach of its primary obligations. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the parties may rely. If Elastic breaches its primary obligations through simple negligence, then its liability shall be limited to the losses typical and foreseeable at the time of the conclusion of the Agreement.

11.3   Save for the stipulation in Sections 10.1 and 10.2, the following restrictions shall apply:

(a) Elastic's total liability for simple negligence under Section 10.2 with respect to one Order Form for typical and foreseeable losses shall be limited for any and all damages to the maximum of the single amount of the order value (100%) of the affected Order Form in the calendar year where the losses occurred. For the avoidance of doubt, this limitation of liability applies regardless of its legal cause (e.g. because of non-performance, impossibility of performance, warranty, delay, fault at conclusion of contract, breach of accessory obligation, rescission, tort). The parties agree that this limitation is fair in light of the potential damages of MSP and the potential damages that can happen under the Agreement.

(b) The no-fault liability in the German Civil Code (BGB) according to Section 536a para.1 Alt. 1 for defects that exist at the time of conclusion of this Agreement or of the respective Order Form is excluded.

11.4   Except as expressly set out in Sections 10.1, 10.2 and 10.3, Elastic's liability shall be excluded.

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

11.6   Without prejudice to (a) MSP's rights under § 812 BGB (German Civil Code) and (b) Section 10 of this Agreement, MSP's rights under § 536 BGB (German Civil Code) are hereby excluded.

11.7   Without prejudice to (a) MSP's rights under § 812 BGB (German Civil Code) and (b) Section 11 of this Agreement, MSP's rights under § 536 BGB (German Civil Code) are hereby excluded.

3.9   Section 12.5 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.'

3.10   Governing Law; Jurisdiction and Venue. This Agreement will be governed and construed in accordance with the laws of the Federal

Republic of Germany, without regard to its conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods (UNCISG). All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of a court of competent jurisdiction in Munich, Germany and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. A breach by either party of Section 8 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief.

3.11   The last three sentences of Section 12.17 (Entire Agreement; Amendment) of the Agreement are hereby deleted in their entirety.

4   HONG KONG, CHINA

4.1   Governing Law; Jurisdiction and Venue. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by the laws of Hong Kong. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which SIAC Rules are deemed to be incorporated by reference in this Clause. The tribunal shall consist of three arbitrators. The language of the arbitration shall be English.

5   JAPAN

5.1   The second sentence of Section 7.4 of the Agreement is hereby deleted in its entirety and replaced with the following: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES AND ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED BY ELASTIC HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING.

5.2   Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of Japan without reference to its conflict of laws principles. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be resolved by the courts with jurisdiction in Tokyo, Japan, except where mandatory law provides for the courts at another location in Japan to have jurisdiction. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any applicable courts, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

6   KOREA

6.1   Governing Law; Jurisdiction and Venue. This Agreement will be governed by the laws of the Republic of Korea, without regard to its conflicts of laws principles, and all suits hereunder will be brought in Seoul Central District Court. 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 above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 8 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.

7   SINGAPORE

7.1   Governing Law; Jurisdiction and Venue. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by the law of Singapore. This Agreement shall not

be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which SIAC Rules are deemed to be incorporated by reference in this Clause. The tribunal shall consist of three arbitrators. The language of the arbitration shall be English. A breach or threatened breach, by either party of Section 8 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.

8   UNITED KINGDOM

8.1   The words "SATISFACTORY QUALITY," are added after "MERCHANTABILITY," in Section 7.4 of the Agreement.

8.2   Existing Section 10.3 of the Agreement is moved to Section 10.4 and a new Section 10.3 is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

8.3   Section 12.5 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

8.4   Governing Law; Jurisdiction and Venue. The parties intend that no term of the contract made by this Agreement may be enforced by any person who is not a party to it. The parties reserve the right to agree to rescind or vary this Agreement without the consent of any other person. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded. This Agreement shall be governed by and construed in accordance with the laws of England and Wales whose courts shall have exclusive jurisdiction over any and all disputes arising out of or in connection with it and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 8 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   THE NETHERLANDS AND ANY COUNTRY NOT LISTED IN THIS AGREEMENT (EXCEPT THE UNITED STATES)

9.1   The following is added after the word "DAMAGES" at the end of Section 10.1 of the Agreement: HOWEVER, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELOOSHEID) OR WILFUL MISCONDUCT (OPZET) OF MSP OR ELASTIC.

9.2   Governing Law; Jurisdiction and Venue. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by Dutch law. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be resolved by the courts with jurisdiction in Amsterdam, The Netherlands, except where mandatory law provides for the courts at another location in The Netherlands to have jurisdiction. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 8 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.