



ELASTIC MSP LICENSE AND SUPPORT AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 01 NOVEMBER 2019

This **ELASTIC MSP LICENSE AND SUPPORT AGREEMENT**, including all attachments, addenda, schedules and exhibits and documents referenced at URL's ("**Agreement**") is entered into by and between Elasticsearch, Inc., a Delaware corporation, with offices located at 800 W. El Camino Real, Suite 350, Mountain View, CA 94040 ("**Elastic**") and the entity identified as "MSP" (the "**MSP**") 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 "**Commercial Software**" means Elastic-branded software that is subject to proprietary license terms, including all updates thereto and new releases thereof, that are made generally available by Elastic to its customers during an applicable Subscription Term.

1.6 "**Community Software**" means Elastic-branded software that is licensed and distributed under the Apache License Version 2.0, including all updates thereto and new releases thereof.

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

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

1.9 "**Eligible Features and Functions**" means those features and functions of the Commercial Software that are eligible for use with respect to a particular version of the Commercial Software or Subscription Level. A list of the Eligible Features and Functions that correspond to each version of the Commercial Software and Subscription Levels may be found at <https://www.elastic.co/subscriptions>.

1.10 "**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.

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

1.12 "**MSP Client Agreement**" means a legally enforceable agreement between MSP and an MSP Client that contains terms and conditions that reasonably protect Elastic's intellectual property rights in the Commercial Software, and disclaims any direct liability on the part of Elastic to the MSP Client.

1.13 "**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 Commercial 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 Commercial Software to the scope of the License granted to MSP.

1.14 "**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 and/or third parties, that add substantial additional value to the Software, the combined features and functions of which are made available to MSP Clients as a service, on a single-tenant basis (i.e., each cluster of Software is used for a unique MSP Client), which service is managed by MSP on servers owned or controlled by MSP or, with Elastic's written consent (e-mail sufficient if receipt confirmed or acknowledged), on servers owned or controlled by MSP Client, provided that (i) except for the limited right to have the Software installed on such servers, the MSP Client shall have no license or sublicense to the Software and (ii) MSP agrees to be responsible to Elastic for any use of the Software by MSP Client in violation of the terms and conditions of this Agreement. For the avoidance of doubt, except as set forth in the preceding sentence, such MSP Clients 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.

1.15 "**MSP Client**" means an unaffiliated third party client of MSP.

1.16 "**Node**" means an instance of the Community 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.

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

1.18 "**Open Source Software**" means open source libraries, components, utilities and other open source software, included with Commercial Software, which may have applicable license terms as identified on a website designated by Elastic or otherwise provided with the applicable Commercial Software or Documentation.

1.19 "**Order Form**" means an ordering document pursuant to which MSP purchases Subscriptions under this Agreement.

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 Commercial Software and the Community Software.

1.22 "**Subscription**" means the MSP's right, for a fixed period of time, to receive Support Services and use the applicable Commercial 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 (Gold, Platinum or Enterprise) to be purchased for such Managed Services Offering, as identified on the Order Form. 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 Commercial 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 12.1 below.

1.25 **"Support Services"** means maintenance and support services for the applicable 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 Reference to the singular includes reference to the plural and vice versa. Reference to a gender includes reference to any other gender. Reference to days and months are, unless otherwise specifically stated referring to consecutive calendar days and consecutive calendar months. Section and subsection headings are for ease of reference only and do not affect the construction or interpretation of the Sections or subsections. The phrases "including" and "such as" and similar expressions are not intended and shall not be construed as a limitation.

2 LICENSE GRANTS

2.1 **Commercial 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 term of this Agreement 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 the Commercial Software for Non-Production Purposes; (ii) use the Eligible Features and Functions of the Commercial 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 Clients that have entered into an MSP Client 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. For the avoidance of doubt, MSP's use of any Open Source Software is subject to the applicable open source license, which may set forth terms and conditions that are in addition to or different from those set forth in this Agreement, but which will not restrict the license rights granted to MSP hereunder, and which may contain additional rights.

2.2 **Reservation of Rights and Restrictions.** MSP acknowledges that the Commercial Software is and shall remain the sole and exclusive property of Elastic. Elastic reserves all rights to the Commercial Software not expressly granted herein, and Elastic grants, and MSP receives, no rights in the Commercial Software by implication or otherwise, except those rights expressly granted herein. MSP agrees not to: (i) copy or use Commercial 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 Commercial Software to any third party; (iii) except as expressly permitted herein, use Commercial 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 Commercial Software; or (v) make available to any third party any analysis of the results of operation of Commercial 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 Commercial 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 Commercial 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.

2.3 **Elastic Trademarks.** MSP may use the Elastic Trademarks solely to identify the Commercial Software, and to promote the availability of the Commercial 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 <http://www.elasticsearch.co/trademarks/>. 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 Commercial Software as delivered to MSP. MSP shall cooperate fully with Elastic in the defense and protection of the Elastic Trademarks, and shall promptly advise Elastic if it becomes aware of the use 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 Trademarks, other than the limited rights set forth in this Section 2.3. 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.

2.4 **Suggestions, Ideas and Feedback.** Elastic will be free to use, irrevocably, in perpetuity and 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, the Community Software and/or the Commercial 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.

3 SUBSCRIPTION ORDERS

3.1 **Initial Orders.** Orders for Subscriptions may be placed by MSP through the execution of Order Forms with Elastic, setting forth the (i) applicable MSP Client, (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. Each such executed Order Form is incorporated by reference into, and shall be governed by, the terms and conditions of, this Agreement.

3.2 **Additions to Orders.** MSP may add additional Billable Nodes and/or Resource Units to and/or upgrade the Subscription Level for, an existing Subscription by entering into one or more additional Order Forms setting forth the number of additional Billable Nodes and/or Resource Units to be added and/or the new Subscription Level that applies, to the existing Subscription, and referencing the Order Form under which the existing Subscription was purchased. Upon execution of such an Order Form by the parties, the additional Billable Nodes and/or Resource Units and/or the new Subscription Level will be deemed added to the applicable Subscription for the remainder of the applicable Subscription Term, or, if so indicated on the Order Form, a

new Subscription Term may be initiated that includes the increased number of Billable Nodes and/or Resource Units and/or Subscription Level, and provides MSP with a credit for the unused portion of the existing Subscription.

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 Client'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 Clients that have entered into an MSP Client Agreement and solely for such MSP Client's internal use (which includes MSP Client 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 at 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 Client website or MSP Client'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 Clients;

4.3.2. use the Support Services to obtain support for MSP's or MSP Client's use of any Community Software that is being hosted by a third party providing such Community Software as a service (provided, that this prohibition shall not prohibit MSP from running the Software on physical or virtual systems hosted by a third party, where the third party provides compute, storage or other infrastructure services to MSP, but does not provide the Community Software or its features and functions to MSP or MSP Client as part of such services); or

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

MSP agrees that any knowing failure to comply with the terms of this Section 4.3 will be deemed a material breach of this Agreement. In the event of any failure to comply with this Section 4.3, 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. If MSP does not pay the invoice when due, Elastic may charge interest at one percent (1%) per month on the unpaid balance. 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. 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.

6 MSP OBLIGATIONS

6.1 No Unauthorized Warranties. MSP shall make no representations or warranties with respect to the Commercial 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 Clients 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 6.1.

6.2 MSP Client Support By MSP. MSP will provide direct technical support to MSP Clients. MSP's technical support personnel shall include two (2) persons trained and certified on the Community Software and, if applicable, the Commercial Software, in accordance with such reasonable requirements as Elastic may establish from time to time. Training and certification will be at MSP's expense and at Elastic's published rates.

7 OBLIGATIONS OF ELASTIC

7.1 MSP Program Support. Elastic will assign a program lead to provide ongoing, cross-functional operational support for the MSP relationship. The program lead will provide a point of assistance and an escalation path for items not covered through the Support Services.

7.2 Bi-Annual Business Reviews. Elastic will organize bi-annual business reviews with MSP to solicit feedback from MSP on overall satisfaction with the relationship, operational and technical support, mutual go-to-market efforts, solution sell-through success, and opportunities for improvement.

7.3 Bi-Annual Roadmap Reviews. Elastic will organize bi-annual roadmap review to provide visibility into upcoming releases (timing, content) and existing release end-of-life plans. MSP may also request on-demand roadmap reviews once per quarter if not already organized by Elastic. The materials presented by Elastic in the business reviews shall be the Confidential Information of Elastic. 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.

8 REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 Limited Performance Warranty. Elastic warrants that during the applicable Subscription Term, the Commercial Software 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 Commercial 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 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. The warranty set forth in this Section 8.1 does not apply if the Commercial Software or any portion thereof: (a) has been altered, except by or on behalf Elastic; (b) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) 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.

8.2 Malicious Code. Elastic represents and warrants that at the time the Commercial Software is made available for download, it will be free of Malicious Code. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy shall be for Elastic to replace the Commercial Software with Commercial Software that does not contain any Malicious Code.

8.3 Elastic Support Warranty. 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.

8.4 Warranty Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 8, THE COMMERCIAL 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 COMMERCIAL 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 COMMERCIAL 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 COMMERCIAL 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 COMMERCIAL SOFTWARE. IN ADDITION, MSP UNDERSTANDS AND AGREES THAT THE COMMERCIAL SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

9 CONFIDENTIAL INFORMATION

9.1 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 the Commercial Software and Documentation, MSP Products, 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.

9.2 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 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.

9.3 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.

9.4 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.

9.5 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.

10 INDEMNIFICATION

10.1 Elastic Indemnifications.

10.1.1. **Infringement Claims.** Elastic will, at its expense (i) defend, or at its option settle, a claim brought against MSP by an unaffiliated third party alleging that MSP's use, during the applicable Subscription Term, of Commercial Software or the Support Services infringed such party's patent registered as of the Effective Date, or any copyright or trademark of such party enforceable in the jurisdiction of MSP's use of the Commercial Software or Support Services, or made unlawful use of such party's trade secret (each an "Infringement Claim") and (ii) 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.

10.1.2. **Remedies.** If, during the term of this Agreement, the Commercial 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 Commercial Software or Support Services; (ii) modify the applicable Commercial 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 Commercial 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.

10.1.3. **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 Commercial 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 Commercial Software that would have avoided the Infringement Claim; (iii) a modification of the Commercial Software that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Commercial 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) specifications MSP provides to Elastic; (vi) use or distribution of the Commercial Software other than in accordance with the terms and conditions of this Agreement, (vii) damages attributable to the value of the use of a non-Elastic product or service or (viii) any third party Open Source Software.

10.1.4. **Conditions.** The obligations of Elastic in Sections 10.1.1 and 10.1.2 are conditioned upon MSP (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 Sections 10.1.1 and 10.1.2 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 or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. MSP's counsel will have the right to participate in the defense of the Infringement Claim, at MSP's own expense. MSP 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.

11.1.1 **Limitation.** THE PROVISIONS OF THIS SECTION 10.1 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 COMMERCIAL SOFTWARE, THE SUPPORT SERVICES OR ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED TO MSP HEREUNDER.

10.2 Indemnification by MSP.

10.2.1. **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.

10.2.2. **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 MSP Product.

11 LIMITATION OF LIABILITY

11.1 **Disclaimer of Certain Damages.** 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 PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE ELASTIC COMMERCIAL SOFTWARE, OR 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. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11.1 SHALL NOT APPLY TO A BREACH BY MSP OF THE SCOPE OF THE LICENSES GRANTED IN SECTION 2 OF THIS AGREEMENT, OR TO A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT.

11.2 **Damages Cap.** IN NO EVENT SHALL ELASTIC'S OR ITS LICENSORS' AGGREGATE, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE TOTAL SUBSCRIPTION FEES MSP WAS PAID OR WAS REQUIRED TO PAY ELASTIC UNDER THIS AGREEMENT IN CONNECTION WITH SUCH ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

11.3 **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.

11.4 The foregoing limitations set forth in this Section 11 shall not apply to (i) Elastic's obligations under Section 10.1(i) or MSP's obligations under Section 10.2; or (ii) MSP's breach of the scope of the licenses set forth in Section 2.1 or the restrictions set forth in Section 2.2 or Section 4.3; or (iii) damages arising out of a party's (a) breach of

Section 9; or (b) gross negligence, willful misconduct, fraud, bad faith or a breach of applicable law; or (c) violation of the intellectual property rights of the other party.

12 TERM AND TERMINATION

12.1 **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 12.4.1 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**".

12.2 **Agreement Term.** This Agreement will commence on the Effective Date and, unless earlier terminated in accordance with Section 12.3 or Section 12.4.2 below, continue in force and effect for a period of three (3) years. Thereafter, this Agreement may be renewed by the mutual agreement of the parties, which may be evidenced by the parties' execution of any Order Form with a Subscription Term expiring after the expiration of the then-current term of this Agreement. The initial term of this Agreement, plus any subsequent renewal term of, shall be the "**Term**" of this Agreement. Notwithstanding any expiration of this Agreement, its terms will continue to apply to any Subscription that has not been terminated or for which the Subscription Term has not expired.

12.3 **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.

12.4 Termination for Cause.

12.4.1. **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 12.7 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.

12.4.2. **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 this subsection will result in the termination of all Subscriptions and Order Forms.

12.5 **Obligations on Termination.** Upon termination of this Agreement for any reason: (i) MSP shall immediately cease using and shall deliver to Elastic, any unused sales literature and other written information and materials supplied by Elastic pursuant to this Agreement or which contain Elastic's Trademarks; and (ii) MSP shall immediately cease to identify itself as an authorized distributor for Elastic or otherwise affiliated in any manner with Elastic.

12.6 **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 or this Agreement.

12.7 **Survival.** All payment obligations under Section 5, plus Sections 2.4, 5.3, 6.1, 8, 9, 10, 11, 12.5, 12.6 and 13 of this Agreement shall survive any termination or expiration of this Agreement.

13 MISCELLANEOUS

13.1 **Affiliates.** The parties agree that their respective Affiliates may also conduct business under this Agreement by entering into Order Forms, subject to such additional and/or alternative terms and conditions to those contained in this Agreement as may be mutually agreed upon in order to comply with local country law or business practices, and which are set forth in a country specific participation agreement, executed by the applicable parties which otherwise incorporates the terms and conditions of this 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.

13.2 **Anti-Corruption.** MSP 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, MSP and its employees and agents shall not directly or indirectly make any offer, payment, or promise to pay; authorize payment; nor 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 to use his or her influence to affect any such governmental act or decision in order to assist MSP in obtaining, retaining or directing any such business.

13.3 **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 13.3 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.

13.4 **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.

13.5 **Export Control.** MSP acknowledges that the goods, software 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 Commercial Software may in certain circumstances be considered a re-export of Commercial Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

13.6 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.

13.7 Governing Law.

13.7.1. MSPs in California. If MSP is located in California (as determined by the MSP 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.

13.7.2. MSPs Outside of California. If MSP is located anywhere other than California (as determined by the MSP 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.

13.7.3. All MSPs. 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.

13.7.4. Equitable Relief. A breach or threatened breach, by either party of Section 9 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.

13.8 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.

13.9 Non-Solicitation. During the Agreement and for a period of twelve (12) months following its expiry or earlier, lawful termination, MSP shall not solicit, nor approach in any way, any of Elastic's employees or contract staff with a view to (i) offering such persons, employment, (ii) soliciting services from them on their own account, (iii) encouraging them to provide their services to a third party rather than Elastic, or (iv) offering to them the opportunity to provide products similar to the Software or to perform services similar to the Support Services. However, the foregoing restriction shall not apply to any employee or former employee that responds (without specific solicitation) to a general solicitation of general circulation, placement agencies, or similar means.

13.10 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.

13.11 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 13.12.

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

13.13 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.

13.14 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.

13.15 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) this Agreement, and (iii) 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 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.