



NOT FOR EDITING OR NEGOTIATION
Effective Date: 08 October 2019

ELASTIC

ONLINE TRAINING SUBSCRIPTION AGREEMENT

This **Elastic Online Training Subscription Agreement**, including all attachments, addenda, schedules and exhibits, and documents at referenced URLs (this "**Agreement**") is entered into by and between Elasticsearch Federal Inc., a Delaware corporation, with its principal place of business located at 800 W. El Camino Real, Suite 350, Mountain View CA 94040 ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**") on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**"), provided that, solely in the case of a U.S. Government Customer, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government Customer obtains the Commercial Software that is the subject of this Agreement, and, solely in the case of U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order.

1 DEFINITIONS

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

1.1 "**Addendum**" means, an addendum to this Agreement which sets forth additional terms and conditions that are specific to Services.

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 "**Online Training Subscriptions**" means Elastic's annual training subscriptions regarding the use of one or more Products, provided to Customer by or on behalf of Elastic.

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

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

1.6 "**Services**" means Online Training Subscriptions.

2 AGREEMENT SCOPE

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

2.2 Subscription Orders.

(a) **Initial Orders**. Orders for Services may be placed by Customer through the execution of Order Forms with Elastic, setting forth the the specific Services included. For non-U.S. Government Customers, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order as provided in FAR 12.212(b).

2.3 Services Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Services that are governed by this Agreement. Orders for Services purchased through a Reseller are not subject to cancellation by Customer. Where Customer purchases Services through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of Services that shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Services, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Services under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for

the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases Services through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

3 PAYMENT AND TAXES

3.1 Payment. Customer agrees to pay Elastic the fees stated on each Order Form within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback. If Customer does not pay the invoices when due, Elastic may charge interest at the lesser of one percent (1%) per month on the unpaid balance or the highest percentage allowed under applicable law. Except as otherwise expressly provided in this Agreement, any and all payments made by Customer pursuant to this Agreement or any Order Form are non-refundable, and all commitments to make any payments hereunder or under any Order Form are non-cancellable.

3.2 Taxes. All fees stated on an Order Form are exclusive of any applicable sales, use, value added and excise taxes levied upon the delivery or use of the taxable components, if any, of the Subscription purchased by Customer under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its Affiliates. Unless Customer provides Elastic a valid state sales/use/excise tax exemption certificate or Direct Pay Permit, and provided that Elastic separately states any such taxes in the applicable invoice, Customer will pay and be solely responsible for all Taxes. If Customer is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of Support Services or the Commercial Software under this Agreement, Customer shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced.

4 CONFIDENTIAL INFORMATION

4.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("**Confidential Information**"). Confidential Information includes materials and all communications concerning Elastic's or Customer's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Software, anything provided by either party to the other in connection with the Commercial Software or Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and

confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

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

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

4.4 Terms of this Agreement. Except as required by law or governmental regulation, neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party, except that either party may disclose the terms of this Agreement to potential acquirers, referral and partners involved in an applicable transaction, accountants, attorneys and parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement.

4.5 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party may disclose the other party's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party's cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order.

5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Limited Services Performance Warranty. Elastic warrants that it will perform the Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Services].

5.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 ABOVE OR IN AN ADDENDUM, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES AND

ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE SERVICES. IN ADDITION, CUSTOMER UNDERSTANDS AND AGREES THAT THE SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

6 INFRINGEMENT CLAIMS

6.1 Obligation. Elastic will, at its expense: (i) defend, or at its option settle, any claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and Addendum, during the Term, of the 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 Customer's use of the Services, or made unlawful use of such party's trade secret (each, an "Infringement Claim") and (ii) indemnify Customer against and pay (1) any settlement of such Infringement Claim consented to by Elastic or (2) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim.

6.2 Exclusions. Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) Customer's use of the Services in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update of the Commercial Software that would have avoided the Infringement Claim; (iii) a modification of the Services that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Services with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use of the Services other than in accordance with the terms and conditions of this Agreement; (vi) where Products are incorporated into, or constitute a component of, a larger system or solution, including but not limited to a software-as-a-service, damages attributable to the value of the use of any non-Elastic product or service or (vii) any open source software included in a Product.

6.3 Certain Remedies. If the Services are, or in Elastic's reasonable opinion are likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Services; (ii) modify the Services to make it/them non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in Elastic's reasonable judgement, commercially reasonable options, terminate Customer's right to use the Services, and, at Customer's written request, terminate all affected Order Forms and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under such terminated Order Forms.

6.4 Conditions. The obligations of Elastic in this Section 6 are conditioned upon Customer (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 5 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. In the case of U.S. Government Customers, Customer shall be represented as provided under 28 U.S.C. § 516. Customer will not, without the prior written consent of Elastic, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER

INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY SERVICES.

7 LIMITATION OF LIABILITY

7.1 **Excluded Damages.** IN NO EVENT SHALL ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 **Damages Cap.** EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 4, AND WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 6.1(i), IN NO EVENT SHALL ELASTIC'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT IN CONNECTION WITH SUCH ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

7.3 **Basis of the Bargain.** THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SERVICES AND/OR GOODS PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

8 TERM AND TERMINATION

8.1 **Term.** Unless earlier terminated in accordance with this Section 8, this Agreement will remain in effect until both parties' obligations are fully discharged.

8.2 **Termination. Non-U.S. Government Customers:** Each party may terminate this Agreement and the 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, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties will, subject to Section 8.3 below, cease. **U.S. Government Customers:** Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

8.3 **Survival.** Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 6, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

9 GENERAL

9.1 **Anti-Corruption.** Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws ("**Anti-Corruption Laws**"). Each party agrees that no one acting on its behalf will give, offer, agree or promise to give, or authorize the giving directly or indirectly, of any money or other thing of value, including travel, entertainment, or gifts, to anyone as an unlawful inducement or reward for favorable action or forbearance from action or the exercise of unlawful influence (a) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (b) to any political party, official of a political party, or candidate, (c) to an intermediary for payment to any of the foregoing, or (d) to any other person or entity in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or

license, or directing business to any person. Improper payments, provisions, bribes, kickbacks, influence payments, or other unlawful provisions to any person are prohibited under this Agreement.

9.2 **Assignment. Non-U.S. Government Customers:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section 9.2 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns. **U.S. Government Customers:** To the extent relevant and applicable, any assignment shall be subject to FAR 42.12 Novation and Change-of-Name Agreements, and FAR Clause 52.232-23, Assignment of Claims (JAN 1986).

9.3 **Attorneys' Fees.** If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, "prevailing party" includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Notwithstanding the foregoing, for U.S. Government Customers, there shall be no entitlement to attorneys' fees, expert witness fees, costs of suit and expenses, except to the extent, if any, permitted by Federal statute and regulations.

9.4 **Customer Identification.** Unless Elastic has first obtained Customer's prior written consent, Elastic shall not identify Customer as a user of the Services, on its website, through a press release issued by Elastic and in other promotional materials.

9.5 **Export Control.** Customer acknowledges that the Software, Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elastic goods, software or technology or disclose any Elastic software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to the Software may in certain circumstances be considered a re-export of such Products, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

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

9.7 **Future Features and Functions.** Customer understands and agrees that any features or functions of services or products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing products 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.

9.8 **Governing Law, Jurisdiction and Venue.** **Non-U.S. Government Customers in California:** If Customer is located in California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County.

All U.S. Government Customers: No matter where located, for all U.S. Government Customers this Agreement shall be governed by the Federal law of contracts.

(b) **Non-U.S. Government Customers Outside of California.** If Customer is located anywhere other than California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

(c) **All Customers.** This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond. Notwithstanding the foregoing, the parties acknowledge that with respect to non-U.S. Government Customers equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

9.9 **Notices.** Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notices to Elastic may also be sent to legal@elastic.co. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 9.9.

9.10 **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.

9.11 **Relationship of the Parties.** The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its

personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

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

9.13 **Suggestions, Ideas and Feedback.** Subject to its obligations under Section 4 of this Agreement (Confidential Information), 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 Customer, or its Affiliates and their respective employees, contractors or other agents, with respect to the Services. 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.

9.14 **Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form, and (ii) this Agreement. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (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 Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

ELASTIC ONLINE TRAINING SERVICES SUBSCRIPTION ADDENDUM

This **ONLINE TRAINING SERVICES SUBSCRIPTION ADDENDUM** (this “**Addendum**”) sets forth additional terms and conditions related to Customer’s purchase of one or more Online Training Subscriptions (defined below) from Elastic.

1. ORDERS

1.1 **General.** Customer may purchase Online Training Subscriptions from Elastic by completing an Order Form, where the purchase and delivery of the applicable Entitlements is governed by the terms and conditions of the Agreement and this Addendum. Elastic agrees to use commercially reasonable efforts to perform or deliver such Entitlements in accordance with this Addendum. Entitlements are non-transferable (except as provided under Section 3.2 of this Addendum) and only for Customer’s internal use, and Customer may not use the Entitlements to supply any consulting, support or training services to any third party. Entitlements shall be performed or delivered by persons (“**Trainers**”) who in the reasonable judgment of Elastic are appropriately qualified to perform or deliver such Entitlements. All Entitlements are Commercial Items as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101. Subject to the payment by Customer to Elastic of applicable fees, during the applicable Training Subscription Term, Elastic agrees to provide Participant with the Entitlements for the applicable Training Subscription Level set forth on the Order Form for such Online Training Subscription. Upon the expiration of the Training Subscription Term, Elastic will not be obligated to provide the Entitlements, or provide any refund for any unused Entitlements.

1.2 **Additional Online Training Subscriptions: Online Courses.** Customer may purchase additional Online Training Subscriptions through the execution of one or more additional Order Forms, setting forth the additional Online Training Subscriptions purchased by Customer, along with the applicable additional fees to be paid by Customer to Elastic. Purchases of individual online training products via the online shopping cart on training.elastic.co will be governed by separate terms, not by this Addendum.

2. SPECIFIC ENTITLEMENT TERMS

2.1 **Online Courses; Ask-the-Instructor Sessions.**

(a) **Training Portal Login.** All Participants that will have access to Online Courses or Ask-the-Instructor Sessions must select for Elastic’s training portal (“**Training Portal**”) a login identification (“**User ID**”) and a user password (“**User Password**”) that is unique and entirely different from Customer’s User ID (collectively, “**Training Portal Login**”).

(b) **Online Course Access.** Participants generally will have at least ninety (90) days from the date they first access an on-demand Online Course to complete it, though modules or hands-on labs within individual on-demand Online Courses may be subject to additional time restrictions on availability and access, as set forth in the user guide that is e-mailed to each Participant upon registration on the Training Portal. A Participant may only access a given Online Course once during the Training Subscription Term, unless renewed.

(c) **Ask-the-Instructor Sessions.** From time to time during an applicable Training Subscription Term, Elastic may offer Ask-the-Instructor Sessions for eligible Participants. Customer understands that any information provided through such Ask-the-Instructor Sessions is purely advisory in nature and is not intended as a type of support service or substitute for support services. ELASTIC SPECIFICALLY DISCLAIMS ALL WARRANTIES, IMPLIED OR EXPRESS, WITH RESPECT TO THE INFORMATION FURNISHED OR PROVIDED TO PARTICIPANTS IN SUCH SESSIONS.

2.2 **Certification Exam Attempts.** Certification Exam Attempts are subject to the terms of the Elastic Certification Program Agreement, available at: <https://www.elastic.co/legal/certification-program-agreement> (other than Section 3 thereof relating to the parties’ obligations with respect to payment and taxes, which shall instead be governed by the terms of the Agreement and this Addendum).

Participants must both schedule and perform their Certification Exam Attempts by the end of the applicable Training Subscription Term.

3. PARTICIPANT AND CUSTOMER OBLIGATIONS

3.1 **Participant Conduct.** Each Participant must: (i) be appropriately qualified to participate; (ii) login on time for training and in any event not later than twenty minutes after its scheduled start time (for public classroom); (iii) not conduct itself in an anti-social manner that could reasonably be considered contrary to Customer’s applicable employment rules and policies (for public classroom); (iv) protect the confidentiality of his or her Training Portal Login(s) and not share his or her User ID and/or User Password with others; and (v) not share access to the training or the Materials (defined in Section 6.1 below) with any third party for any reason. Trainers shall have the right in their reasonable discretion to exclude from a training session any person in breach of subsections (i)-(v) of this Section 3.1.

3.2 **Re-Designation of Participant.** If the Participant designated in an Online Training Subscription is an employee of Customer and his or her employment terminates, Customer may, with written consent of Elastic, designate another individual as Participant for the remainder of the term of the Online Training Subscription.

3.3 **Customer Responsibility for Participant.** Where Customer has designated a Participant under an Online Training Subscription, Customer shall be responsible for Participant’s compliance with the Agreement and this Addendum and for any acts or omissions of Participant in violation of the Agreement and/or this Addendum.

3.4 **Participant Privacy.** Customer acknowledges that as part of Customer’s and/or Participant’s use of the Entitlements, Elastic will obtain certain information about Customer and/or Customer’s Participants, which may include personal data. Customer shall make such disclosures, obtain such consents and provide such choices regarding the disclosure and use of Participant personal data as may be required for compliance with any applicable law, rule or regulation. Customer agrees to the Elastic Privacy Statement, which can be found at <https://www.elastic.co/legal/privacy-statement>.

4. MONITOR RIGHTS

Elastic shall have the right to verify Participant’s right to access or use an Entitlement and monitor Participant’s progress and access to and use of the Entitlements for compliance with any applicable limitations on Customer’s and/or Participant’s use of the Entitlements. In the event any such monitoring reveals that Customer or Participant has used the Entitlements in excess of the limitations applicable to Customer’s Online Training Subscription, Customer shall promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. Elastic may also request no more than once per calendar year that Customer perform an appropriate self-audit to validate and then certify in writing that its Participants have not shared their User Passwords with others. Without prejudice to Elastic’s other rights, Elastic may in its sole discretion disable any User IDs or User Passwords revealed in such self-audit to have been shared.

5. INDEMNITY

Customer shall indemnify, defend and hold harmless Elastic, its subsidiaries and affiliates, and each of their officers, directors, agents, employees, and assignees from any and all claims, liabilities, expenses and damages, including reasonable attorneys’ fees and costs, made by any third party relating to or arising out of (i) Participant’s access or use or attempted access or use of the Entitlements in violation of the Agreement, this Addendum or the Order Form, (ii) Participant’s use or attempted use of any program, data, information or any other Material provided as part of the delivery of the Entitlements in a manner inconsistent with this Agreement, or (iii) Participant’s use or violation of any law or rights of any third party.

6. OWNERSHIP OF MATERIALS; LICENSE GRANT

6.1 **Ownership of Materials.** Customer acknowledges that it and its Participant(s) may acquire proprietary information and materials about the business, products, services, certification criteria and processes and programming techniques of Elastic and agrees that all such information and materials acquired are the confidential information of Elastic ("**Confidential Training Information**"). Customer agrees and shall require that its Participant(s) agree to protect and not to disclose or use the Confidential Training Information except as expressly permitted under the Addendum. Elastic training courses and training materials including, without limitation, online lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programming assignments, code samples, practice exams, and other educational materials and tools made available to Participant in connection with the Entitlements ("**Materials**") and all worldwide intellectual property rights therein, as the same may be amended and/or extended, including the copyright, are wholly owned solely by Elastic, who shall retain all right title and interest in and to all Materials. A Participant shall be entitled to keep and use all Materials provided by Elastic to Participant, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Elastic. In particular, and without limitation, Materials may not be copied, electronically or otherwise (whether or not for archive purposes), modified (including translated), re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. The use of any Materials will be limited to use by the specific Participant to whom the Entitlements are provided. All Elastic trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Neither Customer nor any of its Participant(s) shall use any Elastic trademarks without Elastic's express written authorization.

6.2 **License Grant.** Subject to the terms and conditions of the Agreement, this Addendum and the applicable Order Form, including complete payment of any and all applicable fees, Elastic agrees to grant to each Participant a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) to access, download, internally use and display the Material as necessary to utilize the Entitlements under the Online Training Subscription that Customer has purchased.

7. THIRD PARTY SOFTWARE

7.1 **Third Party Products.** Customer acknowledges that in order for Elastic to provide the Entitlements, Customer or Participant may be required to license and install certain third party software and provide certain third party hardware that are not provided or licensed by Elastic ("**Third Party Products**"). Elastic may provide Customer or Participant with links and instructions for obtaining Third Party Products, but it is Customer's and/or Participant's (as applicable) responsibility to properly license and install any required Third Party Products from the relevant third party providers. Elastic shall have no liability with respect to any Third Party Products. In the event of a failure by Customer or Participant to timely provide Third Party Products as required, Elastic may treat the applicable Online Training Subscription under the Order Form as having

been cancelled by Customer with respect to the Entitlements requiring the Third Party Products. In no event will Elastic be liable in case such third party providers do not comply with any or all obligations under applicable law as regards the storage, processing, transmission and protection of personal data.

7.2 **Third Party Privacy Policies.** Third Party Product suppliers may request or require that Customer or Participants provide or make available personal data in connection with making the Third Party Product available to the Participant. It is Customer's and Participant's responsibility to read the privacy policies of any such Third Party Product suppliers and determine whether to provide or make available such personal data. Elastic is not responsible for the privacy policies of any Third Party Product supplier and shall not be liable if any such Third Party Product supplier fails to comply with its privacy policy or its obligations under applicable law.

8. ADDITIONAL DEFINITIONS

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

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

8.2 **"Certification Exam Attempt"** means Participant's right to attempt the Elastic Certification Exam.

8.3 **"Entitlements"** means the applicable Online Courses, Ask-the-Instructor Sessions, Certification Exam Attempts, Materials, and/or other benefits that may be provided by Elastic to a Participant, as determined by the Training Subscription Level purchased by Customer.

8.4 **"Online Course"** means an online training course provided by Elastic to Participant via the Training Portal, including any hands-on lab and associated reference Materials that may be offered as part of such course.

8.5 **"Online Training Subscription"** means the right for a single, named individual designated by Customer ("**Participant**") to access or use, for the Training Subscription Term, the Entitlements with respect to the applicable Training Subscription Level set forth in the applicable Order Form.

8.6 **"Participant"** has the meaning set forth in the defined term "Online Training Subscription".

8.7 **"Training Subscription Level"** means the level of an Online Training Subscription purchased by Customer, as indicated on an applicable Order Form. The Training Subscription Level purchased by Customer determines the specific Entitlements that Participant may receive, as more fully described at <https://www.elastic.co/training/subscriptions>.

8.8 **"Training Subscription Term"** means the period commencing and expiring on the respective start and end dates set forth on the Order Form for the applicable Online Training Subscription.