



## ELASTIC

### SERVICES AGREEMENT

#### NOT FOR EDITING OR NEGOTIATION.

Effective Date: 10 DECEMBER 2019

This **Elastic Services 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 "**Consulting Services**" means consulting services 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 Consulting Services or Training Services, as applicable.

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

#### 2 AGREEMENT SCOPE

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

2.2 Subscription 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 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 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.

(a) **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](mailto:legal@elastic.co). Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 9.9.

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 **Product Usage Data.** Elastic may collect and use Product Usage Data (defined below) for security, support, product and operations management, and research and development. "**Product Usage Data**" is information other than Customer content that may be automatically collected and reported by the Product. Detailed information on Product Usage Data is provided in Elastic's Privacy Statement at <https://www.elastic.co/legal/privacy-statement>.

9.12 **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.

9.13 **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.

9.14 **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.

9.15 **Threat Data.** If a Customer has purchased a Subscription that includes endpoint security, Elastic may collect and use Threat Data (defined below) for threat analysis and mitigation, customer support, product management and improvement, and research and development. "**Threat Data**" is data derived from, or communicated to, the Product that is related to malicious or potentially malicious code, attacks or activity. Threat Data will not be shared with third parties in a manner attributable to an individual or End User.

9.16 **Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), and (ii) 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 SERVICES ADDENDUM

This **ELASTIC SERVICES ADDENDUM** (this "**Addendum**") sets forth additional terms and conditions related to Customer's purchase of Consulting Services and/or Training Services.

### 1 SERVICES

#### 1.1 Services Orders.

(a) Customer may order Services by executing an Order Form, which upon execution by Elastic and Customer will become part of and subject to this Agreement. Each Order Form will set forth the Services Package(s) being purchased and the applicable Fees.

(b) Order Forms are not subject to cancellation. Customer agrees that it will have a period of one (1) year from the date of execution of an applicable Order Form to consume the Services set forth on such Order Form. Upon the expiration of such one (1) year period, Elastic will not be obligated to provide such Services, or provide a refund of any Fees paid under such Order Form.

#### 1.2 Scheduling and Rescheduling.

(a) Services may be scheduled at the time of purchase, or at a later date, through contacting the Elastic Consulting Services group, provided that Services to be provided at Customer's location must be scheduled in minimum increments of one (1) day, and Services to be provided remotely must be scheduled in minimum increments of two (2) hours.

(b) Rescheduling of Services must be done in writing. There is a €2,600 rescheduling fee if Services are rescheduled less than fifteen (15) days prior to the scheduled commencement of Services, and Customer shall reimburse Elastic for any non-refundable travel expenses that have been incurred by Elastic prior to such rescheduling.

1.3 Performance of Services. Subject to the payment by Customer to Elastic of applicable Fees and the terms and conditions of this Services Addendum and the Agreement, Elastic agrees to perform the Services.

1.4 Personnel. Elastic reserves the right, at its discretion, to assign personnel, and to use and assign personnel from Elastic Affiliates, to perform Services.

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

#### 1.6 Customer Obligations.

(a) **Access, Information, Materials and Cooperation.** For Consulting Services, Customer agrees to provide Elastic with such cooperation, materials, information, access and support which Elastic deems to be reasonably required to allow Elastic to successfully provide the Services, including, without limitation, secure access to Customer's systems that complies with any data privacy laws applicable to Customer and Customer's security policies, and as may be set forth in the Services Description. Customer understands and agrees that Elastic's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information, access and support.

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

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

(d) **Training Services.** Customer will supply facilities and equipment (including refreshments and stationary) for on-site courses with one fully operational workstation per student, unless otherwise stated on the Services Order Form. Customer shall not change the venue for a course to another venue more than five miles away without giving Elastic fourteen (14) days prior written notice, nor without Elastic's prior written consent (not to be unreasonably withheld or delayed), failing either of which Elastic shall be entitled to treat the Training Services as having been cancelled by Customer. Customer shall ensure that all persons booked to receive training: (i) are appropriately qualified to participate; (ii) arrive on time for training and in any event not later than twenty minutes after its scheduled start time; (iii) do not conduct themselves in an anti-social manner that could reasonably be considered contrary to Customer's applicable employment rules and policies. Consultants providing Training Services shall have the right in their reasonable discretion to exclude from a training session any person in breach of subsections (i)-(iii) of this Section 1.5(d).

### 2 OWNERSHIP OF WORK PRODUCT AND OTHER MATERIALS

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

2.2 Other Materials. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any other materials, including, without limitation training course materials

provided by Elastic to Customer in connection with the provision to Customer of Services (collectively, "**Materials**"), other than the rights of use specifically granted in this Agreement. Customer shall be entitled to keep and use all Materials provided by Elastic to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Elastic. In particular and without limitation, Materials may not be copied electronically or otherwise (except for purposes of internal distribution within Customer's organization and for archival purposes), modified including translated, re-distributed, disclosed to third parties (other than Customer Affiliates and Contractors providing services to Customer that do not compete with the Services), lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Elastic trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Elastic trademarks without Elastic's express written authorization.

### 3 INDEMNIFICATION

3.1 Each party ("**Indemnitor**") shall indemnify, defend and hold the other party and its directors, officers, employees, agents and independent contractors ("**Indemnitee**") harmless from and against, any and all suits, actions and proceedings, claims, liabilities, losses, damages, expenses (including attorneys' fees) and costs (collectively, "**Claims**"), made against an Indemnitee by a third party for personal injury or damage to tangible property, to the extent arising solely from any gross negligence or reckless act, or any intentional misconduct of the Indemnitor, or its directors, officers, employees, agents or independent contractors in the performance of this Services

Addendum. The indemnification obligations of the parties in this Section 3 are contingent upon: (i) the Indemnitee promptly notifying the Indemnitor in writing of any claim which may give rise to a Claim for indemnification hereunder; (ii) the Indemnitor being allowed to control the defense and settlement of such Claim; and (iii) the Indemnitee cooperating with all reasonable requests of the Indemnitor (at Indemnitor's expense) in defending or settling a Claim. The Indemnitee shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing.

### 4 ADDITIONAL DEFINITION

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

4.1 "**Consultant**" means a member of Elastic's consulting services or training services staff, as applicable.

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

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

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